

LICENSE AGREEMENT

(Habitat for Humanity Access)

This REVOCABLE LICENSE ("License"), made and entered into this 28th day of FEBRUARY, 2014, by and between the City of Albuquerque, New Mexico, a municipal corporation (hereinafter referred to as the "City") as licensor and Greater Albuquerque Habitat for Humanity a New Mexico non-profit company _____, (hereinafter referred to as the "Licensee") as licensee.

WITNESSETH, that in consideration of the mutual obligations and covenants herein, the parties hereto do mutually agree as follows:

1. Recital.

The Licensee is the owner of certain real property ("Licensee's Property") located at 4900 MENALL BLVD NE, in Albuquerque, New Mexico, and more particularly described as:

Lot A-1 as shown on Replat of a Portion Lot 1 Block 1 Vidas Subdivision filed for record on September 24, 1973 in Plat Book B8 Folio 165, Bernalillo County Clerk's Office, Bernalillo County New Mexico,

and;

Lot 1-B-4 as shown on Plat of Block 1 Vidas Subdivision filed for record on June 20, 1974 in Plat Book B9 Folio 149, Bernalillo County Clerk's Office Bernalillo County, New Mexico.

The City is the owner of a certain real property, ("City Property") in the vicinity of, contiguous to, or abutting Licensee's Property, and more particularly described as:

Lot 1-B-7 as shown on Plat of Lot 1-B-7 Block 1 Vidas Subdivision filed for record on April 15, 1976 in Vol. B-11 Folio 61 as Document No. 7620593, Bernalillo County Clerk's Office, Bernalillo County New Mexico;

The City Property is encumbered by a 30' access easement (the "Easement") in favor of Lot 1-B-1 Block 1 Vidas Subdivision as shown on Plat of Lot 1-B-7 Block 1 Vidas Subdivision filed for record on April 15, 1976 in Vol. B-11 Folio 61 as Document No. 7620593, Bernalillo County Clerk's Office, and Bernalillo County, New Mexico.

Licensee wishes to use a portion of the City Property that is encumbered by the Easement as an access for the benefit of Licensee's Property.

The City Property is currently used and occupied by the Albuquerque Fire Department as Fire Station Site #13 that provides emergency rescue and response services to the general public. The parties acknowledge and agree that unhindered access of the Fire Station Site by the Fire Department is critical to the emergency rescue and response function of the Fire Station.

2. License.

Subject to the terms and conditions of this License, the City licenses to Licensee its employees, agents, customers and contractors access for egress only for the exclusive purpose of picking up and dropping off materials (hereinafter referred to as the "Access") within the City Property at the following location, as more particularly shown on the drawing which is attached hereto as Exhibit A and made a part of this License.

3. Use.

Licensee its employees, agents, customers and contractors shall use the Access only to exit Licensee's Property after loading and unloading materials. Licensee, its employees, agents, customers and contractors shall not park vehicles on the Access and shall not otherwise obstruct access to the City Property. Licensee its employees, agents, customers and contractors use of the Access shall not unreasonably interfere with the use of the City's Property by the City or the use of the Easement by the owner of Lot 1-B-1.

The Licensee its employees, agents, customers and contractors shall use the Access for the purpose described above and in the manner described on Exhibit A and will not use it for any other purpose whatsoever without first obtaining the written consent of the City.

Unless specifically provided otherwise herein, the Licensee shall have no right to locate any surface installation on any part of the Access or to fence the Access or in any way obstruct the Access or any part thereof except for the items expressly noted in Paragraph 7 in this Agreement or without first obtaining the written consent of the City.

4. Compensation.

As compensation for this License, the Licensee shall pay the City a yearly fee of Five Hundred Dollars (\$500.00) for each year this License is in effect (hereinafter referred to as the "Annual Fee").

The Annual Fee shall be paid to the City at the office of the City Treasurer upon execution of this License, and by the same month and day each year thereafter for the term of this License.

5. Term, Termination and Removal.

This License will remain in effect for a period of ten (10) years from the date of execution of this License (hereinafter referred to as the "Term"), unless terminated and revoked as a result of:

- a. The Licensee's breach of this License only after the City gives Licensee thirty (30) days written notice to cure said breach and Licensee fails to reasonably cure said breach; or
- b. The City's giving the Licensee written notice without cause thirty (30) days in advance of termination; or
- c. The Licensee's giving the City written notice thirty (30) days in advance of termination; or
- d. The conveyance of Licensee's Property, or any part thereof, by sale or lease; or
- e. An order of a court of competent jurisdiction.

