

## AMENDED AND RESTATED DEFERRED LOAN AGREEMENT

THIS AMENDED AND RESTATED DEFERRED LOAN AGREEMENT ("Amended and Restated Agreement") made and entered into this 9<sup>TH</sup> day of JANUARY 2008, by and between the city of Las Vegas, a municipal corporation of the State of Nevada, (herein the "City"), and **Kathleen Nepolitan** (herein the "Owner").

### WITNESSETH:

WHEREAS, Clark County, Nevada, (herein the "County") has entered into a Grant Agreement with the United States Department of Housing and Urban Development, (herein "HUD") for participation in the Home Investment Partnerships Program, (herein the "HOME Program"), under 24 CFR Part 92 as amended; and

WHEREAS, the County as the Entitlement Grantee for the HOME Program is responsible for planning, administration, implementation and evaluation of the program; and

WHEREAS, the City has entered into an Interlocal Agreement with the County for the purpose of creating a HOME Program Consortium (herein the "Consortium") wherein the City is entitled to participate in a pro rata share of all HOME Program funds allocated to and administered by the County; and

WHEREAS, the County pursuant to the terms and conditions of the Interlocal Agreement with the City shall transfer HOME Program funds to the City; and

WHEREAS, the City, through the Neighborhood Development Division of the Neighborhood Services Department, has established a Residential Rehabilitation Deferred Loan Program (Loan Program) to enable low-to-moderate income homeowners who reside in their homes within the city of Las Vegas to obtain loans from the City to assist homeowners in making their homes safe and livable; and

WHEREAS, the Owner is the resident of certain improved real property located in the city of Las Vegas, Nevada, commonly known as **3804 El Cedral Avenue, Las Vegas, NV 89102**, which more particularly described as **Las Verdes Hgts Unit #4, Plat Book 8 Page 8, Lot 17 Block 3, city of Las Vegas, County of Clark, State of Nevada**, which serves as the Owner's home (hereafter "Owner's home" or "Property"); and

WHEREAS, the City and Owner entered into a Deferred Loan Agreement dated \_\_\_\_\_ in the amount of \$22,041 for certain rehabilitation work to be performed on the Owner's home; and

WHEREAS, the Owner has requested additional rehabilitation work which shall increase the total amount of the HOME Program Loan; and

WHEREAS, the Owner desires to have certain rehabilitation work performed on the Owner's home which is described as follows to wit: **New roofing system, new windows, new doors, lead containing materials abatement, plumbing and electrical repairs, garage door replacement, new window safety bars, new fencing, GFCI's, electric smoke detectors,** (hereinafter "Rehabilitation Work"); and

WHEREAS, the Owner desires to obtain from the City a loan in the total amount of \$40,000 which is to be used solely for the Rehabilitation Work of the Owner's home;

NOW, THEREFORE, it is mutually agreed by and between the parties that the Agreement shall be amended and restated as follows:

1. The City agrees to lend to the Owner, and the Owner agrees to borrow from the City, the aggregate sum of **Forty thousand and 00/100 Dollars (\$40,000.00)** (herein the "HOME Program Loan") which amount is based on the estimated cost of the labor and materials required for the Rehabilitation Work on the Owner's home.

2. The Owner agrees to execute any contract required to effect completion of the Rehabilitation Work on the Owner's home. Changes in the amounts to be paid for the labor and/or materials shall be authorized only by a written Change Order, which must be signed by the Owner and the contractor performing the Rehabilitation Work, but in no event shall any Change Order be executed without written approval of the city's Neighborhood Development Division. In the event that the Change Order changes the amount of the contract entered into for the Rehabilitation Work, the Loan will be adjusted accordingly unless the Change Order is not approved by the City.

3. The Owner agrees that the proceeds of the HOME Program Loan will be used solely for the rehabilitation of the Owner's home.

