

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

DEPARTMENT: Community and Human Development

AGENDA DATE: Introduction October 5, 2010 and
Public Hearing October 12, 2010

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

DISTRICT(S) AFFECTED: 4

SUBJECT:

City Council is asked to approve an Ordinance authorizing the City Manager to execute a HOME Program Purchase and Development Agreement, Special Warranty Deed and all Other necessary documents to effectuate the sale and conveyance of property to Tierra Del Sol Housing Corporation for the development of 30 affordable single-family homeownership housing for low- to moderate-income households, in the Summerlin Subdivision, within 24 months from the closing of the sale.

The 30 lots will be sold to Tierra Del Sol Housing Corp. for \$150, who in turn, will decrease the sales price of the land by \$30,000 to each eligible homebuyer. There are four models available, that can be mirrored or modified to accessible. The models have been reviewed and approved by the City. The maximum sales price of each home will be \$121,000; less \$30,000 for the land; less \$3,000 for the self-help component; less down payment and closing costs assistance. All of these deductions will help to ensure the homes are affordable to low income First time Homebuyers.

In compliance with the sales Agreements, Tierra Del Sol will: (1) conduct education and outreach to recruit Eligible applicants whose income is $\leq 80\%$ AMI; (2) execute a written agreement or addendum to the contract for sale of the homes, with prior review and approval by the City; (3) provide each qualified homebuyer with the minimum required homebuyer education and counseling through a HUD-approved Homebuyer Education and Counseling provider; (4) include a self-help component in the construction of each home with a value up to \$3,000 that includes painting and other non-skilled construction work on the homes; (5) obtain and pay for all necessary permits and licenses required to construct the homes; (6) assist the prospective eligible Homebuyer in obtaining construction and/or permanent mortgage financing; (7) ensure the prospective eligible homebuyers meet the underwriting criteria of the primary Lender and require a standard mortgage at a fixed interest rate; (8) strongly encourage Homebuyers to complete training on home maintenance conducted by the City, prior to closing on the home; and (9) encourage the homebuyers to complete a post counseling session after purchasing their home.

BACKGROUND / DISCUSSION:

The Community and Human Development Dept. purchased the specified vacant lots in Scattered sites, in the Summerlin subdivision, for the purpose of providing homeownership opportunities for low- to moderate-income First Time Homebuyers, whose income is $\leq 80\%$ of Area Median Income. In January, 2010, the City issued an RFP for the development of affordable single-family First Time Homebuyer housing in the Summerlin Subdivision. Two proposals were received that were reviewed and rated by the Evaluation Committee. The respondent receiving the highest score is Tierra Del Sol Housing Corporation.

PRIOR COUNCIL ACTION:

On August 26, 2008 City Council approved the purchase of the 30 lots in the Summerlin Subdivision by the City for the purpose of developing affordable homeownership housing for low- to moderate income First Time Homebuyers.

AMOUNT AND SOURCE OF FUNDING:

None Required

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A
N/A

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

DEPARTMENT HEAD:



William L. Lilly

Information copy to appropriate Deputy City Manager

ORDINANCE NO.

AN ORDINANCE AUTHORIZING THE CITY OF EL PASO TO SELL 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 TO TIERRA DEL SOL HOUSING CORPORATION, IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE SECTION 272.001(G).

WHEREAS, on October 17, 2008 the City of El Paso, having received a formula grant from the U.S. Department of Housing and Urban Development ("HUD") under the HOME Investment Partnerships Program, referred to as "HOME", as enacted under Title II of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625, approved November 28, 1990), acquired 30 residential lots in the Summerlin Subdivision, El Paso, Texas (the "Property") through use of HUD HOME funds for the sole purpose of developing affordable homeownership housing opportunities in El Paso, Texas; and

WHEREAS, pursuant to Section 272.001(g) of the Texas Local Government Code, the City is authorized to sell, exchange or otherwise convey land or interests to an entity for the development of low-income or moderate-income housing and for less than its fair market value if the conveyance serves a public purpose and under terms and conditions of the transaction so as to effectuate and maintain the public purpose; and

WHEREAS, on December 29, 2009, the City's Community and Human Development Department issued a Request for Proposals for the City's Affordable Housing Development Project (Summerlin Subdivision First-Time Homebuyer Program) for the purpose of soliciting proposals from non-profit and for-profit organizations to purchase the Property through a bulk sale at discount and to construct 30 affordable single family housing units on the residential lots for resale to qualified low to moderate income first-time homebuyers who intend to occupy their newly constructed homes for a minimum 10-year affordability period; and

WHEREAS, the City is willing to sell and convey the subject Property to Tierra Del Sol Housing Corporation and accept its proposal as amended and Tierra Del Sol Housing Corporation is willing to acquire the Property subject to the terms and conditions specified in the HOME Program Purchase and Development Agreement and other related documents to be entered into by the parties in the transaction; and

WHEREAS, the City Council finds that the conveyance of the City's interest in the subject Property to Tierra Del Sol Housing Corporation at less than fair market value serves a public purpose by effectuating the development of low to moderate-income affordable homeownership housing in El Paso, wherein the public purpose will be maintained by the terms and conditions of the parties' HOME Program Purchase and Development Agreement and certain deed restrictions in the conveyance deed to enforce the affordability requirements and recapture of federal funds invested by the City.

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

That the City Manager be authorized to execute a HOME Program Purchase and Development Agreement, Special Warranty Deed, and all other necessary related documents, in a form approved by the City Attorney's Office, to effectuate the sale and conveyance of the following property to Tierra Del Sol Housing Corporation:

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.

PASSED AND APPROVED this ____ day of _____, 2010.

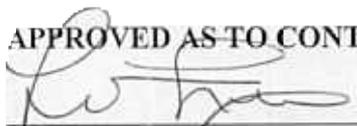
THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

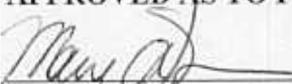
Richarda Momsen, City Clerk

APPROVED AS TO CONTENT:



William Lilly, Director
Community and Human Development

APPROVED AS TO FORM:



Marie A. Taylor,
Assistant City Attorney

CHD/10/ORD/Summerlin/Tierra Del Sol Housing Corp.
Document: #57454/MTAY 9-15-2010

ORDINANCE NO.

Page 2 of 2

S T A T E OF TEXAS

COUNTY OF EL PASO

**HOME PROGRAM
PURCHASE AND DEVELOPMENT AGREEMENT**
(Affordable Housing Development Project-
Summerlin Subdivision First-Time Homebuyer Program)

THIS HOME PROGRAM PURCHASE AND DEVELOPMENT AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2010, by and between **THE CITY OF EL PASO**, a municipal corporation and home-rule city of the State of Texas, hereinafter referred to as "City" and **TIERRA DEL SOL HOUSING CORPORATION**, hereinafter referred to as "Purchaser."

WHEREAS, the City of El Paso has received a formula grant for Fiscal Year 2008 from the U. S. Department of Housing and Urban Development ("HUD") under the HOME Investment Partnerships Program, hereinafter referred to as "HOME", as enacted under Title II of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625, approved November 28, 1990); and

WHEREAS, on October 17, 2008, the City acquired certain real property located in the Summerlin Subdivision of El Paso, El Paso County by warranty deed recorded in the Real Property Records of El Paso County, Texas under Clerk's File No. 20080084906, through the use of HUD HOME funds for the sole purpose of developing affordable homeownership housing opportunities in El Paso, Texas; and

WHEREAS, pursuant to Section 272.001(g) of the Texas Local Government Code, the City is authorized to sell, exchange or otherwise convey land or interests to an entity for the development of low-income or moderate-income housing and for less than its fair market value if the conveyance serves a public purpose and under terms and conditions of the transaction so as to effectuate and maintain the public purpose; and

WHEREAS, on December 29, 2009, the City's Community and Human Development Department (the "Department") issued a Request for Proposals for the City's Affordable Housing Development Project (Summerlin Subdivision First-Time Homebuyer Program) (the "RFP") for the purpose of soliciting proposals from non-profit and for-profit organizations to purchase the subject Property as a bulk sale at discount and to construct 30 affordable single family housing units on the residential lots for resale to qualified low to moderate income first-time homebuyers as their principal residence for the duration of a 10-year affordability period; and

WHEREAS, Purchaser responded to the RFP with a proposal to purchase the subject Property identified herein and to construct in accordance with HUD regulations affordable single family homeownership housing for sale to a subsequent purchaser(s) who is a qualified low-to-moderate income first-time homebuyer, as more specifically described herein ("Purchaser's Proposal"); and

WHEREAS, the City is willing to accept Purchaser's Proposal and to sell and convey the subject Property to Purchaser pursuant to Texas Local Government Code Section 272.001(g), subject to the terms and conditions specified hereinbelow; and

WHEREAS, Purchaser desires to acquire the subject Property identified herein and has agreed to comply with all terms, conditions, and obligations in this Agreement and all documents incorporated by reference herein.

NOW, THEREFORE, for and in consideration of the premises and the mutual agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to be bound by all terms and conditions of this Agreement and all incorporated documents, as follows:

ARTICLE I.
GENERAL CONDITIONS OF SALE

Incorporation of Solicitation Documents and Purchaser's Proposal.

1.1 Under this Agreement, the term "Solicitation Documents" means the various documents produced by the City describing the request for proposal process requirements applicable thereto and the standard and requirements applicable to the development of the Property, the City's RFP, including all exhibits and attachments thereto, and the Purchaser's Proposal and any amendments thereto.

1.2 The Solicitation Documents are expressly incorporated in this Agreement and made a part of it.

1.3 In the event of a conflict between (i) the body of this Agreement and (ii) either the Solicitation Documents, any issued addenda or errata to the Solicitation Documents, or the Purchaser's Proposal, this Agreement shall control; and the Request for Proposal and any addenda or errata thereof shall control over the Purchaser's Proposal in the event of any conflict between them.

1.4 Purchaser shall meet and satisfy any standards, requirements, obligations and conditions stated in the Solicitation Documents, whether or not stated in the body of this Agreement.

1.5 Where the body of this Agreement and the provisions of the Solicitation Documents concern the same or similar requirements, conditions, standards, terms or other matters, they are to be read in conjunction with each other and harmonized to the extent reasonably practicable. Provisions in this Agreement are cumulative of and may augment provisions in the Solicitation Documents, and vice-versa.

1.6 "This Agreement," unless otherwise apparent from context, shall mean and refer to this Agreement including all incorporated documents. "As provided in" or "as described in" a referenced section of a contract document or other references to particular sections made in the body of this Agreement or the Solicitation Documents, shall mean as provided or described in the referenced section but shall also include any related or additional requirements that may be stated elsewhere in this Agreement including the Solicitation Documents. Unless otherwise

apparent in context, a reference to a particular section or sections is for convenience and is not exclusive.

Purpose: No Merger with Deed

2.1 The body of this Agreement, together with the incorporated documents, describes the procedures by which, conditions under which, and other terms by which the City have agreed to sell and convey the Property to Purchaser, and the terms and conditions to which Purchaser has agreed, as consideration in part for the sale and conveyance of the Property to it.

2.2 This Agreement is not merely a contract for sale, but also is intended by the parties to be, and is, a contract defining the post-sale, post-conveyance obligations of Purchaser for the development of the Lots described herein on the Property to be conveyed to and developed by Purchaser as provided herein. As such, the obligations, duties, covenants, commitments, responsibilities, assumptions of risk, representations, warranties, and promises of Purchaser stated in this Agreement (collectively, "Purchaser's Obligations"), and the rights and interest of the City stated herein, are intended by the parties to, and will, survive the conveyance of the Property described herein and the issuance of the deed(s) to such Property called for herein. The legal doctrine of merger of contract-for-sale or contract-for-deed with the property deed shall not apply, nor shall that doctrine or any other have the effect of negating or modifying Purchaser's Obligations in any way, or otherwise excusing Purchaser from them, either before or after issuance of any deed concerning the Property or any part thereof, or of negating, modifying, limiting, curtailing or otherwise altering the rights of City.

Purchase and Sale.

3.1 Description of Property. Upon and subject to the terms, provisions, and conditions, set forth in this Agreement, the City hereby agrees to sell and convey and Purchaser hereby agrees to purchase and accept the following described property located in El Paso County, Texas:

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, according to the plat thereof recorded in Clerk's File No. 20060039322, Real Property Records of El Paso County, Texas.
(collectively, the "Property").