Upon termination of this License and any renewal hereof, the Licensee shall abandon the use of the Access, and if required by the City, restore the Access or the City's Property as nearly as possible to the condition it was in prior to the effective date of revocation, all at the sole expense of the Licensee.

If, after termination and within thirty (30) days after being directed to do so by the City, the Licensee fails to restore the Access or City's Property, the City may perform the work and the Licensee shall reimburse the City within thirty (30) days after the City submits a bill to the Licensee for the reasonable and customary costs of such work. Failure to pay the City within thirty (30) days shall result in a lien being placed on Licensee's Property for the costs of such work. Such lien shall be foreclosed in the manner provided by Sections 3-36-1 to 3-36-6 NMSA 1978 as amended, or as otherwise provided by law.

Termination of this License for any reason shall not release the Licensee from any liability or obligation relating to any other term of this License, except for payment of future of compensation pursuant to Paragraph 4.

6. Renewal of License.

If both the City and the Licensee wish to extend the Term of this License, then, not less than one hundred twenty (120) days before the expiration of the Term, the City and the Licensee shall enter into good faith negotiations, the object of which will be to agree upon the terms of a renewal of this License. The agreement of the City shall not be withheld unreasonably. If an agreement is reached, all terms, including the agreed-upon consideration shall be reduced to a writing signed by both parties.

7. Installation of Fence and Stop Sign.

In order to restrict unauthorized use of the Access, at its own expense, the Licensee shall install, construct and maintain a chain link fence (the "Fence") along the southern property line, to the western boundary of Licensee's Property and erect a stop sign (the "Stop

Sign”) on Licensee’s Property all at the locations shown on **Exhibit A**. The Fence and Stop Sign will be constructed of such material, and in a manner that will not at any time be a source of danger to, or interfere with the City’s use of the City Property as a Fire Station. Licensee further warrants that Fence and Stop sign will not interfere with the Easement, or the use of the City Property by any utility presently franchised by the City. If during installation it becomes evident that the Licensee’s proposed installation will interfere with existing City installations or any existing underground installations, then the Licensee shall modify its installation within the location to avoid the conflict, after obtaining the City’s approval for the change, at the sole expense of the Licensee.

The Fence and Stop Sign shall be constructed, installed and maintained in conformity with specifications approved in advance by the City. Before performing any construction, Licensee’s contractors shall obtain all necessary permits and approvals. After installation of the Fence and Stop Sign, the Licensee shall back-fill, compact, repair and repave all resulting trenches, curbs, gutters and pavement, if any, to the satisfaction of the City.

If, in the judgment of the City, the Licensee at any time fails to perform its obligations under this Paragraph 7, after thirty (30) days written notice to Licensee, the City, at the City’s option, may perform whatever work the City deems necessary for the public safety, health and welfare, and the Licensee shall reimburse the City within thirty (30) days after the City submits a bill to the Licensee for the reasonable and customary costs of performing such work. Failure to pay the City within thirty (30) days will result in a lien being placed on Licensee’s Property for the costs of such work. Such lien shall be foreclosed in the manner provided in Sections 3-36-1 to 3-36-6 NMSA 1978, as amended, or as otherwise may be provided by law. However, the City is not required to perform such work, and any failure by the City to perform the Licensee’s obligations shall not release the Licensee from liability for any loss or damage caused by the Licensee’s failure to perform its obligations.

Installation, maintenance, and removal of the Fence and Stop Sign shall be accomplished in a manner which will not unreasonably impede City use of the Access or impede its use for operation and maintenance of the City Property, as determined by the City. The timing and manner of such construction, maintenance, and removal shall be done in compliance with the City’s requirements.

If the Fence, Stop Sign or use of the Access, by Licensee or any part thereof is the cause of an emergency condition, and the City determines that the situation makes it unreasonable to notify the Licensee or await action by the Licensee, the City may take whatever actions it deems necessary to remedy the emergency situation at the sole expense of the Licensee, which will reimburse the City within thirty (30) days after the City submits a bill to the Licensee for the costs of such actions. Failure to pay the City within thirty (30) days shall result in a lien being placed on Licensee’s Property for the cost of the City’s actions. Such lien shall be foreclosed in the manner provided in Section 3-36-1 to 3-36-6 NMSA 1978 as amended, or otherwise provided by law.