4. The Owner agrees to execute the Promissory Note and Amended Deed of Trust, copies of which are attached hereto as Exhibits "A" and "B" in favor of the City and to repay the HOME Program Loan in accordance with the provisions of the Promissory Note. If, upon completion of the Rehabilitation Work, the amount expended for the Rehabilitation Work varies from the sum of **\$40,000.00**, the Owner agrees to execute a revised Promissory Note and Deed of Trust, if necessary, so that the amount of the indebtedness concurs with the amount expended for the Rehabilitation Work. The Promissory Note in the amount of \$22,041 executed by Owner shall be rescinded and replaced with the Promissory Note attached as Exhibit "A".

5. The Owner agrees to obtain and maintain policies of fire, hazard and flood insurance (where required) for the Owner's home, specifically the building and its contents in the minimum amount of **\$40,000.00**. With respect to such insurance, the Owner further agrees to:

a. Name the City as an additional insured party on the policies, as the City's interest may appear;

b. Adjust as needed the amount of insurance coverage expressly required to be maintained by this Paragraph 5 so as to reflect the reconstruction or replacement costs of the Owner's home;

c. Furnish to the City annually certificates of insurance demonstrating that the foregoing insurance requirement in the sum stated is in effect;

d. Notify the City ten (10) days prior to any material change in insurance coverage or of a cancellation or an impending lapse of such coverage; and

e. Maintain such insurance identifying the City as an additional insured party on the Owner's home until the termination of this Amended and Restated Agreement.

6. The Owner understands and agrees that the Loan is for the benefit of the Owner only and only as long as the Owner actually lives in Owner's home. In the event that all or any part of the improved real property that is the subject of this Agreement or an interest therein is sold, transferred or otherwise alienated, or if the Owner ceases to live in the Owner's home, the total amount of the Loan, without interest shall, at the discretion of the City, be immediately due and payable.

7. The Owner acknowledges that the loan is comprised of federal HOME funds. The Owner further understands and agrees that the city of Las Vegas requires that unit (Owner's home) assisted with federal funds remain affordable until the Owner's home is sold, transferred or otherwise alienated and the subsidy provided by federal funds is recaptured. Owner agrees to execute the Promissory Note and an Amended Deed of Trust of even date herewith granting the property of Owner's home in favor of city of Las Vegas, State of Nevada ("Amended Deed of Trust") and to comply with and/or acknowledge the following deed restrictions:

- (1) The term of compliance is 5 years.
- (2) The Property must be used as the Owner's principal home.
- (3) No temporary subleases of Owner's home are allowed;
- (4) Federal funds, which comprise the loan, must be recaptured upon sale, transfer or change of ownership of Owner's home.
- (5) Should the Trustor lose possession of the property through foreclosure, the City must be properly notified by a Request for Notice of Default and a written notice from the Trustor submitted in a timely manner in order that the City be included in the division of net proceeds from the foreclosure sale and this amount will satisfy the repayment of the HOME Program funds.
- (6) The estimated value of the Property, after rehabilitation, does not exceed 95 percent of the median price for the area where the property is located.

8. The City will not subordinate its lien position for future lending except in the following circumstances: (1) to refinance an existing mortgage to a lower interest rate to reduce their monthly payment or (2) in the event of the death of the owner and the property is being refinanced to allow a new income eligible family member to acquire the property. Home equity loans will only be allowed if the financier of the loan is willing to take a subordinate position to the City's lien. Bill consolidation loans, new higher mortgages, or loans that result in the Owner receiving cash as a result of the new increased value of the asset will not be approved for subordination. An approved subordination will be allowed once during the affordability period.

9. Owner agrees to indemnify and save the City, its officers, employees and agents (collectively "City"), harmless from and against any claims or causes of action filed against City as a result from, related to, or arising out of Owner's action or inaction concerning the Rehabilitation work on Owner's home.

10. According to Executive Order 13166, enacted on August 11, 2000, it is mandated that the federal government reduce barriers to limited English proficiency ("LEP") persons with regard to federal benefits. The City, as a recipient of HUD assistance funds, directly or indirectly, is subject to said Executive Order and Title VI, Civil Rights protections, as a condition of receiving these federal funds. The failure to ensure limited English proficiency (LEP) persons access to HUD benefits may violate Title VI based upon national origin.

