

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

DEPARTMENT: Community and Human Development

AGENDA DATE: January 19, 2010

CONTACT PERSON NAME AND PHONE NUMBER: William L. Lilly, Director – 541-4241

DISTRICT(S) AFFECTED: 8

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the City Manager be authorized to sign a Loan Assumption Agreement and Modification of HOME Financial Terms Contract, Notes and Lien (the "Agreement") by and among the City of El Paso, Al Rivera, Martha Rivera, Gregory D. Rivera, El Paso Rivera Investments, Ltd., and Robert Malooly, concerning the City's consent to the transfer of the property located at 1326 Wyoming, El Paso, Texas to Robert Malooly and assumption of all borrower obligations under the loan documents, including modifications thereto.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

In 2002, The Riveras (original borrower) received HUD-funded financial assistance from the City for the rehabilitation of a 15-unit investor rental property at 1326 Wyoming. Pursuant to the terms of the parties' written agreement and related loan/secured grant documents, an affiliate of the original borrower has requested the City's consent to the sale and transfer of the property. As consideration of the City's consent, all loan arrears and delinquent property taxes will be paid at closing and the new owner shall assume all financial, programmatic, and regulatory obligations required under the original agreement as well as those required under the City's current Investor Rehabilitation Program. The City will maintain its first lien position against the property. Community Development staff will continue to monitor the rental units on an annual basis to ensure the units remain affordable to low income families and are in compliance with Housing Quality Standards, for the remaining eight-year affordability period.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

No

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Loan Assumption Agreement and Modification of HOME Financial Terms Contract, Notes and Lien (the "Agreement") by and among the City of El Paso, Al Rivera, Martha Rivera, Gregory D. Rivera, El Paso Rivera Investments, Ltd., and Robert Malooly, concerning the City's consent to the transfer of the property located at 1326 Wyoming, El Paso, Texas to Robert Malooly and assumption of all borrower obligations under the loan documents, including modifications thereto.

ADOPTED this day of _____, 2010.

THE CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

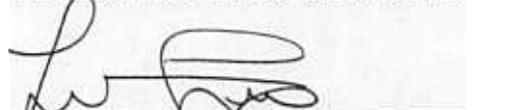
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



William Lilly, Director
Community and Human Development

**LOAN ASSUMPTION AGREEMENT AND MODIFICATION OF
HOME FINANCIAL TERMS CONTRACT, NOTES AND LIEN**

THIS LOAN ASSUMPTION AGREEMENT AND MODIFICATION OF HOME FINANCIAL TERMS CONTRACT, NOTES AND LIEN (the "Agreement") is made and entered into this ____ day of _____, 2010, by and among **AL RIVERA, MARTHA RIVERA**, and **GREGORY D. RIVERA** (collectively, the "Original Borrower"), **EL PASO RIVERA INVESTMENTS, LTD.** ("Owner"), **ROBERT MALOOLY** ("Assuming Borrower"), and the **CITY OF EL PASO** ("City").

RECITALS

WHEREAS, on or about May 14, 2002, the Original Borrower executed a Loan Note ("Loan Note"), a copy of which is attached hereto and incorporated herein as Exhibit "A", in the original principal amount of Six Hundred Seventy-Two Thousand and No/100 Dollars (\$672,000.00) and a Secured Grant Note ("Secured Grant Note"), a copy of which is attached hereto and incorporated herein as Exhibit "B", in the original principal amount of Ninety-Five Thousand Nine Hundred and No/100ths Dollars (\$95,900.00), each payable to the order of the City and secured by a Builder's and Mechanic's Lien Contract and Deed of Trust (With Power of Sale) dated May 14, 2002, filed of record in Volume 4261, Page 0592, Clerk's File No. 20020043318, Real Property Records of El Paso County, El Paso, Texas (the "Lien") against the following property:

Lots 13, 14, 15, and 16, Block 26, FRANKLIN HEIGHTS ADDITION, an Addition to the City of El Paso, El Paso County, Texas, according to the City Block Map in the Office of the County Clerk of El Paso County, Texas; also known and numbered as 1326 Wyoming, El Paso, Texas (the "Property"); and

WHEREAS, City and the Original Borrower entered into that certain HOME Financial Terms Contract (the "HOME Program Contract"), dated May 14, 2002, concerning use of the City's U.S. Department of Housing and Urban Development ("HUD") HOME funds for rehabilitation of the Property and fulfillment of HOME tenant occupancy requirements pursuant to Title 24 Code of Federal Regulations ("CFR") Part 92, HOME Investment Partnership Program (the Loan Note, Secured Grant Note, Lien, Property Agreement Concerning Covenants and Restrictions Running with the Land, and HOME Program Contract, hereinafter collectively referred to as the "Loan Documents"); and