All references to the Property shall mean all or any portion of the Lots available for Purchaser's purchase under this Agreement, together with all and singular the rights and appurtenances pertaining thereto.

3.2 Conveyance of Lands-General. The purchase price for the Property shall be a total of ONE HUNDRED FIFTY AND 00/100THS DOLLARS (\$150.00), provided, however that conveyance shall be contingent upon: (a) Passage of an Ordinance by the El Paso City Council authorizing the sale of the Property and execution of the conveyance documents and related

ocuments; and (b) Purchaser having timely executed this Agreement

3.3 Special Warranty Deed with Restrictions and Covenants. Conveyance of the Property shall be made by special warranty deed(s) and shall contain covenants and restrictions running with the land to enforce the affordability covenants required under this Agreement. The conveyance and deed(s) shall be subject to any existing easements, deed, or other restrictions, reservations, rights-of-way, dedications and any other encumbrances, whether of record or apparent in fact on the Property. Further, conveyance of this Property will be subject to a restrictive covenant running with the land that Purchaser, its successors or assigns, will not in violation of any applicable laws, discard, place, or store upon such land, any radioactive materials or other hazardous wastes that would or might contaminate or otherwise damage the groundwater supply or resources of the City of El Paso. The deed to be utilized in the conveyance transaction shall be substantially in the form attached hereto to as Exhibit "A".

3.4 Affordability Covenants. The special warranty deed(s) to Purchaser from the City shall contain and be subject to affordability covenants and deed restrictions encumbering the Property which will provide that from the date of recordation of the conveyance deed from Purchaser to the subsequent Qualifying Low-to Moderate-Income Homebuyer(s) of the Property who shall meet the criteria described herein, the Property must remain the Qualifying Low to Moderate-Income Homebuyer's principal residence for a ten (10) year period (the "affordability period") pursuant to 24 CFR 92.254(a)(4) (the "Affordability Covenants"). For purposes of this Agreement, "Qualifying Low-to Moderate-Income Homebuyer" means a person satisfying the requirements set forth in the deed restrictions contained in the City's deed who, as determined by the City's Community and Human Development Department, is a HOME qualified low-to moderate-income first-time 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, and has not owned any property as his/her principal residence within the three years preceding the conveyance.

3.4.1 The Affordability Covenants shall stipulate that in the event that: (i) the immediate subsequent purchaser of any Lot is not a Qualifying Low-to Moderate-Income Homebuyer; or (ii) Purchaser fails to construct the improvements to the Property in accordance with the terms and conditions specified herein, the City of El Paso, Texas shall be entitled to and be owed by Purchaser an amount equal to \$30,000.00 per affected Lot, being the HOME fund subsidy recapture amount for each Lot. Further, the Affordability Covenants will stipulate that following the subsequent conveyance of a Lot to a Qualifying Low-to Moderate-Income Homebuyer, in the event of a voluntary or involuntary sale or transfer of the Lot, or if the Lot ceases to be the Qualifying Low-to Moderate-Income Homebuyer's principal residence during the affordability period, the City of El Paso, Texas shall be entitled to and be owed by the Qualifying Low-to Moderate-Income Homebuyer or its successor-in-title, as the owner of record, an amount equal to the \$30,000.00 less any proportionate reduction at a rate of one-fifth (1/5th) each year after a 60-month occupancy period by the Qualifying Low-to Moderate-Income Homebuyer, or the applicable amount of shared net proceeds based on the formula contained in 24 CFR §92.254(a)(5) (ii)(A)(3) as applicable, being the recapture of the HUD funds invested in the Lot by the City to make the Lot affordable.

1.2 Violation or breach of the Affordability Covenants shall give the City the right to institute any proceeding at law or in equity to recover any sum due to the City. If the City institutes an action to recover any such sum, Purchaser or successor-in-title agrees to pay all costs of collection, including court costs and reasonable attorney's fees.

3.5 Surveys. Purchaser accepts responsibility for conducting its own archeological and environmental surveys of the Property. Mitigation of any conditions on the Property, including archeological sites or, without limitations, adverse environmental conditions, shall be at the expense of the Purchaser who shall take the Property subject to all existing conditions. The Purchaser accepts responsibility for its determination of the nature and extent of any archeological sites, or without limitations, any adverse environmental conditions by its complete inspection of the Property.

3.6. Easements. Easements for water and wastewater lines, if not located in public streets shall be provided at no cost to the City or its Public Service Board.

3.7. Groundwater. All ground water, water rights, or rights to surface water shall be reserved to the City and will be subject to all easements, restrictions, reservations, rights of way, dedications and other encumbrances of record or apparent upon the property. The Purchaser shall not have the right to drill a well and produce therefrom any quantity of groundwater. The quitclaim deed(s) issued to Purchaser shall expressly reflect this reservation; and all contracts for sale and deeds or other conveyance documents of any kind and given by Purchaser concerning any portions of Property shall also expressly include this reservation and make clear no subsurface interests of any kind are being conveyed.

4. Payment of Purchase Price. The consideration for each Lot purchased shall be the purchase price of the Property, plus any additional Closing Costs, and shall be paid in cash to the City at Closing.

5. Conditions to Purchaser's Obligations. The obligations of Purchaser to consummate the transaction contemplated herein are subject to the satisfaction of each of the following conditions, any of which may be waived, in whole or in part, in writing by the Purchaser, at or prior to Closing.

5.1 Title Insurance. Purchaser at its own expense will order a title commitment (the "Commitment") from the Title Company accompanied by copies of all recorded documents affecting the Property for the issuance of an Owner's Policy of Title Insurance with respect to the Property, in an amount to be decided by the Purchaser ("Owner's Policy"). Purchaser, at its sole cost and expense, may cause the Commitment to be updated before the scheduled Closing hereunder. It shall be the sole responsibility of Purchaser to satisfy itself that title is acceptable. Purchaser shall obtain and bear the costs of title insurance.

Title Objections. If after receipt of the original or an updated Commitment, Purchaser determines that the condition of the title set forth in the Commitment is unacceptable to

Purchaser in its reasonable business judgment and of which has not previously been approved by Purchaser (or deemed approved by Purchaser failing to timely make objection thereto), Purchaser shall so notify the City in writing specifying such objectionable matters on or before five (5) days after the date Purchaser actually receives a copy of such original or updated Commitment, together with copies of the instruments referenced therein. Following receipt of such notice from the Purchaser, the City may, but is not obligated to, undertake action to eliminate or modify all unacceptable matters to the reasonable satisfaction of the Purchaser. If (a) the City is unable or unwilling to cure the title objection within ten (10) days following Purchaser's written notice thereof or (b) the City gives written notice to Purchaser that it is not willing or unable to cure Purchaser's title objection, Purchaser may, as Purchaser's sole and exclusive remedies, either (a) terminate this Agreement within five (5) days after expiration of such ten (10) day period or receipt of the City's notice to Purchaser (as the case may be) (in which case neither party shall have any further obligations hereunder except as otherwise provided herein), or (b) maintain this Agreement in effect with the obligation to purchase the Property subject to such defects not cured by the City. If Purchaser fails to notify the City of such election within the prescribed five (5) day period, the Purchaser shall be deemed to have selected alternative (b) immediately above with the effect that Purchaser has waived its right to terminate this Agreement.

7. Inspection Period. During the inspection period, which will begin upon the Effective Date and terminate fourteen (14) days thereafter ("Inspection Period"), Purchaser shall have the right to physically inspect, and to cause one or more engineers or other representatives of Purchaser to physically inspect, the Property. Purchaser shall make such inspections in good faith and with due diligence. All inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Purchaser relating to the inspection of the Property will be solely Purchaser's expense. The City shall cooperate with Purchaser in all reasonable respects in making such inspections. The City hereby reserves the right to have a representative present at the time Purchaser conducts any inspection of the Property. Purchaser shall notify the City not less than one (1) business day in advance of making any such inspection. In making any inspection, Purchaser will treat and will cause any representative of Purchaser to treat, all information obtained by Purchaser pursuant to the terms of this Agreement as strictly confidential. **PURCHASER AGREES TO INDEMNIFY, DEFEND, AND HOLD THE CITY, ITS OFFICIALS, EMPLOYEES, AGENTS AND REPRESENTATIVES, HARMLESS FROM ANY AND ALL INJURIES, LOSSES, LIENS, CLAIMS JUDGMENTS, LIABILITIES, COSTS, EXPENSES OR DAMAGES (INCLUDING REASONABLE ATTORNEY'S FEES AND COURT COSTS) SUSTAINED BY OR THREATENED AGAINST THE CITY WHICH RESULT FROM OR ARISE OUT OF ANY INSPECTIONS BY PURCHASER OR ITS AUTHORIZED REPRESENTATIVES PURSUANT TO THIS PARAGRAPH.** Notwithstanding any provision herein to the contrary, the indemnity contained in the preceding sentence shall survive the termination of this Agreement or the Closing. In the event Purchaser determines as a result of the foregoing that the condition of the Property is deficient in any respect or for any other reason in Purchaser's sole and absolute discretion, Purchaser may elect to terminate this Agreement by delivering written notice thereof to the City prior to the expiration of the Inspection Period. Failure of Purchaser to timely elect to terminate this Agreement shall be deemed a waiver by Purchaser of its right to do

so pursuant to this Article I, Section 7.

8. Closing. Provided that Purchaser is not in default of this Agreement and all terms and conditions of this Agreement then due and performable have been fulfilled, the closing of the Property conveyance of this transaction ("Closing") shall take place at the El Paso office of the Title Company selected by the Purchaser on or before the later of thirty (30) days from the Effective Date or thirty (30) days after the execution of this Agreement by the City, subject to delays due to the City's efforts to cure any title objection under this Article I.

9. Closing Procedures. At the Closing, City and Purchaser shall have the following obligations:

a. City shall deliver to Purchaser a duly executed and acknowledged Special Warranty Deed conveying the Property and any related easements, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for (i) ad valorem taxes for the year of Closing, if any, which shall be prorated to the date of Closing, and assumed by Purchaser upon closing; (ii) the standard printed exceptions contained in the usual form of the Owner's Policy, and (iii) any other exceptions set forth in the Owner's Policy which the Purchaser has approved pursuant to Article I, Section 6 above.

b. Purchaser shall pay the purchase price for the Property to City and deliver to the Title Company such further instruments as may be reasonably required by City or the Title Company to consummate the purchase of the Property by Purchaser.

c. All recording fees arising from the recordation of documents necessary to show good title to the Property in the Purchaser shall be paid by the Purchaser.

d. Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the Purchaser.

e. Each party shall do all other acts, or deliver any other instruments or documents required or helpful to be done or delivered, in order to consummate this transaction.

Possession of the Property will be transferred to the Purchaser upon closing

10. City's Obligation. The obligation of the City to perform its obligations herein and to sell the Property to Purchaser pursuant to this Agreement is conditioned upon Purchaser having performed all obligations to be performed by it under this Agreement in a timely manner and Purchaser not being in default under any term, provision, agreement, covenant or condition contained herein.

10.1 Purchaser's financing. Prior to Closing and as a condition precedent to City's obligation to Close, Purchaser shall deliver to the City evidence of financing from a bona fide third party lender sufficient to provide Purchaser adequate funds to complete Purchaser's obligations hereunder to acquire the Property, construct the HOME-Assisted Units and sell the HOME-

Assisted Units to Qualifying Low-to Moderate-Income Homebuyers, in a form and substance reasonably satisfactory to the City.

11. Representations of City. The City hereby represents, to the extent allowed by law, to the Purchaser, to the best of its knowledge, as follows:

11.1 Parties in Possession. At the time of Closing, other than the Purchaser, there are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise.

11.2 Mechanic's Lien. (i) No action has been taken, suffered or permitted by or on behalf of the City, the effect of which would be to establish or cause the inception or priority of any mechanic's or materialmen's lien, statutory, constitutional or otherwise, or other lien, charge or encumbrance upon the Property or any part thereof or interest therein; and (ii) no liens or lien claims, choate or inchoate, arising from the City's actions or otherwise, exist or can exist for the benefit of mechanics or materialmen in regard to the Property; and (iii) except as expressly disclosed in the documents relating to this transaction, the City has not entered into any contracts or agreements relating to the use or ownership of the Property or by which any person or entity agreed to provide labor, services or materials in regard to the Property or the business of the City.