## 11. MISCELLANEOUS PROVISIONS

### A. NOTICES

Any notice or other communication required or permitted to be given under this Amended and Restated Agreement (herein the "Notices") shall be in writing and shall be (i) personally delivered, or (ii) delivered by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. The Notices shall be deemed received upon actual receipt. The Notices shall be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other party in the manner described above:

CITY

City of Las Vegas  
Attention: Director,  
Neighborhood Services Department  
400 Stewart Avenue, 2<sup>nd</sup> Floor  
Las Vegas, NV 89101

OWNER:

**Kathleen Napolitan**  
**3804 El Cederal Avenue**  
**Las Vegas, NV 89102**

## **B. AMENDMENTS**

This Amended and Restated Agreement may not be amended or modified except by a written instrument executed by the parties hereto.

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## **C. TIME OF THE ESSENCE**

Time is of the essence of this Amended and Restated Agreement and each and every term, condition and provision hereof.

## **D. NO WAIVER**

No waiver of any of the provisions of the Amended and Restated Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

## **E. COUNTERPARTS**

This Amended and Restated Agreement may be executed in two (2) counterparts, each of which shall be deemed to be an original.

## **F. ENTIRE AGREEMENT**

This Amended and Restated Agreement constitutes the entire agreement between parties hereto with respect to the subject matter hereof, and supersedes all prior understandings or agreements between the parties.

## **G. HEADINGS AND INTERPRETATION**

Headings used in this Amended and Restated Agreement are for convenience or reference only and are not intended to govern, limit or aid in the construction of any term or provision hereof. Any reference to a Section in this Amended and Restated Agreement shall include all sections and subsections related thereto.

## **H. CHOICE OF LAW**

This Amended and Restated Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of Nevada.

### **1. SEVERABILITY**

If any term, covenant, condition or provision of this agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction, or

rendered by the adoption of a statute invalid, void or unenforceable, the remainder or the terms, covenants, conditions or provisions of this Amended and Restated Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

#### **J. ATTORNEY'S FEES**

In the event that any party hereto institutes an action or proceeding relating to or arising out of this Amended and Restated Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, in the prevailing party shall be entitled to its reasonable attorneys' fees and to all court costs incurred, in addition to any other damages or relief awarded.

#### **K. ASSIGNMENT**

This Amended and Restated Agreement may not be assigned without the written consent of the City.

**L. DISCLOSURE OF PRINCIPALS.** Pursuant to resolution R-105-99 adopted by the City Council effective October 1, 1999, (Owner's name) warrants that it has disclosed, on the form attached hereto as Exhibit C, all principals, including, partners of Owner or anyone acquiring an interest in Owner's home, as well as all persons and entities holding more than 1% interest in Owner's home or any principal of the company acquiring Owner's home. Throughout the term hereof, Owner shall notify in writing of any material change in the above disclosure within 15 days of any such change.

#### **M. RIGHT TO REVIEW AND AUDIT**

1. The Owner agrees to maintain financial records pertaining to all matters relative to this Amended and Restated Agreement in accordance with standard accounting principles and procedures and to retain all records and supporting documentation applicable to this Amended and Restated Agreement for a period of three years, except those records subject to audit findings shall be retained for three years after such findings have been resolved. In the event the Owners goes out of existence, the Amended and Restated Agreement shall turn over to the City all of its records relating to this Amended and Restated Agreement to be retained by the City for the required period of time.