WHEREAS, the Loan Documents provide that the Property shall not be conveyed without the City's prior written consent and that failure to do so constitutes a triggering event, entitling the City to exercise certain rights and remedies, including collection of the outstanding balance of the Loan Note and the entire principal balance of the Secured Grant Note; and

WHEREAS, the Owner desires to convey the Property to Assuming Borrower and Assuming Borrower, in consideration of City's agreement not to exercise certain rights and remedies, has agreed to assume all the liability and obligations of Original Borrower and Owner under the Loan Documents; and

WHEREAS, the City is willing to accept Assuming Borrower as an assumptor under the Loan Documents on the terms and conditions set forth in this Assumption Agreement; and

WHEREAS, Assuming Borrower and City now desire to amend and modify said Loan Documents as set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

I. LOAN AND SECURED GRANT ASSUMPTION

1. Owner, Assuming Borrower, and City hereby acknowledge that (i) Exhibits "A" and "B" attached hereto are a true and correct copy of the Loan Note and Secured Grant Note, respectively; and (ii) City is the present legal and equitable owner and holder of said Notes and of the Loan Documents.

2. City hereby represents to Assuming Borrower that, as of the date hereof, the unpaid balance of the Loan Note is \$533,802.65. The Secured Grant Note in the principal amount of \$95,900.00 shall be forgiven in its entirety on its maturity date, provided the Assuming Borrower complies with the terms and conditions contained in the Loan Documents.

3. From and after the date hereof, Assuming Borrower hereby (i) assumes and agrees to pay each and every obligation of the Original Borrower set forth in the Loan Note and Secured Grant Note, including, without limitation, the obligation, if applicable, to make installment payments of principal and interest; (ii) agrees to observe and perform all of the terms, covenants, liabilities, and conditions of the Original Borrower as set forth in the Loan Note and Secured Grant Note; (iii) agrees to observe and perform all of the terms, covenants, liabilities, and conditions which are required to be observed and performed by the Original Borrower as Grantor as set forth in the Lien; and (iv) agrees to observe and perform all of the terms, covenants, liabilities, and conditions of the Original Borrower under and pursuant to any and all other Loan Documents.

4. The City consents to allow the assumption of the Loan Documents and transfer of the Property to Assuming Borrower and to accept Assuming Borrower as obligor under the Loan Documents with the condition that the principal of the Loan Note in arrears and delinquent, as of the date hereof, in the amount of \$11,200.02 be paid in full by the Assuming Borrower within ten (10) days of the sale and transfer of the Property or upon the execution date of this Agreement, whichever date is later. Further, City consent is conditioned upon the sale and transfer of the Property resulting in payment in full of all outstanding delinquent property taxes assessed against the Property, which as of the date hereof is \$14,932.68. It is understood and agreed by the parties that consent granted herein does not apply to any future conveyance of the Property, so that the prohibition against conveyance set forth in the Loan Documents remains in full force and effect.

5. Original Borrower, Owner, and Assuming Borrower hereby acknowledge, agree and warrant that (i) there are no rights of offset or defenses of any kind, whether legal, equitable or otherwise, which would enable Assuming Borrower to avoid or delay timely performance of Assuming Borrower's obligations under the Loan Documents, and (ii) there are no claims of any kind or nature against the Property.

6. Without waiving the validity and priority of the Lien and provided Assuming Borrower closes on the purchase of the Property, the Original Borrower is hereby released from all liability and obligations, as a primary obligor, to pay each and every payment obligation of the Maker, as set forth in the Loan Note, to observe and perform all of the terms, covenants and conditions of the Maker as set forth in the Loan Note and Secured Grant Note and of the Original Borrower as Grantor as set forth in the Lien, and to observe and perform all of the terms, covenants and conditions under and pursuant to any and all other Loan Documents.

7. Original Borrower, Owner, and Assuming Borrower acknowledge that the Property remains subject to the liens, covenants, conditions, and agreements set forth in the Loan Documents, and that nothing contained herein shall affect those liens or the priority thereof over any other liens.

8. Assuming Borrower hereby agrees to provide the City with fire and extended coverage insurance as required by the Loan Documents and Lien, and the Assuming Borrower acknowledges its obligation to pay the real estate taxes imposed on the Property pursuant to the Loan Documents and Lien.