11.3 Litigation. There is no pending or contemplated litigation before or by any court of law pertaining to the Property or which involve incidents occurring on the Property including, but not limited to, claims of damage to persons or Property.

11.4 Bills Paid. At Closing, there will be no unpaid bills or claims in connection with any repair or operation of the Property as a result of the City's trusteeship.

11.5 Compliance Law. All laws, ordinances, rules and regulations of any Government or any agency, body or subdivision thereof, bearing in the City's development of the Property, have been complied with.

11.6 Taxes. While the City held the Property, the Property was exempt from ad valorem taxes.

11.7 Pre-Closing Claims. City agrees that the Purchaser's acceptance of title to the Property under the conveyance documents should not create any liability on the Purchaser's part to third parties that have claims of any kind against the City in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the City or other jurisdictional taxing entities.

11.8 Condition of Property Prior to Closing. Prior to Closing, the City shall not create or permit to be created any easement or other condition affecting the Property without the prior written consent of the Purchaser.

12. "AS IS, WHERE IS." THIS AGREEMENT IS AN ARMS-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS

BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION. THE PURCHASER ACCEPTS THE AS IS, WHERE IS, AND WITH ALL FAULTS, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF PURCHASER AND THE CITY TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING: (A) THE CONDITION OF THE PROPERTY; (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; AND (D) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY.

PURCHASER ACKNOWLEDGES THAT IT HAS INDEPENDENTLY INSPECTED AND INVESTIGATED ALL ASPECTS OF THE PROPERTY, THAT IT HAS MADE AND ENTERED INTO THIS AGREEMENT AND WILL CLOSE ANY ACQUISITION OF LOTS BASED UPON SUCH INSPECTION AND INVESTIGATION AND ITS OWN EXAMINATION OF THE CONDITION OF THE PROPERTY, AND THAT THE PROPERTY IS SATISFACTORY FOR PURCHASER'S INTENDED USE THEREOF. THE CITY IS HEREBY RELEASED FROM ALL RESPONSIBILITY REGARDING THE VALUATION AND CONDITION OF THE PROEPRTY AND PURCHASER IS PURCHASING THE PROPERTY ON AN "AS IS" AND "WHERE IS" BASIS.

PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, PURCHASER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE CITY. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE CITY HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE CITY IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE FOR THE PROPERTY REFLECTS THAT ALL OF THE PROPERTY IS SOLD BY THE CITY AND PURCHASED BY THE PURCHASER SUBJECT TO THE FOREGOING.

ENVIRONMENTAL MATTERS. AFTER CLOSING, BETWEEN THE CITY AND THE PURCHASER, THE RISK OF LIABILITY OR EXPENSE FOR

ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF THE PURCHASER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, THE PURCHASER SHALL INDEMNIFY, HOLD HARMLESS, AND RELEASE THE CITY FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. THE PURCHASER SHALL INDEMNIFY, HOLD HARMLESS AND RELEASE THE CITY FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THE CITY'S OWN NEGLIGENCE OR THE NEGLIGENCE OF THE CITY'S REPRESENTATIVES. THE PURCHASER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE CITY FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON THE CITY IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

IN PARTICULAR, THE PURCHASER ACKNOWLEDGES THAT THERE MAY BE ASBESTOS ON THE PROPERTY AND THAT IT MUST COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS IN ADDRESSING ANY ASBESTOS.

14. **Purchaser Representations and Warranties.** Purchaser represents and warrants to the City that: (a) there are no attachments, executions or assignments for the benefit of creditors, generally, or voluntary or involuntary proceedings in bankruptcy or under any other debtor-relief laws pending or threatened against Purchaser; and (b) Purchaser has full right, power and authority to enter into this Agreement and, at the Closing, will have the right, power and authority to consummate the transactions contemplated thereby and all required corporate, partnership or other action necessary to authorize Purchaser to enter into and consummate the transaction contemplated herein has been or upon the Closing, will have been taken, and the joinder of no person or entity other than Purchaser will be necessary to execute and deliver such documents and instruments at the Closing and to perform all the obligations of Purchaser hereunder applicable thereto.

Default.

15.1 **Breach by City.** In the event that the City shall fail to fully and timely perform any of its obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except the Purchaser's default, or the termination of this Agreement in accordance with its terms, the City agrees to absorb the costs the City may have incurred in preparation for the

ion First-Time Homebuy

Property. In the event City fails to meet any obligation imposed on City pursuant to
err and such failure to perform or cure shall continue for thirty (30) days following
writing from Purchaser, then Purchaser may, as Purchaser's sole and exclusive remedy
this agreement whereupon Purchaser and City shall be released and relieved of and
om an all further obligations or liabilities under this Agreement except for those
blig n: abilities which expressly survive such termination.

conveyance. In the event the City is unable at Closing to convey title to all of the Lots
comprising the Property in accordance with terms, provisions and conditions of this Agreement,
may, at its option and without penalty to it, elect by written notice delivered to the
City purchase only those Lots which the City can convey as provided herein. In this event, the
Date shall be extended for an additional 30 days to allow time to revise the Closing

15.3 No specific performance. Purchaser specifically waives any right to specific
performance of this Agreement, and agrees that it shall not claim or file any lis pendens against
the Property, and any such claim of specific performance, if made, shall be deemed an act of bad
faith on the part of Purchaser, entitling the City to recover any and all actual and special damages
resulting from such causes as delay and lost profits.

4 Breach by Purchaser. In the event that Purchaser shall fail to fully and timely perform
of its obligations under this Agreement and such default shall continue for thirty (30) days
following notice thereof in writing from the City, then the City may: (i) enforce specific
formance of Purchaser's obligations hereunder, or (ii) pursue other remedies available to the
y at law or in equity

ARTICLE II

**DEVELOPMENT COVENANTS AND POST-CONVEYANCE PROJECT DEVELOPMENT
REQUIREMENTS: CONSTRUCTION AND RE-SALE**

1. Construction of Affordable Single Family Housing. Purchaser 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
within twenty-four (24) months from the date of the Closing, in accordance with the terms and
conditions of this Agreement and all applicable local, state, and federal laws and regulations (the
"Project"). Purchaser expressly acknowledges that it will be the Purchaser's obligation to
procure private funding for completion of the development and construction of 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

Project Budget. Purchaser's Project Budget, attached hereto as Exhibit "B" (the "Project
represents the Purchaser's private financing and financial contributions, which may be
upon prior approval of the Director of the Community and Human

Development Department ("Director"), provided however, the revised Project Budget containing the construction costs for the Project shall not exceed \$3,630,000.00. For purposes of this Agreement "Construction Costs" means the costs incurred by Purchaser to construct a HOME-Assisted Unit based on the home model(s) submitted by Purchaser and approved by the City as part of this Agreement. Construction costs include Lot development costs, e.g., site survey, site work, applicable regulatory fees; Purchaser's hard costs; construction financing; Purchaser's soft costs; property taxes while Lots are in Purchaser's inventory; and homeowner's warranty and warranty provision. The estimated Construction Costs for each Model are set forth on the Project Budget.

Construction Specifications

3.1 Each HOME-Assisted Unit shall comply with the General Construction Specifications set forth in Section S of City's RFP in the Solicitation Documents and the Model Home Plans and Specifications set forth in Exhibit "C" attached hereto, all of which are incorporated by reference herein. Purchaser represents and warrants to the City that each HOME-Assisted Unit will be (i) constructed by Purchaser in accordance with the General Construction Specifications, the Model Home Plans and Specifications, and this Agreement, in a good and workmanlike manner and in accordance with all applicable laws, rules, regulations imposed by any local, state, or federal agency or instrumentality thereof having jurisdiction over the City or the Purchaser, the Property, or any portion thereof (the "Governmental Authority"), and (ii) free from defects in labor or materials for a period of twelve (12) months following the completion thereof. Prior to expiration of the warranty period, the City shall have the right, at its cost, through a licensed home inspector or other agent designated by the City, to inspect the HOME-Assisted Unit for defects. The Purchaser shall promptly correct any such defects. Additionally, as part of the sale of a HOME-Assisted Unit to a Qualifying Low-to Moderate-Income Homebuyer, such Qualifying Low- to Moderate-Income Homebuyer shall be provided with a limited homeowner warranty in form and substance in accordance with standard home building practices for comparable properties, as required by the Texas Residential Construction Commission.

3.2 The Purchaser will comply and will cause its contractors and subcontractors to comply with all provisions contained in the Supplemental Contract Conditions, Section F of City's RFP in the Solicitation Documents in the construction of the HOME-Assisted Units; said Supplemental Contract Conditions being expressly incorporated herein by reference.

3.3 The Purchaser will comply and will cause its contractors and subcontractors to comply with all provisions contained in Sections J-Q of City's RFP in the Solicitation Documents in the construction of the HOME-Assisted Units; said Sections being expressly incorporated herein by reference.

3.4 Purchaser will utilize a self-help component in the construction of the HOME-Assisted Units in conjunction with qualified homebuyer participation. "Self-help," also known as Sweat-equity labor, is defined as equity in property earned by virtue of carrying out manual work to assist in the construction. Purchaser will manage and assure that the selected construction contractor has the capacity to implement the self-help construction component. The value of the

self-help component will be up to \$3,000.00 and include painting and other non-skilled construction work on the prospective Qualifying Low-to Moderate-Income Homebuyer's HOME-Assisted Unit.

3.5 The City shall be entitled to inspect the Lot(s) at any time (including, without limitation, during the twelve (12) month warranty period described in Article I, Section 3.1 above) and will receive from Purchaser, during construction, bi-weekly (or as otherwise requested by City) updates and certifications on the progress of construction of the HOME-Assisted Units in form and substance reasonably satisfactory to the City. If the City believes that any completed work is defective or is not in conformity with the terms of this Agreement, General Construction Specifications, or the Model Home Plans and Specifications, which determination shall be made in City's reasonable business judgment, then Purchaser shall cause such work to be uncovered and any defective nor non-conforming work shall be rectified promptly by Purchaser at Purchaser's sole cost. City's inspection of the work, failure to inspect or failure to object to any defective or non-conforming work shall not be deemed an approval of same or impose any liability upon the City with respect thereto.

3.6 Prior to commencement of construction, Purchaser shall obtain all necessary permits, licenses, and special privileges that may be required by the Governmental Authority prior to conducting the construction work on the Property subject to this Agreement. In the event Purchaser must pay any fees for obtaining any of the above items, Purchaser agrees to pay such to the City. Purchaser shall also comply with any County, State or Federal requirements that apply to its construction activities. Purchaser agrees to provide the City's Community and Human Development Department with sufficient documentation to satisfy all federal HOME regulatory requirements.

3.7 Upon request, Purchaser shall have available plans for a HOME-Assisted Unit that will accommodate individuals with mobility and/or sensory disabilities. Such plan shall be designed based on current Texas Accessibility Standards. All homeownership housing that is newly constructed or rehabilitated must meet the requirements of 24 CFR Part 8, the implementing regulations for the Rehabilitation Act of 1972, 29 U.S. 794. Further all affected HOME-Assisted Units must be built to conform to the design and constructions requirements of the Fair Housing Act. For newly constructed single-family housing developed with federal funds, the housing must be made accessible upon the request of the prospective homebuyer if the nature of the prospective occupant's disability so requires. Should a prospective homebuyer request a modification to make a unit accessible, Purchaser must work with the homebuyer to provide the specific features that meet the need(s) of the prospective homebuyer or occupant. If the design features that are needed for the homebuyer are design features that are covered in Uniform Federal Accessibility Standards (UFAS), those features must comply with the UFAS standard. Purchaser shall be permitted to depart from the standard in order to have the homebuyer/occupant's needs met.

3.8 Purchaser will cause all construction sites on Lots or elsewhere (including streets) to be kept clean of trash and/or debris. If Purchaser fails to keep such areas clean of trash and/or debris, then the City shall be entitled to remove such trash and/or debris and receive

reimbursement from Purchaser on demand of City's actual cost thereof.