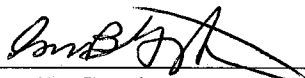
2. The Owner agrees to permit the City or the City's designated representatives to inspect and audit its records and books relative to this Amended and Restated Agreement at any time during normal business hours and under reasonable circumstances and to copy therefrom any information that the City desires concerning Owner's operation hereunder. The Owners further understands and agrees that said inspection and audit would be exercised upon written notice. If the Owners or its records or books are not located within Clark County Nevada, In the event of an inspection and audit, Owner agrees to deliver the records or books or have the records of books

delivered to the City or the City's designated representatives at an address within the city of Las Vegas as designated by the City. If the City or the City's designated representatives find that the records delivered by the Owners are incomplete, the Owners agrees to pay the City or the City representatives' costs to travel (including travel, lodging, meals and other related expenses) to the Owner's offices to inspect, audit, and retrieve the complete records.

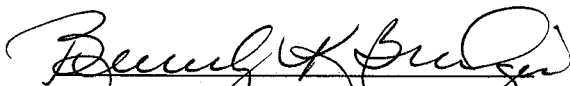
The Owners further agrees to permit the City or the City's designated representatives to inspect and audit, as deemed necessary, all records of this project relating to finances, as well as other records including performance records that may be required by relevant directives of funding sources of the City.

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Agreement as of the date first set forth above.

CITY OF LAS VEGAS

  
\_\_\_\_\_  
Oscar B. Goodman, Mayor

ATTEST:

  
\_\_\_\_\_  
Beverly K. Bridges, CMC, City Clerk

Approved as to form:

 12/21/07  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Kathleen Napolitan, Owner

**Exhibit "A"**

**CITY OF LAS VEGAS  
NEIGHBORHOOD SERVICES DEPARTMENT  
NEIGHBORHOOD DEVELOPMENT DIVISION**

**PROMISSORY NOTE SECURED BY DEED OF TRUST  
DEFERRED LOAN  
(OWNER-OCCUPIED REHAB PROGRAM)**

**PROPERTY: 3804 El Cederal Avenue**

**AMOUNT: \$40,000.00**

FOR VALUE RECEIVED, the undersigned promise(s) to pay to the CITY OF LAS VEGAS, at its office at 400 East Stewart, Las Vegas, Nevada 89101, the principal sum of **Forty\_Thousand and 00/100 Dollars (\$40,000.00)** without interest, upon the occurrence of either of the following two conditions:

1. The undersigned ceases to reside on the real property which is pledged as security for the indebtedness herein by means of a certain Amended Deed of Trust of even date herewith.
2. All or any part of the aforesaid property, or any interest therein, is sold or transferred.
3. The Owner acknowledges that the loan is comprised of federal HOME funds. The Owner further understands and agrees that the City of Las Vegas requires that the unit (Owner's Home) assisted with federal funds remain affordable until the Owner's Home is sold, transferred or otherwise alienated and the subsidy provided by federal funds is recaptured. Owner agrees to execute the Promissory Note and a Deed of Trust of even date herewith granting the property of Owner's Home in favor of City of Las Vegas, State of Nevada ("Amended Deed of Trust") and to comply with and/or acknowledge the following deed restrictions:
  - (1) The term of compliance is 5 years.
  - (2) The Property must be used as the Owner's principal home.
  - (3) No temporary subleases of Owner's home are allowed.
  - (4) Federal funds which comprise the loan must be recaptured upon sale, transfer or change of ownership of Owner's home.
  - (5) Should the Homebuyer lose possession of the property through foreclosure, the city of Las Vegas must be properly notified in a timely manner in order

to be included in the division of net proceeds of the property (if any), and this amount will satisfy the repayment of the HOME investment.

~~(6) The estimated value of the Property, after rehabilitation, does not exceed 95 percent of the median price for the area where the property is located.~~

In the event that any of the aforesaid conditions occur, the holder of the NOTE may without notice at its option, declare said indebtedness at once due and payable, and any failure to exercise said option shall not constitute a waiver of the right to exercise the same at any time.

Presentment, notice of dishonor and protest are hereby waived.

Should payment thereof not be made when due, the undersigned further promises to pay all cost of collection, including, without limitations, attorney's fees, incurred by the City in connection herewith.