II. VALIDITY AND PRIORITY OF MODIFIED LIEN

1. City and Assuming Borrower hereby agree to extend and modify the Loan Note and Secured Grant Note, and carry forward the Lien on the Property securing the same until the indebtedness and said Notes as so renewed, modified and extended have been fully paid, and agree that such renewal, extension, modification or rearrangement shall in no manner affect or impair the validity or priority of said Notes and the Lien as modified herein and that said Lien as modified herein shall not in any manner be waived.

2. Assuming Borrower acknowledges that the Loan Note, Secured Grant Note, and the Lien are valid and subsisting and further agrees that all terms and provisions of said original Notes and of the instruments creating or fixing the Lien, shall be and remain in full force and effect as therein written, except as otherwise expressly provided herein.

III. MODIFICATION OF LOAN NOTE

1. Assuming Borrower hereby expressly agrees that the Loan Note dated May 14, 2002, shall be and is modified by the principal balance of the Loan Note being reduced by the lump sum payment of \$11,200.02 required and referenced in Section I of this Agreement. Said payment represents delinquent principal and interest due under the Loan Note provided as consideration to induce City to enter into this Agreement. Following the lump sum payment by Assuming Borrower, Assuming Borrower shall continue to make consecutive monthly payments in the amount of \$1,866.67 as stated in the Loan Note until the entire principal balance and accrued interest on the Loan Note, if any, is paid in full by Assuming Borrower. The first required monthly loan payment shall be due on January 1, 2010 and shall continue for two hundred seventy seven (277) consecutive monthly payments or until the loan balance is paid in its entirety.

IV. MODIFICATION OF HOME FINANCIAL TERMS CONTRACT

The parties hereto agree that the HOME Program Contract shall be and is hereby modified and amended as follows:

1. Throughout the HOME Program Contract, all references to "Borrower" are hereby revised to refer to the "Assuming Borrower" with the Assuming Borrower assuming the obligations of Borrower.

2. On page 5, Section IV. Covenants, subsection E., the second paragraph is revised to add the following sentence and attachment:

The terms and conditions regarding subsequent rent increases and HUD median income adjustments are specified in Addendum B, "HOME Program Rents and Tenant Eligibility," attached hereto and incorporated by reference herein.

3. On page 6, Section IV. Covenants, subsection E (2) is revised to add the following paragraph:

Assuming Borrower hereby agrees to verify all income, assets, household characteristics, and any other circumstances that affect tenant eligibility in accordance with 24 CFR Part 5 and as more specifically described in Addendum B, "HOME Program Rents and Tenant Eligibility." Further, Assuming Borrower shall assist the City in acquiring tenants' consent and release authorization for purposes of determining or auditing tenant income eligibility or for verifying related information from depository or private source of income, or any Federal, State, or local agency ("source documentation").

4. On page 6, Section IV. Covenants, subsection F (2) is revised to add the following sentence:

Assuming Borrower agrees to complete with every tenant household in connection with the execution of the lease and upon the City's request, the City's standard Mandatory Lease Addendum concerning prohibited lease terms, a copy of which has been provided to Assuming Borrower.

5. On page 7, Section IV. Covenants, subsection I is revised to add the following sentence:

Assuming Borrower hereby agrees to sign the Certification, attached hereto and made a part of this Contract as Addendum A, and if necessary, the Disclosure of Lobbying Activities referenced therein, and return said signed Certification and, if necessary, the completed Disclosure of Lobbying Activities, to the City.

6. On page 7, Section IV. Covenants, subsection K is revised to add the following paragraphs:

Assuming Borrower shall maintain tenant records to verify at a minimum that: the Project is satisfying the affordability and income targeting requirements for the required period;

tenants are income eligible; the Project is in compliance with tenant and participant protections of 24 CFR §92.253. Such documentation must be kept for each tenant household, and will include: the tenant's application, initial income verification documents, subsequent income recertification documents and the tenant's lease and lease addendum.

For general rental housing projects, records must be retained for five years after project completion; except that records of individual tenant income verifications, Project rents and Project inspections must be retained for the most recent five-year period until five years after the fifteen-year affordability period expires.

Assuming Borrower further agrees to allow City to conduct periodic Project monitoring and evaluation activities as determined necessary by City and HUD. Assuming Borrower agrees that it will make its premises and records available for such inspection and monitoring during regular business hours.