3.9 If any on-site sidewalk(s) is/are required to be constructed on a Lot by any applicable plat, ordinance, restriction or other requirements, Purchaser, at its sole cost and expense, agrees to construct, repair or reconstruct such sidewalk(s) prior to the completion of construction of any HOME-Assisted Unit on the Lot so affected. It is also expressly agreed and understood that Purchaser shall be required to construct and install, at Purchaser's sole cost and expense on Lots owned by Purchaser, all front yard sidewalks and both the front yard sidewalk and the side yard sidewalk on all Lots constituting corner lots.

4. **Project Schedule.** Purchaser shall maintain the Project Schedule attached as Exhibit "D" for carrying out the required tasks to complete the project, which may be updated and revised upon prior approval of the Director.

5. **Lot Maintenance.** After Closing and prior to the sale of the HOME-Assisted Unit to a Qualifying Low-to Moderate-Income Homebuyer, Purchaser shall mow and maintain each of the Lots from the Closing Date in a neat and orderly manner and keep such Lots free of all trash and debris. If Purchaser fails to mow and maintain each Lot after the Closing Date after such mowing and maintenance is requested by the City, then City may at its option, have the Lot(s) mowed and maintained and Purchaser shall reimburse City for the cost of such mowing and maintenance upon demand by the City.

6. **Security** Purchaser is responsible for providing security to its Lot(s).

7. **Property Insurance.** Purchaser shall comply with the insurance requirements set forth in Exhibit "E" attached hereto and incorporated by reference herein for all purposes.

8. **Purchaser's Contracts.** Upon written request by the City, Purchaser shall furnish to the City true and correct copies of all agreements and contracts with other parties to furnish labor, materials or services with respect to the Lots and/or HOME-Assisted Units.

9. **Solicitation of Eligible Homebuyers.** Purchaser will recruit prospective homebuyers to solicit Qualifying Low-to Moderate-Income Homebuyers for subsequent purchase of the HOME-Assisted Units. Purchaser's recruitment activities will include marketing, identification, interviewing of prospective eligible homebuyers, and determination of income eligibility to assure prospective eligible homebuyers' housing cost ratios do not exceed 35% of the homebuyer's gross monthly income, including PITI (loan principal, interest, property taxes, and insurance).

9.1 Purchaser will be responsible for ensuring that each prospective homebuyer is income-qualified and that the income data collected is in compliance with the HUD income definition contained in 24 CFR Part 5. The gross annual household income of the prospective homebuyer must be at or below 80% of the Area Median Income for the City of El Paso, as published by HUD on an annual basis. Other prospective homebuyers may be considered if other secondary financing is being utilized (e.g., Section 8 Homeownership, IDA's, Home Program for People

with Disabilities) as long as the housing cost ratio does not exceed 35% of the prospective homebuyer's monthly gross household income.

Purchaser will provide or cause to be provided to each Qualifying Low-to Moderate-Income Homebuyer, the minimum required hours of homebuyer education and counseling through a HUD-approved Homebuyer Education and Counseling provider.

9.3 Purchaser will assist prospective Qualifying Low-to Moderate-Income Homebuyers in obtaining construction and/or permanent mortgage financing. Specifically, Purchaser warrants and represents that it will partner with the Affordable Housing Credit Union Services Organization (AHCUSO) or other comparable lending institution to underwrite mortgages guaranteed by Fannie Mae. Purchaser will refer prospective Qualifying Low-to Moderate-Income Homebuyers who have completed homebuyer education and counseling and are mortgage ready to AHCUSO or other lending institution approved of by the Director. 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 \$10,000.00 per eligible homebuyer).

9.4 Purchaser will ensure that the Qualifying Low-to Moderate-Income Homebuyers meet the underwriting criteria (i.e., creditworthiness, debt to income ratios, employment) of the primary lender and require a standard mortgage at a fixed interest rate (i.e., not an adjustable rate mortgage or ARM) that does not exceed 2.1% of the current market rate. The housing cost ratios shall be no more than 35% of the Qualifying Low-to Moderate-Income Homebuyer's gross monthly household income, including PITI (loan principal, interest, property taxes and insurance). The primary lenders must agree, in writing, to comply with the City's minimum lender qualifications contained in the Department's Housing Division Program Handbook Chapter 6, pages 6-17, incorporated by reference herein.

10 Re-Sale to Qualifying Low-to Moderate-Income Homebuyers.

10.1 Purchaser represents, warrants, covenants and agrees that the HOME-Assisted Unit(s) constructed on the Property shall be sold in fee simple title and only to Qualifying Low-to Moderate-Income Homebuyers for initial occupancy and for the purpose of occupying the HOME-Assisted Unit as his or her principal residence.

10.2 Purchaser agrees to verify all income, assets, household characteristics, and any other circumstances that affect income eligibility in accordance with 24 CFR Part 5, the City's selected method of income eligibility determination and will be responsible for ensuring that the household income for the subsequent purchaser falls at or below 80% of AMI, as established by HUD guidelines, attached hereto as Exhibit "E", and that the income data can be independently verified through source documentation, which identifies income sources as defined in Title 24 C.F.R. §92.203(b)(2). Purchaser agrees to submit to the City a copy of the income verification date at least fifteen (15) working days in advance of the proposed closing date of the sale of the HOME-Assisted Unit to the Qualifying Low-to Moderate-Income Homebuyer. Further, Purchaser shall assist the City in acquiring prospective Qualifying Low-to Moderate-Income

Homebuyer's consent and release authorization for purposes of determining or auditing income eligibility or for verifying related information from depository or private source of income, or any Federal, State, or local agency ("source documentation"). Purchaser agrees that upon completion and sale of each HOME-Assisted Unit, as described herein, Purchaser will furnish to City data on the demographic characteristics of the Qualifying Low-to Moderate-Income Homebuyer. Such data must be of a quality acceptable to the City.

10.3 Purchaser will also be responsible for ensuring that the subsequent purchaser has not been the owner of record of any property as his/her principal residence within the three years preceding the conveyance.

10.4 All HOME-Assisted Units shall be sold subject to the affordability covenants and deed restrictions contained in the City's Special Warranty Deed of the Property to be enforced at the time of the subsequent purchase closing for each of the HOME-Assisted Units to the Qualifying Low-to Moderate-Income Homebuyer(s). Purchaser agrees to execute a written agreement or addendum to the contract for sale (with survival provision) with each Qualifying Low-to Moderate-Income Homebuyer, which must meet the 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 ten (10) year affordability period property covenant and the principal residency requirement, in a form substantively similar to the following:

"AFFORDABILITY CLAUSE.

(a) Buyer acknowledges, understands, and agrees that this Property is being sold subject to affordability covenants contained in that certain Special Warranty Deed dated _____, 2010, recorded as Clerk's File No. _____, El Paso County Property Records, El Paso County, Texas granted by the City of El Paso, Texas to TIERRA DEL SOL HOUSING CORPORATION. The affordability covenants require that the immediate subsequent purchaser (Buyer) maintain the property as his or her principal residence for a ten (10) year period (the "affordability period") following initial occupancy by the Buyer. Provided that the Property remains the principal residence of the Buyer, the HUD recapture amount will be proportionately reduced following a 60-month period after conveyance, at a rate of one-fifth (1/5th) each year starting at the 61st month. Buyer agrees that in the event of a voluntary or involuntary sale or transfer of the property or if the property ceases to be the Buyer's principal residence during the affordability period, the City of El Paso, Texas shall be entitled to and be owed by Buyer, as the owner of record, a recapture amount equal to \$30,000.00 less any proportionate reduction after 60-month occupancy by the Buyer, or the applicable amount of shared net proceeds based on the formula contained in Title 24 of the Code of Federal Regulations (CFR), Part 92, Section 254(a)(5)(ii)(A)(3) as applicable, being the recapture of the HUD funds invested in the Property by the City to make the Property affordable to Buyer. Net Proceeds are the sales price minus loan repayment and closing costs. In the event the Net Proceeds are not sufficient to repay the City all of the HOME fund subsidy to be recaptured, the Buyer will share Net Proceeds of the sale with the City on a proportionate basis as

set forth in 24 CFR §92.254(a)(5)(ii)(A)(3). If there are no Net Proceeds, payment of the HOME fund subsidy as recaptured funds is not required.

(b) Buyer agrees that violation or breach of the affordability covenants shall give the City the right to institute any proceeding at law or in equity to recover any sum due to the City. If the City institutes an action to recover any such sum, Buyer agrees to pay all costs of collection, including court costs and reasonable attorney's fees. Buyer agrees to assist and cooperate with the City's effort to annually monitor compliance with the affordability period requirement, to include: completion and return of any annual certification form to verify continued occupancy of the property as his/her principal residence and submission of any requested residency documentation, such as utility bills, tax statements, or other billing statements.

(c) The obligations, duties, covenants, commitments, responsibilities, and promises of Buyer and the rights and interest of the City stated herein will survive the conveyance of the Property described herein and the issuance of the deed to such Property called for herein. "

10.4.1 The City shall monitor the homebuyer's compliance for the affordability period applicable to each HOME-Assisted Unit.

10.5 The maximum purchase price of each HOME-Assisted Unit shall not exceed \$121,000.00, which is 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)) or the HOME 221(d)(3) Limits for the City of El Paso as determined by HUD established guidelines.

10.6 All closing documents (including, without limitation, all HUD-1 settlement or closing statements) to be executed and delivered in connection with the sale by Purchaser of a HOME-Assisted Unit to a Qualifying Low-to Moderate-Income Homebuyer shall be subject to review and approval by the City to ensure conformity by the City of the terms and conditions of this Agreement. Any conveyance of a HOME-Assisted Unit by a subsequent purchaser without such approval by the City shall be null and void and of no force or effect. Approval of such documents by the City shall not constitute (or be deemed to constitute) matter set forth therein, and the City shall have no liability to Purchaser or owners as a result of such approval.

10.7 If Purchaser is a certified Community Housing Development Organization (CHDO) All net sales proceeds (i.e., proceeds other than the HOME funds invested in the individual HOME-Assisted Unit) from the sale of the homes in the project will be considered CHDO proceeds that may be retained by the Purchaser and must be used in conformance with 24 CFR §92.300(a)(2), for other housing activities to benefit low-income families.

10.8 Purchaser will strongly encourage Qualifying Low-to Moderate-Income Homebuyers to complete training on home maintenance conducted by Purchaser, its designee, or the City's

and Dr
four:

Summerlin Subdivision First-Time Homebuyer Program

Housing Programs Division prior to closing on the HOME-Assisted Unit. Purchaser will strongly encourage Qualifying Low-to Moderate-Income Homebuyers to complete a post-counseling session after purchasing their HOME-Assisted Unit(s) and will provide information and location of HUD-approved housing counseling or other agencies that provide this assistance.

11. Release and Indemnity. PURCHASER AGREES TO AND SHALL RELEASE CITY, ITS AGENTS, OFFICIALS, EMPLOYEES, OFFICERS AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY PARTIES") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT OR IN CONNECTION WITH THE DEVELOPMENT OF THE LOTS, SALE OF THE RESIDENCE OR OTHERWISE, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY PARTIES' SOLE OR CONCURRENT NEGLIGENCE AND/OR THE SELLER PARTIES' STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

PURCHASER AGREES TO AND SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY PARTIES FOR ALL CLAIMS, SUITS, DEMANDS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING WITHOUT LIMITATION, THOSE CAUSED BY PURCHASER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY THE "INDEMNITOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR ALLEGED CONCURRENT NEGLIGENCE OR ANY OMISSION TO ACT, ANY BREACH OF CONTRACT, OR ANY ACTIONS OF THE INDEMNITOR OUTSIDE THE SCOPE OF THIS AGREEMENT ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY PARTIES UNDER TEXAS LAW. THIS INDEMNITY SHALL COVER ATTORNEY'S FEES, COURT COSTS, WITNESS EXPENSES, AND ALL OTHER RELATED COSTS, INCLUDING AWARDS AND SETTLEMENTS AND ANY INTEREST THEREON.

ARTICLE III.

ADDITIONAL COVENANTS AND POST-CONVEYANCE PROJECT DEVELOPMENT REQUIREMENTS: FEDERAL REGULATORY REQUIREMENTS

Purchaser agrees to comply fully with all requirements of 24 C.F.R. §92.217 regarding Income Targeting: Homeownership.