Property legally described as: **Las Verdes Hgts Unit #4, Plat Book 8 Page 8, Lot 17 Block 3**, city of Las Vegas, Clark County, State of Nevada

Assessor's Parcel No. **162-06-711-049**

and, more commonly known as **3804 El Cederal Avenue, Las Vegas NV 89102**, IS THE SECURITY FOR INDEBTEDNESS EVIDENCED BY THIS PROMISSORY NOTE. An Amended Deed of Trust of even date herewith secures this Promissory Note, and reference is made to said Amended Deed of Trust for rights as to acceleration of the indebtedness evidenced by this Promissory Note.

This NOTE shall be governed by and construed in accordance with the laws of the State of Nevada. If the undersigned is more than one, each covenant and obligation contained herein stated shall be joint and several.

\_\_\_\_\_  
**Kathleen Nepolitan** , BORROWER

\_\_\_\_\_  
DATE

SCHEDULE OF COSTS IN LOAN AMOUNT

Contract Amount paid to A-Bear Construction	\$39,471.00
Real Estate Appraisal	\$300.00
Preliminary Title Report	\$200.00
Recording Documents at Clark County Recorder	\$ 14.00
Credit Report	\$ 15.00

ADJUSTED AMOUNT

DATE

\_\_\_\_\_

\_\_\_\_\_

APN: 162-06-711-049

**EXHIBIT "B"**  
**AMENDED DEED OF TRUST**

**(HOMEOWNER DEFERRED PAYMENT LOAN)**

THIS AMENDED DEED OF TRUST, made this 27 day of \_\_\_\_\_, 2008, between **Kathleen Napolitan**, herein called TRUSTOR, whose address is **3804 El Cederal Avenue, Las Vegas, NV 89102**; and the City of Las Vegas, herein called TRUSTEE and BENEFICIARY, a municipal corporation duly organized in the State of Nevada, whose principal office is located at 400 E. Stewart Avenue, Las Vegas, Nevada 89101, Attention: Neighborhood Services Department.

WITNESSETH, that TRUSTOR IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST WITH POWER OF SALE, that property located in the city of Las Vegas, Clark County, State of Nevada described as:

**Las Verdes Hgts Unit #4, Plat Book 8 Page 8, Lot 17 Block 3**

APN: **162-06-711-049**

TOGETHER WITH all appurtenances in which TRUSTOR has any interests including water rights benefiting said realty, represented by shares of a company or otherwise; and

TOGETHER WITH the rents, issues and profits thereof, reserving the right to collect and use the same, except during some default hereunder, in which event the TRUSTEE shall collect the same by any lawful means in the name of the BENEFICIARY.

FOR THE PURPOSE OF SECURING (1) performance of the Amended and Restated HOME Investment Partnership Program (herein "HOME"), Homeowner Deferred Payment Loan Agreement executed by TRUSTOR on the \_\_\_\_\_ day of \_\_\_\_\_, 2008 ("Homeowner Deferred Payment Loan Agreement") and (2) payment of any and all indebtedness evidenced by and accruing under the Promissory Note dated \_\_\_\_\_ ("Promissory Note"), in the principal sum of **Forty thousand and no/100—Dollars (\$40,000.00)** executed by TRUSTOR in favor of TRUSTEE, or order.

TO PROTECT THE SECURITY OF THE AMENDED DEED OF TRUST, TRUSTOR AGREES:

By the execution of this Amended Deed of Trust that those provisions included in the Amended and Restated Homeowner Deferred Payment Loan Agreement and Promissory Note, are hereby incorporated herein by reference and made a part hereof as though fully set forth herein at length; that the TRUSTOR or his successors will observe and perform said provisions; and that the references to property, obligations and parties in said provisions shall be construed to refer to the property obligations and parties set forth in this Deed of Trust.