7. On page 10, Section VII. Notices, the address of the Assuming Borrower for all purposes in connection herewith shall read as follows, unless the City is notified in writing of a change of address:

ASSUMING BORROWER: Robert Malooly
920 N. Stanton
El Paso TX 79902

8. On page 11, Section X. Entire Agreement, is revised to add the following sentence:

This Contract shall be effective on the date first above written and shall remain in effect for the fifteen-year affordability period required by Title 24 of the Code of Federal Regulations, Part 92 following project completion and for five years thereafter or until full repayment of the Loan Note, whichever date is later.

Except as amended herein, the HOME Program Contract dated May 14, 2002 shall remain in full force and effect.

V. MISCELLANEOUS

1. The provisions of the Loan Documents shall remain in full force and effect and unmodified, except as herein stated. The lien(s) created in the Loan Documents remain unchanged and are brought forward and renewed herein. Assuming Borrower agrees to execute documents as requested by the City in order to obtain the City's consent to the transfer and to effectuate the transfer of the property between Assuming Borrower and Owner.

2. This Agreement is made pursuant to the laws of the United States and the State of Texas, and shall be construed in accordance therewith, and this Agreement is performable in El Paso County, Texas.

3. This Agreement shall be binding on, and inure to the benefit of, the parties and their heirs, personal representatives, successors and assigns.

THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDES ANY PRIOR WRITTEN OR ORAL AGREEMENTS AMONG THEM CONCERNING THE SUBJECT MATTER HEREOF. THERE ARE NO REPRESENTATIONS, AGREEMENTS, ARRANGEMENTS OR UNDERSTANDINGS, ORAL OR WRITTEN, AMONG THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF THAT ARE NOT MENTIONED HEREIN. THIS AGREEMENT SHALL NOT BE AMENDED UNLESS SUCH AMENDMENT IS IN WRITING AND EXECUTED BY EACH OF THE PARTIES HERETO.

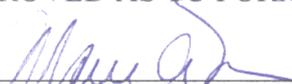
[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF EL PASO

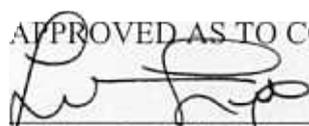
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



William L. Lilly, Director
Community and Human Development

ASSUMING BORROWER



Robert Malooly

OWNER:

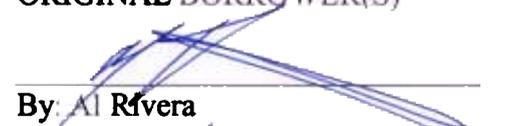
El Paso Rivera Investments, Ltd.
a Texas limited partnership.

By: **G&R Rivera Properties, L.L.C.**
a Texas limited liability company,
General Partner.



By: **Al Rivera, Manager**

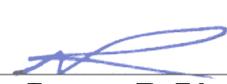
ORIGINAL BORROWER(S)



By: **Al Rivera**



By: **Marina Rivera**



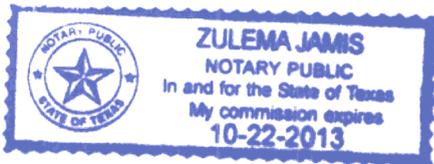
By: **Gregory D. Rivera**

[ACKNOWLEDGMENTS ON FOLLOWING PAGE]

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

Before me, the undersigned Notary Public, on this 5th day of January, 2010, personally appeared Robert Malooly, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.



Zulema Jamis
Notary Public in and for the State of Texas

(Acknowledgment)

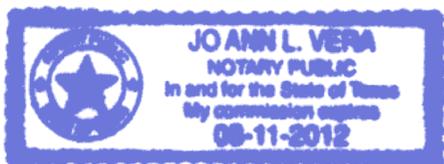
STATE OF TEXAS)
)
COUNTY OF EL PASO)

Before me, the undersigned Notary Public, on this 5th day of January, 2010 personally appeared Al Rivera, Manager of G & R Rivera Properties, LLC, a Texas limited liability company, General Partner of El Paso Rivera Investments, Ltd., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same on behalf of said corporation and for the purposes and consideration therein expressed.

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

Before me, the undersigned Notary Public, on this 5th day of January, 2010, personally appeared Al Rivera, Martha Rivera, and Gregory D. Rivera, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they individually executed the same for the purposes and consideration therein expressed.



Jo Ann L. Vera
Notary Public in and for the State of Texas

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

Before me, the undersigned Notary Public, on this _____ day of _____, 20____, personally appeared Joyce A. Wilson, as City Manager of THE CITY OF EL PASO, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same on behalf of said corporation and for the purposes and consideration therein expressed.

