

# DONATION AGREEMENT

1. **PARTIES/DONATION.** This Agreement, effective as of the date set forth below, is made by and between BORREGO CONSTRUCTION, INC, a New Mexico corporation, ("DONOR") which agrees to donate and convey to SANTA FE HABITAT FOR HUMMANITY, INC. a New Mexico nonprofit corporation ("RECIPIENT"), which agrees to RECEIVE from DONOR the property described in Paragraph 2 below, on the terms and conditions contained herein.

## 2. PROPERTIES.

Lot numbered Twenty-nine (29) of the PLAZA BONITA SUBDIVISION, as the same is shown and designated on the plat thereof filed in the office of the County Clerk of Santa Fe County, New Mexico on October 19, 2006 in Plat Book 638, page 021-024, as instrument No. 1455606.

Lot numbered Eighteen (18) of the PLAZA BONITA SUBDIVISION, as the same is shown and designated on the plat thereof filed in the office of the County Clerk of Santa Fe County, New Mexico on October 19, 2006 in Plat Book 638, page 021-024, as instrument No. 1455606.

3. **APPRAISAL VALUE.** The RECIPIENT shall receive the Property for 0/Zero at the time of Closing. The appraised value of the donated land is \$410,000 (the "Purchase Price").

4. **CLOSING DATE AND CLOSING COSTS.** Closing date shall occur within three (3) business days of the satisfaction of all contingencies contained in this Agreement, but not later than August 2, 2021 for the delivery and execution of the necessary documents to complete this transaction at Santa Fe Title. However, the actual date of Closing shall be the date title is conveyed to RECIPIENT by recordation of the Warranty Deed. Closing shall take place at the offices of Title Company. RECIPIENT shall pay all closing costs which are incurred, including but not limited to, appraisals, credit reports, mortgage recording fees, mortgagee's title commitment and policy and transfer fees.

5. **POST CLOSING.** As soon as is practicable after Closing, the Title Company shall make such searches of the public records as may be necessary to enable it to issue the title policy, whereupon, if such searches are satisfactory, the transaction shall be deemed to have closed and the Title Company shall (a) file the deed for record, and (b) deliver the recorded deed and title insurance policy to RECIPIENT. If such searches are not satisfactory, then the transaction shall be deemed not have closed, and the Title Company shall hold the unrecorded documents and funds thereafter as agent for the parties. The documents and funds shall be delivered pursuant to an agreement of the parties or an order of court specifying the disposition thereof.

6. **PRORATIONS AND TRUST FUNDS.** Any rent, property taxes, interest, hazard, flood, and/or mortgage insurance, water, sewer, and garbage charges, propane and propane tank rental, if applicable, and association fees, if any, are to be prorated to the date of

Closing. Prorations will be determined based on information available as of Closing and shall be binding on the parties.

**7. TITLE INSURANCE AND CONVEYANCE.**

A. DONOR, at RECIPIENT'S expense, shall provide RECIPIENT with a title insurance commitment to issue an owner's RECIPIENT's policy of title insurance in the amount of the Purchase Price within five (5) business days of the date of this Agreement to RECIPIENT's address below. At Closing, DONOR, at the RECIPIENT'S expense, shall provide RECIPIENT with an owner's policy of title insurance in RECIPIENT'S name insuring title to the Property in the amount of the Purchase Price, subject to those exceptions as are accepted by RECIPIENT in accordance with the terms of this Agreement. RECIPIENT may, at its cost, cause standard exceptions 1 (parties in possession), 2 (easements not shown by public records), 3 (survey protection) and 4 (mechanic's lien coverage) of the title insurance commitment to be removed from the final owner's policy of title insurance. RECIPIENT shall also be responsible for the cost of any Survey or Improvement Location Report desired by it or required by Title Company to delete standard exception no. 3.

B. DONOR shall convey the Property to RECIPIENT by general warranty deed at Closing subject to restrictions, reservations, encumbrances and easements shown of record and shown as exceptions in the title insurance commitment accepted by RECIPIENT in accordance with the terms of this Agreement.

C. RECIPIENT will receive title under the name set forth above and RECIPIENT'S address will be the address for property tax notices unless otherwise specified by RECIPIENT.