Beneficiary acknowledges that the Property is or will be encumbered by one deed of trust (the "First Deed of Trust") created by Trustor to provide rehabilitation services to the Trustor of the Property which will be recorded in the Official Records of Clark County, Nevada Prior to recordation of this Amended Deed of Trust. Trustee acknowledges and agrees that this Amended Deed of Trust and all rights of Trustee hereunder are and will be subject and subordinate to the lien of the First Deed of Trust and to all rights and remedies of the Beneficiary and Trustee under the Deed of Trust. The Beneficiary under the First Deed of Trust and its successors and assigns, including, without limitation, any purchaser at a Trustee's sale under the First Deed of Trust and the heirs, personal representatives, successors and assigns of such purchaser, shall not be bound by or obligated to perform any of the obligations of the Purchaser under this Deed of Trust. This Amended Deed of Trust will not be subordinate to any replacement of the First Deed of Trust occurring as a result of any prepayment, refinancing, sale or other transaction.

FURTHER, if the Beneficiary under the First Deed of Trust, as the Senior Lien Holder acquires title to the Property pursuant to a deed in lieu of foreclosure, the lien of this Amended Deed of Trust shall automatically terminate upon the Senior Lien Holder's acquisition of title, provided that (i) the Trustee under this Amended Deed of Trust has been given written notice of default under the First Deed of Trust and (ii) the Trustee under this Amended Deed of Trust shall not have cured the default under the First Deed of Trust, or diligently pursued curing the default as determined by the Senior Lien Holder, within the 60-day period provided in such notice sent to the Trustee.

**THE TRUSTOR AGREES TO COMPLY WITH THE FOLLOWING RESTRICTIONS:**

1. The term of compliance shall be 5 years;
2. The Property shall be used as Trustor's principal Home;
3. No temporary subleases of the Home are allowed;
4. Federal HOME funds used for the loan under the Promissory Note must be recaptured upon the sale, transfer or change of ownership of the Property;
5. Should the Homebuyer lose possession of the property through foreclosure, the city of Las Vegas must be properly notified in a timely manner in order to be included in the division of net proceeds of the property (if any), and this amount will satisfy the repayment of the HOME investment.
6. The estimated value of the Property, after rehabilitation, does not exceed 95 percent of the median price for the area where the Property is located.

The following covenants Nos. 11, 2, 3, 4, 5, 6, 7, 8, and 9 of NRS 107.030 are hereby adopted and made a part of this Amended Deed of Trust. Such provisions so incorporated shall have the same force and effect as though specifically set forth and incorporated in this Amended Deed of Trust.

THE UNDERSIGNED TRUSTOR requests that a copy of any Notice of Default, any Notice of Sale, and or any Notice of Lien hereunder be mailed to the address hereinabove set forth:

\_\_\_\_\_  
Trustor: Kathleen Napolitan

STATE OF NEVADA

COUNTY OF CLARK

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2008, before me, personally appeared Kathleen Napolitan, personally known to be (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the instrument, and acknowledged that he/she/they executed it.

SUBSCRIBED AND SWORN to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC in and for said  
County and State

WHEN RECORDED MAIL TO:  
City of Las Vegas  
Neighborhood Services Dept.  
400 East Stewart, 2<sup>nd</sup> Floor  
Las Vegas, NV 89101

MAIL TAX STATEMENTS TO:  
**Kathleen Napolitan**  
**3804 El Cederal Avenue**  
**Las Vegas, NV 89102**

**EXHIBIT "C"**

**DISCLOSURE OF PRINCIPALS**

Owner represents and discloses that the Owner's home is owned by the Owner. Owner warrants that it shall disclose all principals, including partners of Owner, as well as all persons and entities of any principal acquiring an ownership in Owner's home. Throughout the term hereof, Owner shall notify in writing of any material change, including in the principals and partners of Owner and all persons and entities holding more than 1% interest in Owner or any principal of Owner. The changes shall be listed as follows:

<b>FULL NAME</b>	<b>BUSINESS ADDRESS</b>	<b>BUSINESS PHONE</b>
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1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

Continue list until full and complete disclosure is made.

I certify under penalty of perjury, that the following list is full and complete.

By: \_\_\_\_\_  
Kathleen Nepolitan, Owner

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Notary Public