2. Purchaser hereby further agrees that the Project will comply with Subpart F - Project Requirements of Part 92 of Title 24 of the Code of Federal Regulations, HOME Investment Partnerships Program. Purchaser further agrees to comply with 24 CFR §92.250 regarding Maximum Per Unit Subsidy; 24 CFR §92.251 regarding Property Standards; 24 CFR Part 35, subparts A, B, J, K, M, and R, regarding lead-based paint restrictions and requirements; 24 CFR

§92.254 regarding Qualification as Affordable Housing: Homeownership.

3. Records. In order to assure compliance with the Requirements of the HOME Program (as defined Title 24 of the Code of Federal Regulations, Part 92, Subparts E and F), Purchaser agrees to submit the following documentation to City for review and approval:

- a. Records regarding Income Targeting required by 24 CFR §92.217.
- b. Records that demonstrate that each HOME-Assisted Unit meets the property standards in 24 C R §92.251.
- c. Records that demonstrate compliance with the requirements of 24 CFR §92.254 for affordable housing: homeownership, including income qualifications of the homebuyer and the initial purchase price. The records shall be submitted to the City at least fifteen (15) working days in advance of the proposed closing date for each of the single-family HOME-Assisted Units for inspection and approval by the City prior to closing.
- d. If applicable, a copy of Purchaser's procedures for marketing the availability of accessible units to eligible persons such that reasonable, nondiscriminatory steps are taken in making the accessible units that become available are offered to persons who require the accessibility features.

4. Affirmative Marketing. Purchaser agrees that it will not discriminate against any class of individuals protected against discrimination under federal law in soliciting and accepting applicant for the newly constructed structure. Purchaser further agrees to participate with City in making all good faith efforts necessary to attract as applicant any and all classes of individuals protected against discrimination under federal law as required by the City, pursuant to 24 CFR §92.351 (Affirmative Marketing Policy and Procedures). For the duration of this Agreement, Purchaser agrees to comply with all requirements of the City's Affirmative Marketing Policy and Procedures, attached hereto as Exhibit "G". The City reserves the right to amend said attachment and to notify the Purchaser of the changes, without written amendment to this Agreement. Further, the City reserves the right to review on an annual basis the records that document the Purchaser's affirmative marketing actions. Purchaser agrees to take corrective actions when the affirmative marketing requirements are not met, in accordance with 24 CFR §92.351(a)(2)(v).

5. Disclosure of Lobbying Activities. Purchaser further agrees to comply with subpart H - "Other Federal Requirements" of 24 CFR Part 92, as applicable, the federal requirements set forth in 24 CFR Part 5, subpart A, and the federal regulations at 24 CFR Part 87, related to lobbying. Purchaser hereby agrees to sign the Certification, attached hereto and made a part of this Agreement as Addendum A, and if necessary, the Disclosure Lobbying Activities, referenced therein and return said signed Certification and, if necessary, the completed Disclosure of Lobbying Activities, to the City. Purchaser shall require the language of the Certification and disclosure be included in all construction contracts and subcontracts and that all contractor(s) and subcontractor(s) shall certify and disclose accordingly.

6. **Fair Housing.** Purchaser agrees to comply with the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended and implementing regulations at Title 24 CFR Part 100), including applicable design and construction standards and other Federal Rules, regulations and policies applicable to the performance of this Agreement. Further, Purchaser agrees to assist in the City's compliance with the requirements of 24 CFR §92.202 Site and Neighborhood Standards.

7. **Discrimination Prohibited.** No person in the United States shall, on the grounds of race, creed, color, national origin, (including immigration status where an alien holds proper work authorization), religion, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape or form in employment or under projects or activities funded in whole or in part with funds made available to the Purchaser pursuant to this Agreement, as set forth in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d) and implementing regulations at Title 24 CFR Part 1; Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07) and implementing regulations at Title 24 CFR Part 146; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and implementing regulations at Title 24 CFR Part 8; and Title I of the Americans with Disabilities Act of 1990 (ADA) and implementing regulations at Title 28 CFR Part 35.

8. **Equal Opportunity Employer.** Purchaser hereby agrees that in all solicitations for employment applications, Purchaser shall hold itself out as an equal opportunity employer. Furthermore, Purchaser shall comply with all the equal opportunity requirements in Title 24 CFR Section 5.105, the requirements of Executive Order 11246 (Equal Opportunity) and the implementing regulations at Title 41 CFR Part 60, and the requirements of Executive Orders 11063 and 12259 (Equal Opportunity in Housing) and the implementing regulations at Title 24 CFR Part 107. Purchaser shall fully comply with all federal and state laws, regulations, and executive orders regarding equal employment and shall further comply with Davis-Bacon Act (40 U.S.C. §276a-276a-5) compensation requirements, if applicable, to Purchaser, pursuant to 24 CFR §92.354. Purchaser's project, regardless of the number of HOME-Assisted Units or HOME funding amount, is subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S. §327-332), the requirements of the Copeland (Anti-Kickback) Act (40 U.S.C. 276c), and Fair Labor Standards Act of 1938, as amended (29 U.S. 20 et. seq.). Further, Purchaser agrees to comply with the following project requirements:

a. Every contract (including subcontracts) for the construction of the HOME-Assisted Units must contain a provision requiring the payment of not less than the prevailing wages for El Paso County, as pre-determined by the Secretary of Labor pursuant to the Davis Bacon Act, to all laborers and mechanics employed in the development of any part of the housing. Purchaser shall stipulate in all construction contracts with its general contractor(s) engaged in furtherance of the execution of this Agreement that said general contractor(s) pay and cause its subcontractor(s) to pay not less than the prevailing wage rate for its workers and shall comply with all 24 CFR §92.354 requirements. Purchaser's contractors and subcontractors shall submit required payroll certification documentation to the City for inspection, review and certification prior to making any disbursement for the construction work. Purchaser is expressly prohibited from arranging multiple construction contracts within a single project for the purpose of avoiding the wage

provisions herein

b. It is agreed that the work to be performed under this Agreement is subject to employment and contracting requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135 and all applicable rules and orders of the Department issued thereunder. Section 3 requires that, to the greatest extent feasible, and consistent with existing federal, state and local laws and regulations, opportunities for training and employment, contracting and other economic opportunities generated by the expenditure of this assistance be given to low and very low-income persons and to business concerns that provide economic opportunities for these persons. The requirements of Section 3 apply to contractors and subcontractors performing work on Section 3 covered projects for which the amount of assistance exceeds \$200,000; and the contract or subcontract exceeds \$100,000. Every Section 3 covered contract and subcontract must include "Section 3-Area Business and Workforce Agreement" attached and incorporated herein as Exhibit "H", and also comply with all terms and conditions of the "Affirmative Action" documents (Section L, City's RFP in the Solicitation Documents). When applicable, the documents will be completed and submitted to the City prior to commencement of any construction. Purchaser will include or cause to be included in every contract or subcontract in connection with the project the Section 3 clause and will, at the direction of the City, take appropriate action pursuant to the contract upon a finding that the contractor or subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135.

9. Recordkeeping Requirements. With respect to HOME-Assisted Units, Purchaser shall maintain such records and accounts, including program records; financial records; program administrative records; equal opportunity and fair housing records; affirmative marketing records; records demonstrating compliance with the income determination and requirements of 24 CFR §92.203; record keeping requirements of 24 CFR §92.508; records demonstrating compliance with the applicable uniform administrative requirements of 24 CFR §92.505; records demonstrating compliance with the labor requirements of 24 CFR §92.354; records demonstrating compliance with the lead-based paint requirements of 24 CFR §92.355; records supporting exceptions to the conflict of interest prohibition pursuant to 24 CFR §92.356; debarment and suspension certifications required by 24 CFR Parts 94 and 91; and any other records as are deemed necessary by the City to assure a proper accounting and monitoring of the HOME-Assisted Units.

10. Document Correction. Purchaser agrees to cooperate with the City in re-signing any documents related to this Agreement to correct errors or omissions, if any, in any form or legal document required by the City or HUD.

11. Record Inspection. Upon reasonable request, City shall have the right at all times to inspect Purchaser's business premises, and its books and records relating to employment. Purchaser agrees that it will make its premises and records available for such inspection by City. Purchaser further agrees that City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have the right of access to any pertinent books,

documents, papers, or other records of Purchaser for the purpose of making an audit, examination, excerpts, and transcriptions.

12. **Conflict of Interest.** No member, officer, or employee of City, or its designees or agents, no member of the governing body of City and no other public official of City who exercises any functions or responsibilities, or who has been in a position to participate in a decision-making process or gains inside information with regard to the activities governed by this Agreement during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the HOME Program under this Agreement. Purchaser further agrees to comply with all provisions contained in 24 CFR §92.356 "Conflict of Interest". Unless expressly permitted by the City in writing, no developer, officer, employee, agent or consultant of the Purchaser, may occupy a HOME-Assisted Unit in the Property.

13. **Debarment and Suspension.** Purchaser certifies that it is not debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, Purchaser shall establish procedures to ensure that it does not make any award to any contractors at any tier in violation of the non-procurement debarment and suspension standard. Purchaser will verify and document that none of its contractors are debarred, suspended or otherwise excluded from participation through the effective use of the List of Parties Excluded from Federal Procurement or Non-procurement programs ("List"). Purchaser may request assistance from the City to access the List and document results in accordance with the procedures outlined in Section O, City's RFP in the Solicitation Documents.

14. **No exemptions.** Purchaser and City agree that the anticipated construction will involve thirty (30) HOME-Assisted Units. No HOME-Assisted Units constructed under this Agreement will be exempt from the requirements and conditions noted herein.

15. **Faith-Based Activities.** If applicable, Purchaser must meet conditions and limitations for use of HOME funds involving faith-based activities, as specified in 24 CFR §92.257:

a. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOME Program. Neither the Federal government nor a State or local government receiving funds under the HOME programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

b. Organizations that are directly funded under the HOME Program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under this Program. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this Program, and participation must be voluntary for the beneficiaries of the assistance provided.

c. A religious organization that participates in the HOME Program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it

does not use direct HOME funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOME-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

d. An organization that participates in the HOME Program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

e. HOME Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. To the extent allowed by applicable federal regulations for the HOME Program, and to the extent allowed by this Agreement, HOME Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the applicable federal regulations for this HOME Program. Where a structure is used for both eligible and inherently religious activities, HOME Program funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to HOME funds under the Title 24, Code of Federal Regulations. Sanctuaries, chapels, or other rooms that a HOME-funded religious congregation uses as its principal place of worship, however, are ineligible for HOME-funded improvements. Disposition of real property, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).

f. If a state or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, these requirements apply to all of the commingled funds.

ARTICLE IV. GENERAL PROVISIONS

1. Notices. Any communications or notices regarding this Agreement shall be effective only if sent postage prepaid by: (i) certified mail, return receipt (effective upon receipt or denial of receipt); (ii) regular U.S. Mail (deemed effective 3 business days after deposit with the United States Postal Service); (iii) nationally-recognized overnight courier (effective upon receipt or denial of receipt); or (iv) hand delivery (effective upon receipt or denial of receipt), to the following addresses, unless either party notifies the other in writing of a change of address. Any notice, demand, direction, request, or other instrument authorized or required by this Agreement to be given to or filed with either party, shall be deemed delivered and shall be deemed received (a) on the date delivered if hand delivered by receipted hand delivery and (b) three (3) days after postmark if sent postage prepaid by certified or registered mail, return receipt requested. Notices

to the parties shall be sent to their addresses set forth below. Either party, by written notice, may change its address to which notices are to be sent and when personally delivered or sent by certified mail, postage prepaid, return receipt requested, to the address specified below or at such other address as may be designated in writing by the parties:

City Director Community and Human Development Department
 2 Civic Center Plaza
 El Paso, TX 79901-1196

copy to: Pat White, Housing Programs Manager
 Community and Human Development Department
 2 Civic Center Plaza
 El Paso, TX 79901-1196

Purchaser: Tierra Del Sol Housing Corporation
 Attn: Rose Garcia, Executive Director
 P.O. Box 2626
 Anthony, NM 88021

2. Entire Agreement/Governing Law. This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, regarding the subject matter of this Agreement, and may be amended or supplemented only by an instrument in writing, executed by the party against whom enforcement is sought. This Agreement shall be governed in all respects, including validity, interpretation and effect, by and shall be enforceable in accordance with the laws of the State of Texas and venue shall lie in El Paso County, Texas.