**8. POSSESSION.** DONOR agrees that physical possession of the Property shall be delivered to RECIPIENT following funding of RECIPIENT'S loan, if any, and immediately following the Closing.

**9. CASUALTY PROVISIONS.** Prior to Closing, risk of loss or damage to the Property or any improvements located thereon, whether by fire, windstorm or other peril (including water damage) shall be on DONOR, and in the event of loss, RECIPIENT shall have the option (to be exercised by written notice to DONOR within five days after receipt of notice of loss) of canceling this Agreement and receiving back the earnest money or closing with the Property "as is" and receiving assignment at closing of DONOR'S portion of the insurance proceeds, if any, necessary to restore the Property to its present condition. If RECIPIENT fails to timely notify DONOR of its election, RECIPIENT shall be deemed to have elected to close.

**10. DEFAULT.** If any payment or any other condition hereof is not made, tendered or performed by either DONOR or RECIPIENT as herein provided, then this Agreement, at the option of the party who is not in default, may be terminated by such party. In the event the non-defaulting party elects to treat this Agreement as terminated, then neither party shall have any further rights under this Agreement. In the event, however, that the non-defaulting party elects to treat this Agreement as being in full force and effect, the non-defaulting party shall have the right to an action for specific performance and damages.

**11. NOTICES.** Any notice, demand, request, approval, or other communication (a "notice") which, under the terms of this Agreement or under any statute, must or may be given by

the parties, must be in writing and shall either be hand-delivered, transmitted by facsimile or email, sent by overnight courier, or sent by United States Mail, registered or certified, return receipt requested and postage prepaid, addressed to the respective parties at the following addresses:

RECIPIENT: Santa Fe Habitat for Humanity  
2520 Camino Entrada Ste. A.  
Santa Fe, NM 87507

DONOR: Borrego Construction Inc.  
3056 Agua Fria St.  
Santa Fe, NM 87507

Notices, demands, requests, and exercises served in the above manner shall be considered sufficiently given or served for all purposes under this Agreement (a) upon actual receipt, if hand-delivered, (b) upon confirmation of receipt of transmission, if sent by facsimile or email, (c) the next day, if sent by U.S. Express Mail or overnight courier service, or (d) three (3) days after postmark, if sent by U.S. Mail.

**12. SURVIVAL CLAUSE.** The rights and obligations contained in this Agreement shall not merge at Closing; rather, they shall survive the Closing and bind the parties hereto.

**13. CONTINGENCIES.** This Agreement is contingent upon the following:

A. RECIPIENT's approval of the title insurance commitment. RECIPIENT shall have three (3) business days from the date the title insurance commitment (and all items listed as special exceptions) is RECIPIENT at RECIPIENT's address listed above in which to approve or disapprove of the title insurance commitment. If RECIPIENT shall disapprove of the title insurance commitment, it shall within said time period deliver a written notice of its objection(s) to DONOR at its address listed above. DONOR has the option to remove objections at their cost. If DONOR agrees in writing to remedy such objections, this

Agreement shall remain in full force and effect. Upon DONOR'S timely cure of the title objections prior to Closing, RECIPIENT shall approve the completion in writing after examination and acceptance by his attorney and, if so approved and accepted, shall remove the title contingency. If the DONOR does not agree to cure any or all such objections, RECIPIENT shall either choose to:

1. Accept the Property as offered or remedied by the DONOR; or,
2. Not accept the Property and void the Agreement

If RECIPIENT shall fail to so notify DONOR of its objection(s) in a timely fashion, then this contingency shall be deemed waived by the RECIPIENT. DONOR shall, within three (3) business days of receipt of RECIPIENT's objection(s), notify RECIPIENT of the objection(s) which the DONOR intends to cure. Failure of DONOR to respond to RECIPIENT's objection(s) within this period shall be deemed a refusal to cure any of them.