8. Maintenance, Repair and Cost Allocation.

The cost of maintenance and repair ("Maintenance") for wear and tear of the Access shall be the responsibility of the City, Licensee and the beneficiary of the Easement, (the owner of Lot 1-B-1), which cost shall be shared equally among the parties. The City and Licensee agree that Maintenance shall include but not be limited to the periodic reseal, pothole repair, and paving of the Access. The schedule for the Maintenance of the Access shall be determined by the City in the reasonable discretion of the City.

The City shall provide to Licensee an itemized cost estimate of the Maintenance prior to the start of the Maintenance work. The itemized cost estimate shall include the amount Licensee is obligated to pay. Licensee shall have ten (10) days from receipt of the cost estimate to object in writing to the cost estimate or the amount Licensee is obligated to pay. If Licensee fails to object to the cost estimate or the amount Licensee is obligated to pay within the ten (10) day period, Licensee shall be deemed to have approved the cost estimate and the amount Licensee is obligated to pay. In the event the City receives a written objection from Licensee within the ten (10) day period the City shall not start the Maintenance work without first consulting with Licensee to reach agreement on the amount Licensee is obligated to pay. In the event the parties cannot reach agreement after good faith consultation efforts to resolve the amount Licensee is obligated to pay, the City shall be permitted to proceed with the Maintenance work. The City shall invoice Licensee with its share of the cost of the Maintenance expenses, and Licensee agrees to pay the amount of the invoice within thirty (30) days of receipt. Failure to pay the City within thirty (30) days shall result in a lien being placed on Licensee's property for the costs of the Maintenance expenses. Such lien shall be foreclosed in the manner provided in Section 3-36-1 to 3-36-6 NMSA 1978 as amended, or as otherwise provided by law.

Notwithstanding anything herein to the contrary, in the event the City in its sole discretion determines that an emergency condition exists, the City shall not be obligated to provide Licensee with a cost estimate or the amount Licensee is obligated to pay prior to performing the Maintenance or any other work within the Access. The City shall notify Licensee in writing as soon as possible of the facts for the determination that an emergency condition exists. The City may then invoice Licensee with its share of the cost of the emergency Maintenance work or any other work within the Access, and Licensee agrees to pay the amount of the invoice within thirty (30) days of receipt. Failure to pay the City within thirty (30) days shall result in a lien being placed on Licensee's Property for the costs of the Maintenance or any other work within the Access. Such lien shall be foreclosed in the manner provided in Section 3-36-1 to 3-36-6 NMSA 1978 as amended, or as otherwise provided by law.

9. Hazardous Materials

No hazardous materials shall be transported, discharged, emitted or stored on the Access by Licensee, its, employees, agents or contractors. If any such discharge or emission occurs, whether by accident or otherwise, Licensee shall immediately give City written notice of the facts and shall, at Licensee's expense, immediately clean up and restore the Access property and the City Property to the same condition as existed prior to the discharge or emission. The term hazardous materials shall include but is not limited to: products and substances defined as

hazardous substances, hazardous materials or toxic substances in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq; the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq; the Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq; and those substances defined as hazardous waste or as hazardous substances under the laws of New Mexico or in the regulations adopted in publications promulgated pursuant to the laws.

10. Insurance.

During the Term of this License, including renewals, if any, the Licensee shall obtain and maintain liability insurance in an amount of not less than \$1,000,000.00 combined single limit for accidents or occurrences which cause bodily injury, death or property damage to any member of the public caused by or related to Licensee's use of the Access. . The insurance policy shall provide coverage per occurrence and shall specifically reference this License Agreement. The insurance policy shall name the City of Albuquerque, its employees and elected officials, as their interest may appear, as additional insured. Any cancellation provision must provide that if the policy is canceled prior to the expiration date of the License, materially changed or not renewed, the issuing company will mail thirty (30) days written notice to the City, Attention: Risk Management Division. A certificate of insurance in compliance with the above must be furnished to the City prior to the City's execution of this License.

11. Indemnity.

The Licensee agrees to indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from Licensee's use of the Access or out of the acts or omissions of the Licensee, its agents, employees, representatives, contractors or subcontractors or arising from the failure of the Licensee, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Licensee herein. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.

This indemnity shall not apply to any liability, claims, damages, losses or expenses, including attorney's fees, arising out of bodily injury to persons or damage or damage to property caused by or resulting from, in whole or in part, the negligent act or omission of the City, or the agents or employees of the City. Nothing in this Paragraph 11 shall be interpreted to waive the defenses and claim limits available to the City under the New Mexico Tort Claims Act, Section 41-4-1 et seq. NMSA 1978 as amended.