3. Time. Time is of the essence of this Agreement and each and every provision hereof. Time is of the essence in all things pertaining to the performance of this Agreement.

4. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portion shall not in any way be affected or impaired and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term, covenant, or provision determined to be invalid.

5. Survival of Provisions. The terms contained in this Agreement, including without limitation, representations, warranties, covenants and agreements of the parties, shall survive the execution and delivery hereof and the Closing hereunder, until such time as all of the obligations of the signatories hereto shall have lapsed in accordance with their respective terms or shall have been discharged in full.

6. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective successors and assigns. The terms, provisions, warranties, representations, covenants and agreements contained in this Agreement shall apply to, be binding upon, and inure to the

benefit of the parties hereto and their respective legal representatives, successors and permitted assign. This Agreement shall, however, be for the sole and exclusive benefit of the parties hereto and their respective legal representatives, successors, and permitted assigns and shall not be construed to confer any right upon any third party, unless so expressly stated herein.

7. **Compliance.** In accordance with the requirements of Section 2B of the Texas Real Estate License Act, the Purchaser is hereby advised that it should be furnished with or obtain a policy of title insurance or have an abstract covering the Property examined by an attorney of its own selection.

8. **Cooperation.** The City and Purchaser will each reasonably cooperate with each other, their employees and agents in a good faith attempt to facilitate the purchase of Lots by Purchaser pursuant to the terms and conditions contained herein. Any consent or approval reasonably requested or required by one party under the terms of this Agreement shall not be unreasonably withheld or delayed by the other party hereto, to the extent permitted by federal, state, or local law, rule, or regulation.

9. **Headings.** Any section or subsection headings used in this Agreement are for convenience of reference purposes only and shall not be used in the interpretation of this Agreement.

10. **Waiver.** The failure of Purchaser or City to insist in any one or more instances upon the performance of any of the covenants and/or conditions of this Agreement, or to exercise any right, power or privilege herein conferred shall not be construed as a waiver of any such covenant, agreement, condition, right or privilege.

11. **Assignability.** Except as permitted hereunder, neither party may assign its interest in this Agreement without the prior written consent of the other party. Any attempt to assign this Agreement without prior written consent of the other party will be of no effect and will be an event of default hereunder.

12. **Counterparts.** This Agreement may be executed in any number of counterparts; all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

13. **Effective Date.** As used herein, "Effective Date" shall mean the date of the approval of El Paso City Council of an Ordinance authorizing the sale of the Property.

14. **Term.** This agreement shall be effective on the Effective Date and shall remain in effect until all HOME-Assisted Units have been constructed and transferred to Qualifying Low-to Moderate-Income Homebuyers for use as affordable housing, in accordance with Title 24 of the Code of Federal Regulations, Part 92 and the expiration of affordability period following project completion and for five years thereafter.

**ARTICLE V.
COLLATERAL DOCUMENTS**

1. The following Exhibits "A" -"H", Addendum A and Equal Opportunity Clause, are attached and incorporated by reference for all purposes.

- Exhibit "A": Form Conveyance Deed
- Exhibit "B": Project Budget
- Exhibit "C": Model Home Plans and Specifications
- Exhibit "D": Project Schedule
- Exhibit "E": Insurance Requirements
- Exhibit "F": HUD Income Limits
- Exhibit "G": Affirmative Market Policy and Procedures
- Exhibit "H": Section 3-Area Business and Workforce Agreement
- Addendum A: Certifications - Including Grant Certifications
- Equal Opportunity Clause

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

THE CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Marie A. Taylor
Assistant City Attorney

William L. Lilly, Director
Community and Human Development

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

PURCHASER

TIERRA DEL SOL HOUSING
CORPORATION

By: *Rose Garcia*
Rose Garcia, Executive Director

(The foregoing representative(s) of Purchaser expressly represents that the Purchaser has lawfully authorized execution of this Agreement).

(Acknowledgment)

STAT OF TEXAS

COUNTY OF EL PASO

This instrument was acknowledged before me on this ____ day of _____, 20____, by JOYCE A. WILSON as City Manager of **THE CITY OF EL PASO**, on behalf of said municipal corporation.

Notary's Commission Expires:

Notary Public, State of Texas
Notary's name (printed):

(Acknowledgment)

STATE OF TEXAS

COUNTY OF EL PASO)

This instrument was acknowledged before me on this 29 day of September, 2010, by Rose Garcia as Executive Director of **TIERRA DEL SOL HOUSING CORPORATION**, on behalf of said entity.

Notary's Commission Expires:

2/24/2011

Pat Villalobos
Notary Public, State of Texas
Notary's name (printed):
Pat Villalobos



EXHIBIT "A" -FORM CONVEYANCE DEED

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.

SPECIAL WARRANTY DEED

DATE: _____, 2010

GRANTOR: THE CITY OF EL PASO, TEXAS, a Texas municipal corporation

GRANTOR'S MAILING ADDRESS (including county):

#2 Civic Center Plaza
El Paso, Texas 79901-1196
El Paso County, Texas

GRANTEE: TIERRA DEL SOL HOUSING CORPORATION

GRANTEE'S MAILING ADDRESS (including county):

P.O. Box 2626
Anthony, New Mexico 88021
Doña Ana County, New Mexico

CONSIDERATION: TEN AND 00/100 DOLLARS (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed.

PROPERTY (INCLUDING ANY IMPROVEMENTS):

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.

RESTRICTIONS, CONDITIONS, AND RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:

1. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements;

2. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities to statutory water rights, including riparian rights;

3. Any and all judgments, liens, or other assessments relating to the property whether shown of record or not;

4. Rights of parties in possession;

5. This conveyance is subject to all easements, rights-of-way, and prescriptive rights for road, ditches and utility lines, whether of record or not, all presently recorded instruments, other than liens and conveyances that affect the property;

6. Standby fees, taxes and assessments by any taxing authority for the calendar year of 2010 and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, and those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous year, prorated to the date hereof, which GRANTEE agrees to assume;

7. Property is subject to a restrictive covenant to the effect that any purchaser, its successors or assigns, will not, for a period of at least seventy-five (75) years, discard, place, or store upon such land, any radioactive material or other materials which would contaminate or otherwise damage the ground water supply or resources of the GRANTOR;

8. Claims by the Tigua Indian Tribe of Ysleta del Sur Pueblo, as evidenced by that certain Affidavit concerning filing of notice of Claim to the Ysleta Grant and Aboriginal Title Areas, executed by Julian Granillo, Governor of the Ysleta del Sur Pueblo Indian Tribe, also known as the Tigua Indian Community, dated April 12, 1993, filed on April 16, 1993 in Volume 2553, Page 1958, of the Real Property Records, El Paso County, Texas;

9. Utility easements as shown on plat and, including easements for overhead of service wires for pole type utilities and buried service wires, conduits and pipes for underground utilities, as dedicated on the plat, recorded in Volume 58, Pages 65 and 65A and under Clerk's File No. 20060039322, Plat Records, El Paso County, Texas;

10. Easement to the City of El Paso for the use and benefit of its Public Service Board, recorded in Volume 773, Page 233, Real Property Records of El Paso County, Texas;

11. Reservation of all minerals to the State of Texas in Volume 1050, Page 111, Real Property Records of El Paso County, Texas;

12. Terms, conditions and stipulations of Development Standards and Protective Covenants dated 5/16/1985 recorded in Volume 1557, Page 463, assigned in Volume 2559, Page 18 and amended in Volume 2573, Page 679, and as assigned in Volume 2775, page 1820, Real Property Records of El Paso County, Texas;

13. Terms, conditions, and stipulations as set out on the Subdivision Plat for Summerlin, recorded under Clerk's File No. 20060039322, Real Property Records of El Paso County, Texas; and

14. Any and all restrictions, reservations, covenants, conditions, easements, and other matters, if any, relating to the Property, whether shown of record or not in the hereinabove mentioned County and State, and to all zoning laws, regulations, and ordinances of municipal and/or other governmental authorities, if any, relating to the hereinabove described Property.

15. **AFFORDABILITY COVENANT.**

(a) GRANTEE 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 _____, 2010, between GRANTOR and GRANTEE, 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 ten (10) 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 any portion of the Property is not a subsequent purchaser that meets the criteria described in paragraph (a) above or (ii) GRANTEE fails to construct affordable homeownership housing on the Property within **thirty-six (36) months** from the recordation date of this instrument, then GRANTOR shall be entitled to and be owed by GRANTEE, its assigns, or successors-in-title, an amount equal to \$30,000.00 per affected Lot on the Property, being the federal HUD fund subsidy recapture due and owing to GRANTOR. 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 ten (10) 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 \$30,000.00 less any proportionate reduction at a rate of one-fifth (1/5th) each year after a 60-month occupancy period 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 of El Paso 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) This Section 15 is intended to create and does create a restrictive covenant and it is the intent of GRANTOR to convey to GRANTEE the GRANTOR's interest subject to this restrictive covenant. Violation or breach of the restrictive covenant herein shall give the City of El Paso, Texas the right to institute any proceeding at law or in equity to recover any sum due to the City of El Paso under the terms of this covenant. If the City of El Paso institutes an action to recover any such sum, GRANTEE and its successors-in-title agree to pay all costs of collection, including court costs and reasonable attorney's fees.

(d) Any sum payable under this Section 15 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.

(e) Upon expiration of the affordability period and satisfaction of all other requirements under this Section 15, the City of El Paso will upon request promptly execute and deliver to the owner of record a release instrument duly executed and in recordable form for filing in the Real Property Records, El Paso County, Texas.

GRANT AND CONVEYANCE:

The GRANTOR, for the consideration and subject to the restrictions, conditions, and reservations from and exceptions to conveyance and warranty, GRANTS, SELLS, and CONVEYS to the GRANTEE the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to the GRANTEE, the GRANTEE'S administrators, successors and assigns forever. The GRANTOR binds the GRANTOR and the GRANTOR'S successors and assigns to warrant and forever defend all and singular the property to the GRANTEE and the GRANTEE'S administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Restrictions, Conditions, and Reservations From and Exceptions to Conveyance and Warranty, when the claim is by, through, or under the GRANTOR but not otherwise.

The GRANTOR has executed and delivered this Deed, and the GRANTEE by recording this Deed has accepted this Deed and has purchased the Property, AS IS, WHERE IS, AND WITH ALL FAULTS, AND EXCEPT AS TO THE WARRANTY OF TITLE, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF THE GRANTOR AND THE GRANTEE TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING: (A) THE CONDITION OF THE PROPERTY; (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE GRANTEE MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (D) PRESENT ZONING AND SURFACE CONDITIONS; AND (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. THE GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT,

HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, THE GRANTEE IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE GRANTOR. THE GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE GRANTOR HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE GRANTOR IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE FOR THE PROPERTY REFLECTS THAT ALL OF THE PROPERTY IS SOLD BY THE GRANTOR AND PURCHASED BY THE GRANTEE SUBJECT TO THE FOREGOING.

AFTER CLOSING, BETWEEN THE GRANTOR AND THE GRANTEE, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF THE GRANTEE, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING AND ONCE CLOSING HAS OCCURRED, THE GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE GRANTOR FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. **THE GRANTEE INDEMNIFIES, HOLDS HARMLESS AND RELEASES THE GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THE GRANTOR'S OWN NEGLIGENCE OR THE NEGLIGENCE OF THE GRANTOR'S REPRESENTATIVES.** THE GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON THE GRANTOR IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

When the context of this instrument requires, singular nouns and pronouns will include the plural.