Notary Public in and for the State of Texas

AFTER RECORDING RETURN TO:

**CITY OF EL PASO
HOUSING PROGRAM DIVISION
COMMUNITY AND HUMAN DEVELOPMENT
2 CIVIC CENTER PLAZA, 8TH FLOOR
EL PASO, TEXAS 79901-1196**

ADDENDUM A

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, on behalf of Grantee, to 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 Grantee, 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.

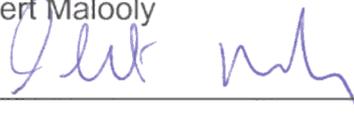
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal 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:

Robert Malooly



ADDENDUM B

HOME PROGRAM RENTS & TENANT ELIGIBILITY

I. HOME Rent Limitations and the Affordability Period

A. Five or More HOME-Assisted Units:

For Projects with 5 or more HOME-assisted units, at least 20% of the HOME-assisted units must be offered at rents at the "Low" HOME rent to Very Low Income households, as defined by HUD ($\leq 50\%$ AMI). The remaining 80% must be offered at rents the lesser of: (1) "Fair Market" or (2) "High" HOME rent level, to low income households, as defined by HUD ($\leq 60\%$ AMI). 24 CFR §92.252(b).

The HOME-assisted units must meet the HUD minimum affordability requirements for not less than the applicable period specified in the following table, beginning after project completion:

Rental Housing Activity	HUD Minimum Period of Affordability in Years
Rehab/Acquisition:	
<\$15,000 per unit	5
\$15,000 to \$40,000 per unit	10
>\$40,000 per unit	15
New Construction, any amount	20

24 CFR §92.252(e).

Initial Rent Schedule and Subsequent Rental Increases During the Affordability Period

A Initial Rent Schedule (24 CFR §92.252(c))

The City must review and approve rents proposed by the owner for the HOME-assisted units (the maximum rent limitations). For all units subject to the maximum rent limitations for which the tenant is paying utilities and services, the City must ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services (excluding telephone). The initial rent schedule for the Project shall be as contained in the parties' HOME Program Contract for the Project and any amendments thereto.

The HOME rent limits provided by HUD include average occupancy per unit and adjusted income assumptions. 24 CFR §92.252(b)(1).

B. Subsequent Rent Increases During the Affordability Period (24 CFR §92.252(f))

The maximum HOME rent limits are recalculated on a periodic basis after HUD determines fair market rents and median incomes. The City will provide the Assuming Borrower with information on updated HOME rent limits on an annual basis or whenever HUD revises the

limits, so that rents may be adjusted (not to exceed the updated maximum HOME rent limits). Annually and upon request, the City will review any Assuming Borrower's request to adjust project rents. The City must review and approve all increases in rents. It is the Assuming Borrower's responsibility to request an annual increase in rent in accordance with the following procedures and requirements:

(1) **Recalculation**: The Assuming Borrower shall recalculate and submit to the City for review such recalculations and the monthly rent to be charged for each unit, twelve (12) months from the date of the first rental by the Assuming Borrower, and once annually thereafter for the entire affordability period in effect for the project. Said calculations are to be sent to the attention of and for the approval of the Housing Programs Division of the City's Community and Human Development Department ninety (90) days prior to the date the Assuming Borrower expects to have the rent increase to take effect. The recalculation shall be based upon the most recent HUD determination of federal HOME Program Rents for the City of El Paso.

(2) **Approval Process**: The City will review the Assuming Borrower's calculations and determine whether the calculations are correct, and the Assuming Borrower shall be so notified. In the event that the Assuming Borrower is notified of the City's disapproval, the adjusted rent schedule may not be used for the Project's HOME-assisted units. The Assuming Borrower shall promptly meet with the City to resolve the monthly rent to be charged for each HOME-assisted unit in the Project.

All rents increases are subject to the provisions of outstanding leases and no unit's rent in the Project may be increased until one year has passed since the last increase for that unit. The Assuming Borrower must provide each tenant not less than 30 days prior written notice before implementing any increase in rents.

The Assuming Borrower must annually provide the City with information on rents and occupancy of HOME-assisted units to demonstrate compliance.

III. HOME Program Tenant Income Limitations/Tenant Eligibility

A. Maximum Tenant Income (24 CFR §§92.203, 92.252(h))

There are income targeting requirements for the HOME Program and for all HOME-assisted Projects. Tenant income limits for Very Low and Low-Income households are determined in accordance with the HUD HOME Rental Housing Income Guidelines, which are periodically adjusted by HUD.