12. City Use.

The City reserves the right, to place along, under, across and over the Access as many roads, streets, sidewalks, passageways, fire alarms, electric light and power lines, waterlines, storm drains, sanitary sewer lines, gas lines, telephone poles and telephone lines, and other utilities and facilities as the City may desire.

13. Entire Agreement.

This License contains the entire agreement of the parties regarding the Access and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

14. Changes.

Changes to this License are not binding unless made in writing and signed by both parties.

15. Captions.

The captions to the sections or paragraphs of this License are not part of this License and will not affect the meaning or construction of any of its provisions.

16. Compliance with Laws.

The Licensee its employees, agents and contractors use of the Access shall comply with all federal, state, and local laws, ordinances, regulations, and rules and will not discriminate illegally against any person.

17. Applicable Law.

This License is governed by and construed and enforced in accordance with the laws of the State of New Mexico.

18. Construction and Severability.

If any part of this License is held to be invalid or unenforceable, the remainder of this License will remain valid and enforceable if the remainder of the License is reasonably capable of completion.

19. Assignment.

The Licensee shall not assign any interest in this License and shall not transfer any interest in this License (whether by assignment or novation), without the prior written consent of the City.

20. Notice.

For purposes of giving formal written notice to the Licensee, the Licensee's address is:

Greater Albuquerque Habitat for Humanity
Attn: Judith A. Lucero, Executive Director
4900 Menaul Blvd. NE
Albuquerque, NM 87110
Phone (505) 265-0057 ext.105
Fax (505) 255-0937
Email judy@habitatabq.org

With a copy to:

Nathan C. Sprague
Moses Dunn Farmer Tuthill, P.C.
PO Box 27047
Albuquerque, NM 87125
Phone (505) 843-9440 ext. 122
Fax (505) 247-3213
Email nathan@moseslaw.com

For purposes of giving formal, written notice of the City, the City's address is:

Notice to City of Albuquerque
Albuquerque Fire Department
Station #13
4901 Prospect Street
Albuquerque, New Mexico 87110

With copies to:

City of Albuquerque
Real Property
Property Management Division
1 Civic Plaza NW
PO Box 1293
Albuquerque, New Mexico 87103

Written notice must be made either personally or by regular United States Mail. If the notice is mailed, the notice will be complete when deposited in the United States Mail, postage paid, and addressed as required in this section. Notice of change of address will be given in the same manner as required by this section.

21. Approval Required.

This License Agreement shall not become effective or binding until approved by the City's Chief Administrative Officer.

22. Shall Not Run with the Property.

This License shall be binding upon Licensee but shall not run with the title to Licensee's Property.

23. Recitals.

The recitals are a material part of this License and are incorporated herein for all purposes.

CITY OF ALBUQUERQUE:

By: [Signature]

Robert J. Perry

Its: Chief Administrative Officer

Dated: 2/20/14

CITY NOTARY

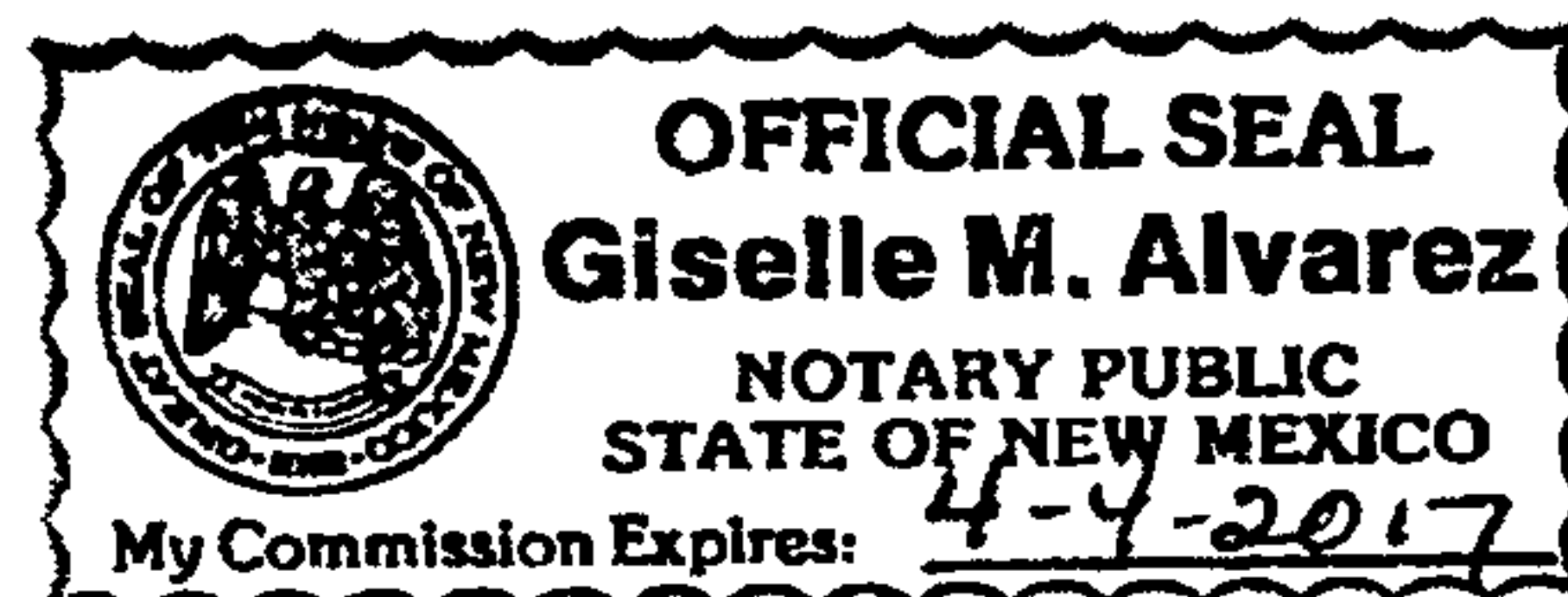
STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me this 28 day of February, ²⁰¹⁴~~2013~~, by Robert J. Perry Chief Administrative Officer, on behalf of the City of Albuquerque, New Mexico a municipal corporation