[SIGNATURES ON FOLLOWING PAGE]

TIERRA DEL SOL HOUSING CORPORATION
SUMMERLIN SUBDIVISION
30 DWELLING UNITS

Exhibit "B"

Floor Plan Type	S-1193 Single Car Garage	S-1201 Single Car Garage	S-1220 Single Car Garage	Alamo 1220 Double Car Garage
Dwelling Cost	\$ 114,053.00	\$ 113,355.00	\$ 116,205.00	\$ 118,085.00
EP Impact Fee	\$ 1,160.00	\$ 1,160.00	\$ 1,160.00	\$ 1,160.00
Less Land Cost	\$ (30,000.00)	\$ (30,000.00)	\$ (30,000.00)	\$ (30,000.00)
Less Sweat Equity	\$ (3,000.00)	\$ (3,000.00)	\$ (3,000.00)	\$ (3,000.00)
Less Down Payment Assistance	\$ (10,000.00)	\$ (10,000.00)	\$ (10,000.00)	\$ (10,000.00)
	\$ 72,213.00	\$ 71,515.00	\$ 74,365.00	\$ 76,245.00
Estimated Value	\$ 124,990.00	\$ 125,828.00	\$ 127,819.00	\$ 129,319.00
Estimated Mortgage	\$ 73,013.00	\$ 72,315.00	\$ 75,165.00	\$ 77,045.00
Per Unit Equity	\$ 51,977.00	\$ 53,513.00	\$ 52,654.00	\$ 52,274.00

Exhibit “C”

**Tierra Del Sol Housing Corporation
Summerlin Subdivision**

Model Home Plans and Specifications

Exhibit "E"
Insurance Requirements

With no intent to limit Purchaser's liability or the indemnification provisions set forth in the Agreement, Purchaser shall maintain or cause to be maintained in effect certain insurance coverage which is described in this Exhibit "E". If the insurance is written as "claims made" coverage, then Purchaser's insurance must include a two-year extended coverage period after the last date that Purchaser performs under this Agreement.

1. Minimum Insurance Requirements The insurance, at a minimum, must include the following coverage and limits of liability:

COVERAGE	AMOUNT
(1) Worker's Compensation	Statutory Limits for Workers Compensation
(2) Employer's liability	Bodily Injury by Accident \$500,000 (each accident); Bodily Injury by Disease; \$250,000 (policy limit); Bodily Injury by Disease \$250,000 (each employee)
(3) Comprehensive General Liability (including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations)	Combined limits of \$500,000 per occurrence and \$1,000,000 in the aggregate or its equivalent in umbrella or excess liability coverage
(4) Business Automobile Liability (any auto, including employer's non-owned and hired auto coverage)	\$1,000,000 combined single limit per occurrence
(5) Property & Casualty Coverage: "All Causes of Loss" Builders Risk Form for building or plant construction on a site.	Full value after construction

(a) Form of Policies. The insurance may be in one or more policies of insurance, the form of which must be approved by City after review by the City Attorney as to form and the Director as to sufficiency. City may approve the form of the insurance policies, but nothing the City does or fails to do relieves the Purchaser of its obligation to provide the required coverage under this Agreement. City's actions or inactions do not waive City's rights under this Agreement.

(b) Insured Parties. Each policy, except those for Workers' Compensation, must name the City (and its elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.

(c) Deductibles. Purchaser shall be responsible for and bear (and shall contract with each applicable contractor to bear and assume) any claims or losses to the extent of any deductible amounts and waives (and shall contract with each contractor to waive) any claim it may have for the same against the City, its officers, agents, or employees.

(d) Cancellation. Each policy must expressly state that it may not be canceled or non-renewed unless thirty (30) days advance notice of cancellation or intent not to renew is given in writing to the City of El Paso by the insurance company. Purchaser shall (and shall contract with each contractor to) give written notice to the City within five (5) days of the date upon which total claims by any party against such person reduce the aggregate amount of coverage below the amounts required by this Agreement. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Agreement.

(e) Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, its elected and appointed officials, officers, agents, or employees.

(f) Endorsement of Primary Insurance. Each policy, except Workers Compensation, must contain an endorsement that such policy is primary insurance to any other insurance available to the additional insured with respect to claims arising under this Agreement and that the insurance applies separately to each insured.

(g) Liability for Premium. Purchaser shall pay (and shall contract with contractors to pay) all insurance premiums for coverage required by this section and the City shall not be obligated to pay any premiums.

(h) Subcontractors. Purchaser and the selected contractor shall require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements. Purchaser shall provide (and shall contract with contractors to provide) copies of insurance certificates to the Director.

(i) Delivery of Policies. Prior to Closing, Purchaser shall furnish to the City with the originals of all policies referred to above, or copies thereof certified by the agent or attorney-in-fact issuing them together with written proof that the premiums have been paid, shall be deposited by Purchaser with the Director. Purchaser shall continuously and without interruption maintain in force the required insurance coverages specified in this Exhibit "E". If Purchaser does not comply with this requirement, the City, at its sole discretion, may purchase the required insurance and the costs thereof shall be promptly paid by Purchaser to the City upon demand. insurance coverage set forth above.

2. Additional Requirements for Workers' Compensation Insurance Coverage. In addition to meeting the obligations set forth above, Purchaser shall maintain or cause to be maintained workers'

compensation coverage and shall comply with all requirements specified below

(a) Definitions:

(i) "Certificate of coverage" ("certificate") -- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

(ii) "Duration of the project" -- includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

(iii) "Persons providing services on the project" ("subcontractor") -- includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

(iv) "Contractor" shall mean the general contractor or general contractors of Purchaser or their subcontractors.

(v) "Governmental Entity" shall mean the City of El Paso.

(b) Purchaser shall provide or cause to be provided coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreement, which meets the statutory requirements of Texas Labor Code, Section 401.011(44), for all employees of the Contractor providing services on the project for the duration of the project.

(c) The Purchaser must provide or cause to be provided a certificate of coverage to the Governmental Entity prior to being awarded the contract.

(d) If the coverage period shown on the current certificate of coverage ends during the duration of the project, the Purchaser must, prior to the end of the coverage period, file or caused to be filed a new certificate of coverage with the Governmental Entity showing that coverage has been extended.

(e) Purchaser shall obtain or cause to be obtained from each person providing services on a project, and provide to the Governmental Entity:

(i) A certificate of coverage, prior to that person beginning work on the project, so the Governmental Entity will have on file certificates of coverage, showing coverage for all persons providing services on the project; and

(ii) no later than seven (7) days after receipt by the Purchaser, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

(f) Purchaser shall retain all required certificates of coverage for the duration of the project

and for one year thereafter.

(g) Purchaser shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after Purchaser knows or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

(h) Purchaser shall post or cause to be posted on each project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered and stating how a person may verify coverage and report lack of coverage.

(i) Purchaser shall contractually require each person with whom it contracts to provide services on the project, to:

(i) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(ii) provide to Purchaser, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(iii) include in all contracts to provide services on the project the language in paragraph 2(j) in this Exhibit "E";

(iv) provide Purchaser, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(v) obtain from each other person with whom it contracts, and provide to Purchaser:

(A) a certificate of coverage, prior to the other person beginning work on the project; and

(B) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(vi) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(vii) notify the Governmental Entity in writing by certified mail or personal delivery within ten (10) days after the person knew or shown have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(viii) contractually require each person with whom it contracts, to perform as required by this paragraph 2(i)(i)-(viii), with the certificates of coverage to be provided to the person for whom they are providing services.

(j) By signing this Agreement or providing or causing to be provided a certificate of coverage, Purchaser is representing to the Governmental Entity that all employees of the Purchaser who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier. Purchaser shall not self-insure Workers' Compensation. Providing false or misleading information may subject Purchaser to administrative penalties, criminal penalties, civil penalties, or other civil actions.

Exhibit "F"

**HUD INCOME LIMITS
BY FAMILY SIZE
YEAR 2010
EL PASO, TEXAS**

El Paso, Texas FY 2010 Median Family Income: \$40,900

FAMILY SIZE	LOW INCOME 80% OF MEDIAN	VERY LOW INCOME 50% OF MEDIAN	EXTREMELY LOW INCOME 30% OF MEDIAN
1 PERSON	26,050	16,300	9,800
2 PERSON	29,800	18,600	11,200
3 PERSON	33,500	20,950	12,600
4 PERSON	37,200	23,250	13,950
5 PERSON	40,200	25,150	15,100
6 PERSON	43,200	27,000	16,200
7 PERSON	46,150	28,850	17,300
8 PERSON	49,150	30,700	18,450

Source: U.S. Department of Housing and Urban Development: www.huduser.org
INCOME GUIDELINES Effective May 17, 2010
CD/public/folder/income guidelines

Exhibit "G"

AFFIRMATIVE ACTION

(Attachment to Fulfill Executive Order 11246 SC-7)

- 1 **GOALS.** The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation in each trade
2010	45.3%	6.9%

These goals are applicable to all the contractor's construction work, whether or not it is federal or federally assisted, performed in the covered area and are percentages of total hours of employment.

The contractor's compliance with the executive order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the covered area. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the Contract, the Executive Order and the Regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

2. **NOTICE.** The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$100,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

3 **DEFINITIONS.**

- A "Covered Area" means the geographical area described in the solicitation from which this contract resulted, El Paso County.
- B "Director" means Director, Office of Federal Contract Compliance Programs. United States Department of Labor, or any person to whom, the Director delegates authority.
- C "Employer Identification Number" means the federal Social Security Number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.
- D "Minority" includes
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

4 **CONTRACT DOCUMENTS.** Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$100,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

5 **AFFIRMATIVE ACTION STEPS.** The contractor shall implement and document the specific Affirmative Action steps provided in Paragraphs 5a through 5p of these specifications. The contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

- A Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- B** Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contract or its unions have employment opportunities available, and maintain a record of the organization's responses.

Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore; along with whatever additional actions the contractor may have taken.

- D.** Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
- E.** Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources complied under 5b above.
- F.** Disseminate the contractor's EEO Policy by providing notice of the policy to unions and training programs requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.: By specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO Policy on bulletin boards accessible to all employees at each location where construction work is performed.
- G.** Review, at least annually, the company's EEO Policy and Affirmative Action obligations under these specifications with all employees having responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- H. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after-school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

- K. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- L. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- M. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.
- N. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- O. Document and maintain a record of all solicitations of offers for subcontractors from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- P. Conduct a review, at least annually of all supervisors' adherence to and performance under the contractor's EEO policies and Affirmative Action obligations.

6 UNION CONTRACT. Neither the provisions of any collective bargaining agreement, nor

the failure by a union with whom, the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

TRAINEE, APPRENTICE COUNT. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such, apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

- 8 JOINT EFFORTS. Contractors are encouraged to participate in voluntary associations which; assist in fulfilling one or more of their affirmative action obligations (5a through p). The efforts of a contractor association joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 5a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.
- 9 DISPARATE HIRING. A single goal for minorities and a separate goal for women have been established. The contractor, however, is required to provide equal opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the executive order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the executive order if a specific minority group of women is under utilized).
- 10 NON-DISCRIMINATION. The contractor shall not use the goals and timetables of Affirmative Action Standards to discriminate against any person because of race, color, religion, sex, or national origin.

SUBCONTRACTOR SANCTIONS. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

12. **SANCTIONS.** If the contractor fails to comply with the Executive Order, and implementing regulations or these specifications, the Owner may proceed in accordance with 41 CFR 60-4.8.
13. **RECORDS.** The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO Policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee: the name, address, telephone numbers, construction trade, union affiliation (if any), employee identification number (when assigned), social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easy-to-read retrievable form. However, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
14. **OTHER AREAS.** Nothing herein provided shall, be constructed as a limitation upon the application of other superseding laws which establish different standards of compliance.

EXHIBIT “H”

CITY OF EL PASO

SECTION 3 AREA BUSINESS AND WORKFORCE AGREEMENT

**Community Development Block Grant Projects
and Federally Assisted Projects**

CONTRACTORS/SUBCONTRACTORS

The following Certification for Business Concerns Seeking Section 3 Preference in Contract and Demonstration of Capability will be filled out and signed by all contractors and subcontractors with contracts exceeding **\$100,000**. This document will then become a part of the contract.

AN EQUAL OPPORTUNITY EMPLOYER

Contractor: _____
Name of Firm
Project _____
Project Location _____
Date _____ Base Bid Amount \$ _____

1 POLICY

The purpose of this plan is to set forth procedures to assure compliance with Section 3 of the Housing and Urban Development Act of 1968 as required by the Housing and Community development Act of 1974 and codified in Title 24, Part 135 (38F.R.29220. 1-/23/73) and Title 24, Part 570 CDBG by the City of El Paso.

2 PURPOSE OF SECTION 3

Section 3 is intended to ensure that when employment or contracting opportunities are generated because a covered project or activity necessities the employment of additional persons or the awarding of contract for work, preference must be given to low- and very low-income persons and Section 3 business concerns residing in the Section 3 area defined as the City of El Paso.