The household income of each tenant must be determined initially and in addition, each year during the affordability period for the Project, the Assuming Borrower must re-examine each tenant's annual household income. The Assuming Borrower acknowledges receipt of the City's "Income and Asset Verification Guidelines" (effective May 15, 2007) and agrees to abide by the income and asset verification procedures contained therein and incorporated by reference, in addition to the following income examination and verification requirements:

(1) In order to determine whether a prospective tenant or a tenant is a Very Low and Low-Income Household, the Assuming Borrower shall ascertain the annual gross income of all members of the household. Annual income is the anticipated total gross income from all sources to be received by each of the household members, including all income derived from assets. The Assuming Borrower will acquire all required income documentation and will submit the same to the City's Housing Programs Division for review and approval prior to occupancy. The Assuming Borrower is required to verify income annually after initial occupancy to determine income eligibility prior to lease renewal. The Assuming Borrower shall consult with the City's Housing Programs Division to obtain advice and guidance with respect to income determinations.

(2) The Assuming Borrower must verify all income, assets, household characteristics, and circumstances that affect tenant income/asset eligibility in accordance with 24 CFR Part 5 and the City's Income and Asset Verification Guidelines, as may be amended from time to time. Written verification directly from the source must be obtained when possible. The Assuming Borrower must maintain documentation of all verification efforts for at least three (3) years from the effective date of determination.

- (3) In verifying income, the Assuming Borrower shall to the extent feasible:
- (a) Maintain tenant files to include the unit lease with income and assets verification documentation.
 - (b) Maintain required Part 5 income/assets worksheets and cover sheet in each tenant file with required income/asset documentation to include: (1) as appropriate, an explanation of the information being requested; (2) contain the tenant's authorization to release information; and (3) Record of Oral Verification of specific information required.
 - (c) 24 CFR Part 5 Verification Forms
 - (1) Third party verification forms will be provided for income documentation and must be signed by the appropriate household member to authorize Assuming Borrower to solicit income/asset information.
 - (2) The Assuming Borrower will include a self-addressed, stamped envelope with mailed requests for verification.
 - (3) The Assuming Borrower may make personal contacts with employers and public agencies if authorization to do so has been provided by the applicant/tenant by execution of an appropriate verification form.
 - (d) Give the household an opportunity to explain any significant differences between the amounts they reported on their application and amounts reported on third-party verifications.

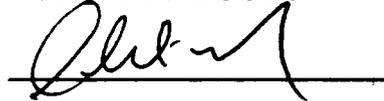
(4) The Assuming Borrower shall reexamine the income of each tenant household living in the units at least once a year for lease renewal and the City shall monitor the Assuming Borrower's verification to determine whether eligible households are occupying the units.

(5) In the event a tenant is determined over-income (by HUD's standards), the Assuming Borrower shall notify the tenant that Assuming Borrower must recalculate the tenant's monthly rent to be charged for the unit when tenant's current lease expires. If the tenant who is determined over-income (by HUD's standards) elects not to renew the tenant lease, the tenant shall be replaced by Assuming Borrower with a new tenant meeting the income eligibility requirements specified herein. During any period of time in which the Assuming Borrower is not in compliance with the income or rent guidelines for any unit(s), the Assuming Borrower shall either (1) repay the subsidy provided by the City under the parties' HOME Program Contract for the unit not in compliance; or (2) extend the affordability period of the unit(s) for the length of time they are not in compliance.

(6) Temporary non-compliance with the project income targeting requirements is permissible when the non-compliance is caused by an increase in a tenant's income. The Assuming Borrower must adjust the tenant's rent according to 24 CFR Part 5 and must rent the next available comparable unit in a manner that complies with the required Floating Unit ratio of "High" Home rental units and "Low" Home rental units for the Project. If the tenant's income is over 80% AMI the rent will be 30% of the tenant's income.

ASSUMING BORROWER:

ROBERT MALOOLY



Date: 5-20-10

(Acknowledgment)

STATE OF TEXAS

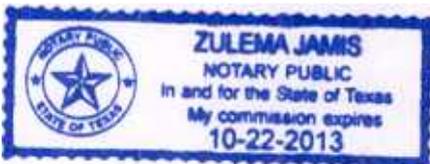
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 5th day of January, 2010, by Robert Malooly.