**14. RECIPIENT'S DISCLOSURES.** RECIPIENT hereby discloses, represents and warrants to DONOR:

**(A) THE DONATION OF THE PROPERTY HEREUNDER IS AND WILL BE MADE ON AN "AS IS, WHERE IS" BASIS AND DONOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, FUTURE OR OTHERWISE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY.**

**(B) RECIPIENT HAS OR WILL COMPLETE ALL PHYSICAL AND FINANCIAL EXAMINATIONS RELATING TO THE ACQUISITION OF THE PROPERTY HEREUNDER AND WILL ACQUIRE THE SAME SOLELY ON THE BASIS OF SUCH EXAMINATIONS AND THE TITLE INSURANCE PROTECTION AFFORDED BY THE TITLE POLICY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY DONOR.**

**(C) ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT DONOR HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.**

**(D) DONOR SHALL NOT BE LIABLE FOR ANY NEGLIGENT MIS- REPRESENTATION OR ANY FAILURE TO INVESTIGATE THE PROPERTY NOR SHALL DONOR BE BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, APPRAISALS, ENVIRONMENTAL ASSESSMENT REPORTS, OR OTHER INFORMATION PERTAINING TO THE PROPERTY OR THE OPERATION THEREOF, FURNISHED BY DONOR OR BY ANY REAL ESTATE BROKER, AGENT,**



**REPRESENTATIVE, EMPLOYEE, SERVANT OR OTHER PERSON ACTING ON DONOR'S BEHALF.**

**(E) IT IS UNDERSTOOD AND AGREED THAT THE PROPERTY IS SOLD BY DONOR AND PURCHASED BY RECIPIENT SUBJECT TO THE FOREGOING.**

**15. BROKERAGE.** DONOR agrees to hold RECIPIENT harmless from any and all claims arising out of DONOR'S actions or omissions by any person for payment of a commission related to this Agreement and the purchase and sale hereunder. RECIPIENT agrees to hold DONOR harmless from any and all claims arising out of RECIPIENT' s actions or omissions by any person for payment of a commission related to this Agreement and the purchase and sale hereunder.

**16. EXECUTION IN COUNTERPARTS.** This Agreement may be executed in counterparts by each of the signatories to this Agreement.

**17. ENTIRE AGREEMENT.** This instrument, together with the addenda or exhibits attached hereto, comprises the entire understanding and agreement of the parties hereto on the subject matter herein contained and supersedes all prior agreements or representations with respect to the Property not expressly set forth herein, is governed by the laws of the State of New Mexico and shall be binding upon and inure to the benefit of the parties, their heirs, executors, administrators, successors, and assigns. Time is of the essence of this Agreement.

**18. ATTORNEYS' FEES.** In the event of any action, suit or proceeding arising from or based on this Agreement brought by either party against the other party to this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees, any gross receipts tax thereon, and legal costs and expenses incurred in connection therewith, including attorneys' fees and costs incurred on appeal and in the collection of any judgment.

**19. SEVERABILITY.** All of the provisions of this Agreement are hereby declared to be severable and a finding by any court of competent jurisdiction that any provision of this Agreement is void, unlawful, or unenforceable shall not affect the validity or enforceability of any other provision of this Agreement.


**20. ELECTRONIC DOCUMENTS.** Documents which are transmitted by telecommunications and reproduced by electronic means ("Faxed" or "Emailed"), with electronically reproduced signatures, shall be legally effective and binding.

**21. DATE OF AGREEMENT.** For the purpose of calculating times for performance, the "date of this Agreement" shall be the date on which the last signature or initials of the parties are affixed to this Agreement. "Days" shall mean business days, unless otherwise specified.

**22. FOREIGN DONORS.** At closing, DONOR agrees to provide an Affidavit of Non-Foreign DONOR to either RECIPIENT or to a Qualified Substitute, at DONOR's option,

as provided by FIRPTA.

RECIPIENT:  
SANTA FE HABITAT FOR HUMANITY

By:   
Kurt F Krahn  
Executive Director

DONOR:  
BORREGO CONSTRUCTION INC.

By: **Ricardo R. Borrego**  
Ricardo R. Borrego  
Secretary/Treasurer

Digitally signed by Ricardo R. Borrego  
DN: cn=Ricardo R. Borrego, o=Borrego Construction  
Inc., ou, email=bd3056@qwestoffice.net, c=US  
Date: 2021.07.21 16:45:29 -06'00'