DEFINITIONS

A. Section 3 Covered Area

The Section 3 covered area shall be the City of El Paso. First priority within the Section 3 covered area shall be given to the general area in which this project is located.

B. Section 3 Business

51% or more of the business is owned by Section 3 residents;

or

At least 30% of the full time employees are currently Section 3 residents, or within three years of the date of first employment with the business were Section 3 residents;

or

Provide a commitment to subcontract in excess of 25% of the total dollar amount of subcontracts to qualified Section 3 businesses.

C. Section 3 Resident is:

Low- and Very-Low Income persons living in the City of El Paso.

4 CITY OF EL PASO GOALS

- 30% of New Hires are Section 3 Residents
- 10% of Construction Contracts to Section 3 Businesses
- 3% of Non-Construction Contracts to Section 3 businesses

Section 3 goals are minimum numerical targets that must be met for HUD to consider the City of El Paso in compliance. The City of El Paso is required, to the greatest extent feasible, to take the necessary actions to achieve the goals. In the event the goals are not achieved, the City of El Paso must be prepared to explain why the goals were not achieved.

5 CONTRACTOR RESPONSIBILITIES

- Ensure that Section 3 goals are met.
- Document activities initiated to meet Section 3 goals.
- Report to the City of El Paso on efforts to meet Section 3 goals

6 RECORD KEEPING FOR CONTRACT AGENCIES

Maintain records of job vacancies, solicitation for bids or proposals, selection materials, and contact documents (including scope of work and contract amount), and provide copies of information to the City of El Paso in accordance with Federal or State procurement laws and regulations.

- Maintain copies of newspaper and other public announcements, and provide copies of information to the City of El Paso in accordance with Federal or State regulations.

Complete Section 3 Summary Report and provide copies of information to the City of El Paso in accordance with Federal regulations.

CONTRACTS EXCEEDING \$100,000.00

A Type of Subcontract/Name of Proposed Subcontractor (If known)
 Lead Abatement, Plumbing, Electrical, Carpentry, Suppliers, etc
 Attach another page if necessary.

Example:	Electrical _____	\$250,000
	ABC Electrical Company, Inc.	
	_____	\$ _____
2.	_____	\$ _____
3	_____	\$ _____
4	_____	\$ _____
5	_____	\$ _____

B SECTION 3 BUSINESSES

All Section 3 covered businesses, presently known or which may become known in the future, who are capable of performing services relating to the above listed projects will be

invited to submit bids. It is anticipated that the following projects and estimated dollar amounts will be awarded to Section 3 covered businesses.

Attach another page if necessary

Example:

Electrical	\$250,000
ABC Electrical Company, Inc.	
Electrical (sub)	\$ 55,000.
Home Electric	
Electrical sub	\$ 40,000.
Unknown (sub)	
	\$
	\$
	\$
	\$
	\$
	\$

4

8. ANTICIPATED PROGRAM

To achieve goals set for this project, this format will be inserted into the bid documents.

To recruit eligible business concerns, the contractor will contact those firms in the Register provided by the City of El Paso and other eligible firms known to the contractor. They shall be informed of the contractor's intention to utilize Section 3 covered businesses and be given the opportunity to bid on projects. Bidders considering themselves eligible for consideration as a Section 3 covered business may submit with their bid the Self-Certification Forms certifying their eligibility. Refer to H- 6-8 (Extra copies are available from the contracting agent.)

Contracts which are typically awarded on a negotiated rather than a bid basis in areas other than Section 3 covered project areas shall also be awarded on a negotiated basis, whenever feasible, when awarded in a Section 3 covered project area.

EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH COMMUNITY DEVELOPMENT BLOCK GRANT OF THE CITY OF EL PASO, TEXAS.

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

- B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.
- C. The Contractor agrees to send to each labor organization, representative or workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- D. The Contractor agrees to include the Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135.30 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with requirements of these regulations.
- E. Compliance with provisions of Section 3, the regulations set forth in 24 CFR 135, and applicable rules and orders of the Department issued there under prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.135.

When competitive bids are solicited, the Contractor shall inform the bidders of Section 3 requirements. The low bidder will be required to submit goals for Section 3. The Contractor shall determine the bidder's responsiveness through careful evaluation for the bidder's submission to determine whether Section 3 goals will be accomplished. If necessary, the Contractor will assist bidders in complying with Section 3 requirements.

During the course of the activity period, the Contractor shall provide the City of El Paso with reports of the progress made to achieve the goals set forth in Section 3. The contracting agent is responsible for the Section 3 activities of subcontractors and shall require of them all that the City of El Paso requires of the prime contractor.

9. SECTION 3 CLAUSE

The Section 3 clause must be included in all the contracts let in connection with this project.

10. LOWER INCOME RESIDENTS

To fulfill the requirements to hire lower income persons as much as possible, the following actions will be taken by the contractor:

- A** The Section 3 Summary Report (H-6) must be submitted before the contract is signed and will provide information on existing and, if known, the work force that will be needed once the project is underway. Goals for hiring lower income persons will be listed on this form.
- B** Contractors or subcontractors seeking to prove that they have tried to hire lower-income target area residents shall keep records of their recruitment methods. The following are examples of how lower income target area people might be recruited: The City of El Paso Housing Authority, the Homeless Coalition, Youth bound, apprenticeship programs signs placed at the project site advertisements in local papers, and contracts with organizations within or working for the target area.
- C** If any vacant positions are filled immediately before work begins on this contract, the contractor or subcontractor must prove that this action is not an attempt to circumvent these requirements.
- D** To receive priority as lower income, applicants shall state their family income for the past twelve (12) months at the time of application. When lower income target area workers apply, the contractor shall determine their qualifications. If applicant qualifications are equal, lower income persons shall be hired first.

COVERSHEET
SECTION 3 Summary Report

H-6 thru H-8

Part II: Contracts Awarded

1. Construction Contracts:

A. Total dollar amount of all contracts awarded on the project	\$	
B. Total dollar amount of contracts awarded to Section 3 businesses	\$	
C. Percentage of the total dollar amount that was awarded to Section 3 businesses		%
D. Total number of Section 3 businesses receiving contracts		

2. Non-Construction Contracts:

A. Total dollar amount all non-construction contracts awarded on the project/activity		
B. Total dollar amount of non-construction contracts awarded to Section 3 businesses	\$	
C. Percentage of the total dollar amount that was awarded to Section 3 businesses		%
D. Total number of Section 3 businesses receiving non-construction contracts		

Part III: Summary

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

- Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contracts with the community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.
- Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
- Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.
- Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.
- Other: describe below.

Public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB number.

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, mandates that the Department ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very-low income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as self-monitoring tool. The data is entered into a database and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

m HL -6000 Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons.

Instructions: This form is to be used to report annual accomplishments regarding employment and other economic opportunities provided to low- and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968. The Section 3 regulations apply to any *public and Indian housing programs* that receive: (1) development assistance pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to Section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to Section 14 of the U.S. Housing Act of 1937 and to recipients of housing and community development assistance in excess of \$200,000 expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; and to *contracts and subcontracts in excess of \$100,000* awarded in connection with the Section-3-covered activity.

Form HUD-60002 has three parts, which are to be completed for all programs covered by Section 3. Part I relates to *employment and training*. The recipient has the option to determine numerical employment/training goals either on the basis of the number of hours worked by new hires (columns B, D, E and F). Part II of the form relates to *contracting*, and Part III summarizes recipients' efforts to comply with Section 3.

Recipients or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low- and very low-income persons.* A recipient of Section 3 covered assistance shall submit one copy of this report to HUD Headquarters, Office of Fair Housing and Equal Opportunity. Where the program providing assistance requires an annual performance report, this Section 3 report is to be submitted at the same time the program performance report is submitted. Where an annual performance report is not required, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion. *Only Prime Recipients are required to report to HUD. The report must include accomplishments of all recipients and their Section 3 covered contractors and subcontractors.*

HUD Field Office: Enter the Field Office name.

1. Recipient: Enter the name and address of the recipient submitting this report.
2. Federal Identification: Enter the number that appears on the award form (with dashes). The award may be a grant, cooperative agreement or contract.
3. Dollar Amount of Award: Enter the dollar amount, rounded to the nearest dollar, received by the recipient.
- 4 & 5. Contact Person/Phone: Enter the name and telephone number of the person with knowledge of the award and the recipient's implementation of Section 3.
6. Reporting Period: Indicate the time period (months and year) this report covers.
7. Date Report Submitted: Enter the appropriate date.

Submit one (1) copy of this report to the HUD Headquarters Office of Fair Housing and Equal Opportunity, at the same time the performance report is submitted to the program office. The Section 3 report is submitted by January 10. Include only contracts executed during the period specified in item 8. PHAs/IHAs are to report all contracts/subcontracts.

* The terms "low-income persons" and very low-income persons" have the same meanings given the terms in section 3 (b) (2) of the United States Housing Act of 1937. *Low-income persons* mean families (including single persons) whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that

8. Program Code: Enter the appropriate program code as listed at the bottom of the page.
9. Program Name: Enter the name of HUD Program corresponding with the "Program Code" in number 8.

Part I: Employment and Training Opportunities

Column A: Contains various job categories. Professionals are defined as people who have special knowledge of an occupation (i.e. supervisors, architects, surveyors, planners, and computer programmers). For construction positions, list each trade and provide data in columns B through F for each trade where persons were employed. The category of "Other" includes occupations such as service workers.

Column B: (Mandatory Field) Enter the number of new hires for each category of workers identified in Column A in connection with this award. New hire refers to a person who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column C: (Mandatory Field) Enter the number of Section 3 new hires for each category of workers identified in Column A in connection with this award. Section 3 new hire refers to a Section 3 resident who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column D: Enter the percentage of all the staff hours of new hires (Section 3 residents) in connection with this award.

Column E: Enter the percentage of the total staff hours worked for Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions.

Column F: (Mandatory Field) Enter the number of Section 3 residents that were trained in connection with this award.

Part II: Contract Opportunities

Block 1: Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project/program that were awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Block 2: Non-Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Part III: Summary of Efforts - Self-explanatory

The Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings such that variations are necessary because of prevailing levels of construction costs or unusually high- or low-income families. *Very low-income persons* mean low-income families (including single persons) whose incomes do not exceed 50 percent of the median family income area, as determined by the Secretary with adjustments or smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

**INCOME GUIDELINES
BY FAMILY SIZE
YEAR 2010
EL PASO, TEXAS**

El Paso, Texas FY 2010 Median Family Income: \$40,900

FAMILY SIZE	LOW INCOME 80% OF MEDIAN	VERY LOW INCOME 50% OF MEDIAN	EXTREMELY LOW INCOME 30% OF MEDIAN
1 PERSON	26,050	16,300	9,800
2 PERSON	29,800	18,600	11,200
3 PERSON	33,500	20,950	12,600
4 PERSON	37,200	23,250	13,950
5 PERSON	40,200	25,150	15,100
6 PERSON	43,200	27,000	16,200
7 PERSON	46,150	28,850	17,300
8 PERSON	49,150	30,700	18,450

Source: U.S. Department of Housing and Urban Development: www.huduser.org
INCOME GUIDELINES Effective May 17, 2010
CD/public/folder/income guidelines

ADDENDUM A

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, 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 a Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-ILL, "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 subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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 the 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 the 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.

GRANTEE:
TIERRA DEL SOL HOUSING
CORPORATION

By: _____
Rose Garcia, Executive Director

(Taken from) §130.15 Equal Opportunity clause.

(a) Government contracts. Except as otherwise provided, the following equal opportunity clause contained in section 202 of the Order shall be included in each Government contract entered into by the Department (and modification thereof if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the non-discrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees place by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Department's contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of the contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(sic)

(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) Incorporation by reference. The equal opportunity clause may be incorporated by reference in Government bills of lading, transportation requests, contracts for deposit of Government funds, contracts for issuing and paying U.S. savings bonds and notes, contracts and subcontracts less than \$50,000 and such other contracts as the Director may designate.

(e) Incorporation by operation of the order and departmental regulations. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order, the "rules and regulations" and these regulations to include such a clause whether or not it is physically incorporated in such contracts. The clause is applicable to every nonexempt contract where there is no written contract between the Department and the contractor.

(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clauses as shall be appropriate to identify properly the parties and their undertaking.