Notary's commission expires:



Notary Public, State of Texas
Notary's Name (Printed):
ZULEMA JAMIS



LOAN NOTE

\$672,000.00

El Paso, Texas May 14, 2002

A. For value received, I, we, or either of us, **AL RIVERA, MARTHA RIVERA, and GREGORY D. RIVERA**, hereinafter jointly referred to as "Maker", promise to pay to the order of the City of El Paso, hereinafter referred to as "City", at its office at Two (2) Civic Center Plaza in El Paso, El Paso County, Texas, or at such other place as shall be designated by the City the principal sum of **SIX HUNDRED SEVENTY-TWO THOUSAND AND NO/100THS DOLLARS (\$672,000.00)** in legal and lawful money of the United States of America with interest on each installment computed as specified below at the rate of zero percent (0%) per annum. Such payments to be subject to the terms and conditions of that certain HOME Financial Terms Contract of even date to which reference is made for all particulars, and which is incorporated by reference as though fully set forth herein.

B. This Note together with all interest and charges thereon, shall be due and payable in consecutive monthly installments as follows, to wit:

(1) The principal and interest due hereunder is due and payable on the first day of each month in 360 equal monthly installments. Maker shall have thirty (30) years from the due date of the first payment in which to pay all principal and interest due hereunder.

(2) The first of such 360 equal monthly installments shall be due and payable commencing on the first day of the month of MARCH 2003. The first of the remaining 359 monthly installments shall be due on the first day of the month immediately following the month in which the first payment came due. Each of the total of 360 monthly installments, as hereinabove described, shall be due and payable with an initial payment of \$1,865.47 and 359 consecutive monthly installments of \$1,866.67 thereafter.

C. The City anticipates and expects that any and all payments due under the terms of this Note, as well as under any other instruments executed simultaneously herewith, shall be made promptly on the date such amount is due. In the event that any such payment is received more than ten (10) days past the due date for such payment, then City shall impose a late payment fee only upon the amount of such late payment which shall be calculated as follows:

(1) Interest shall be recalculated from the time period beginning from the due date of the payment and ending on the date the City receives the loan payment. The interest rate to be used for this recalculation shall be the 10-year Treasury Bond rate in effect upon the date of execution of this contract.

(2) In the event that the 10-year Treasury Bond rate which was in effect at the date of the execution of this contract is less than the amount of interest which was in effect for this loan until the payment due date, as more fully described in Section B. above, then the new interest rate which shall apply to the principal balance as of the payment due date shall be the highest

LOAN NOTE
Al Rivera, Martha Rivera and Gregory D. Rivera
1326 Wyoming Avenue

10-year Treasury Bond rate which has been paid for 10-year Treasury Bonds which have not yet matured.

(3) In the event that the 10-year Treasury Bond rates described in (1) and (2) represent rates lower than the interest rate which was in effect for this loan until the payment due date, as more fully described in Section B. above, then the late payment fee shall be calculated at the maximum interest rate allowed under the laws of the State of Texas, as of the due date of such payment which is late.

(4) Nothing in the terms of this late payment penalty provision shall be construed to violate the terms of the Texas laws concerning usury. It is specifically understood and agreed that the interest on this loan shall continue to accrue, from and after the date of receipt of such late payment and the penalty therefor, at the rate which is stated in this Note, and that certain HOME Financial Terms Contract referenced herein, i.e. that rate which was in effect prior to the imposition of the provisions of this Section C. pertaining to late payment penalty. The interest accrual, as more fully described in the immediately preceding sentence, shall continue from and after the date of receipt of such late payment by City and stay in effect for the full remaining term of this loan, unless another payment is made in such a manner as to cause an additional late payment penalty, as defined hereinabove, to be assessed.

D. Each maker, surety and endorser of this Note expressly waives all notices, demands for payment, presentations for payments, notices of intention to accelerate the maturity, protest and notice of protests, as to this Note and as to each, every and all installments hereof, and each agrees that the time of payment hereof may be extended by the principals without further consent of any accommodation maker, endorser, guarantor or surety.

E. Any prepayment must be in accordance with the terms specified in that certain HOME Financial Terms Contract referenced herein. Any prepayment first is to be applied toward any interest due, and then to the reduction of the principal balance of the Note, thereby reducing the term of the Note accordingly. No penalty shall be charged for such prepayment.