[Signature]
Notary Public

My commission expires:

April 4, 2017



LICENSEE:

Greater Albuquerque Habitat for Humanity

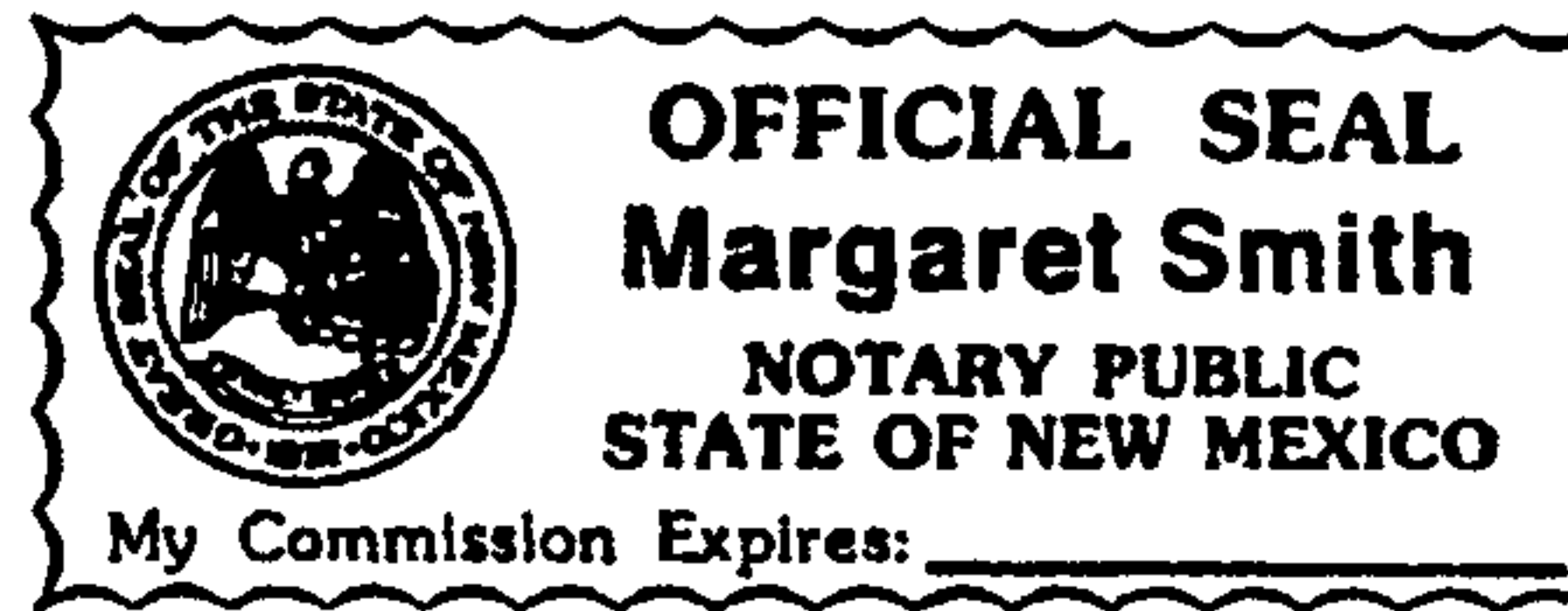
By: Judith Lucero

Its: Judith Lucero
Executive Director

Dated: 9/23/2013

LICENSEE NOTARY

STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)



This instrument was acknowledged before me on this 23rd day of September, 2013, by Judith Lucero, Executive Director of Greater Albuquerque Habitat for Humanity.

Margaret Smith
Notary Public

My commission expires:

April 15, 2015



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/17/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Affinity, LLC PO Box 873401 Kansas City MO 64187-3401	CONTACT NAME:	
	PHONE (A/C No. Ext): 888-553-9002	FAX (A/C No.):
INSURED Greater Albuquerque Habitat for Humanity PO Box 8353 Albuquerque, NM 87198	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Ace American Insurance Co.	NAIC # 22667
	INSURER B: ACE Property & Casualty Insurance Co.	20699
	INSURER C:	
	INSURER D:	
	INSURER E:	
INSURER F:		

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Hired and Non-owned <input type="checkbox"/> Auto Liability GEN'L AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	X		GL1065358-13	04/01/2013	04/01/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 0 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X		H08785685	04/02/2013	04/01/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/>						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				WC STATU-TORY LIMITS OTH-ER E L EACH ACCIDENT \$ E L DISEASE - EA EMPLOYEES E L DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

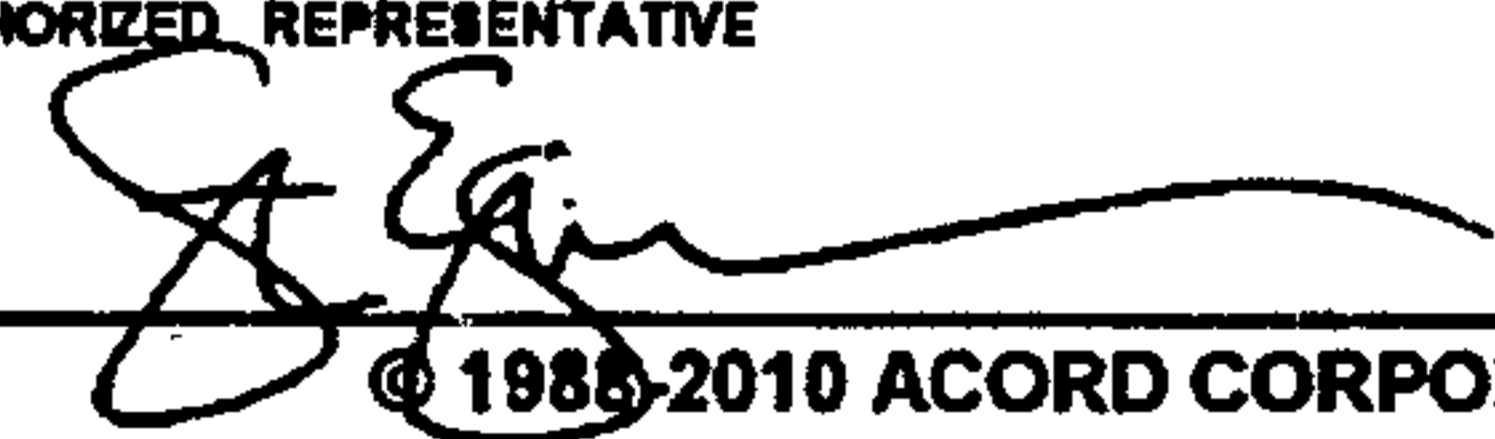
The City of Albuquerque a Municipal Corporation, its employees and elected officials are additional insured pursuant to License Agreement between the City of Albuquerque and Greater Albuquerque Habitat for Humanity for access across Fire Station Site #13.

Notice of Cancellation initiated by the company - for Non Payment: 10 Days; for Other Reasons: 30 Days;

Notice of Non-Renewal initiated by the company: 10 Days.

Failure to provide notice will not invalidate the cancellation or non-renewal.

CERTIFICATE HOLDER**CANCELLATION**

CITY OF ALBUQUERQUE Attn: Risk Management Division P.O. Box 1293 Albuquerque, NM 87103	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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ACORD 25 (2010/05)

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