F. As a condition precedent to a transfer of all or any portion of the fee title of the property secured under this Note, Maker shall obtain the written consent of City. As a condition precedent to the assumption of this Note, Maker shall obtain the written consent of City. If, in either instance, as specified in this Paragraph F., Maker fails to obtain such written consent of City, City may, at its option, declare all of the balance of this Note, including the entire balance of principal and accrued interest on this Note immediately due and payable. If City does choose in its own discretion to give its written Consent to Maker to transfer all or any portion of the fee title of the property secured under this Note, or if City does choose in its own discretion to give its written consent to Maker to transfer all or any portion of the fee title of the property secured under this Note, or if City does choose in its own discretion to give its written consent to Maker for a third-party to assume this Note, City may, at its option, require an increase in the rate of interest of this Note.

LOAN NOTE

Al Rivera, Martha Rivera and Gregory D. Rivera
1326 Wyoming Avenue

G. Payment of this Note is secured by a Builder's and Mechanic's Lien Contract and Deed of Trust with Power of Sale of even date herewith, incorporated by reference herein related to the rehabilitation of the Maker's property which is located at **1326 Wyoming Avenue**, El Paso, El Paso County, Texas, and is further subject to the terms and conditions as specified in the Community Development Construction Contract of even date and referenced herein, and the HOME Financial Terms Contract of even date and referenced herein; all rights and remedies of the City as specified in the above-referenced contracts as to the acceleration of the indebtedness evidenced by this Note and all other applicable terms and conditions, are expressly reserved herein and incorporated herewith.

H. In the event of (a) default in the timely payment of any installment of either principal or interest hereon or any other amount payable hereunder, in whole or in part; or (b) default by Maker with respect to the hereinabove described Community Development Construction Contract, the HOME Financial Terms Contract, or any other security document related hereto, and referenced herein, and upon a failure to cure any such default before the expiration of ten (10) days from receipt by Maker of notice of any such default, such notice to be given by certified mail, return receipt requested, or by personal service, the holder of this Note shall have the right and option, in addition to any and all other rights, remedies or recourses available to it, to declare the unpaid balance of principal and accrued interest on this Note at once due and payable. Failure to exercise such right upon any default or any occurrence shall not constitute a waiver of the right to exercise it in the event of any subsequent default or occurrence of the same or some other character. If this Note is not paid at maturity, no matter how such maturity is brought about, then the holder hereof may, in addition to any and all other rights, remedies or recourses available to it, proceed with the foreclosure of the liens securing payment hereof in the manner provided in the Builder's and Mechanic's Lien Contract and Deed of Trust with Power of Sale, referenced herein, or any other security document, or in any other manner allowed by law or in equity.

MAKER(S):


AL RIVERA


MARTHA RIVERA


GREGORY D. RIVERA

LOAN NOTE
Al Rivera, Martha Rivera and Gregory D. Rivera
1326 Wyoming Avenue

(Acknowledgment)

STATE OF TEXAS)

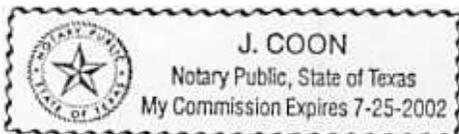
COUNTY OF EL PASO

This instrument was acknowledged before me on the 30th day of May, 2002, by AL RIVERA.

Notary's Commission Expires:



Notary Public,
Notary's Name



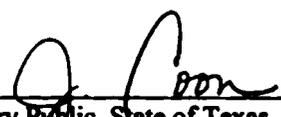
(Acknowledgment)

STATE OF TEXAS)

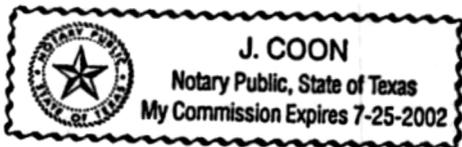
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 30th day of May, 2002, by MARTHA RIVERA.

Notary's Commission Expires:



Notary Public, State of Texas
Notary's Name (Printed)



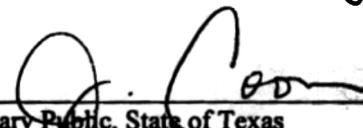
(Acknowledgment)

STATE OF TEXAS)

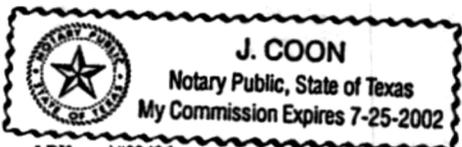
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 30th day of May, 2002, by GREGORY D. RIVERA.

Notary's Commission Expires:



Notary Public, State of Texas
Notary's Name (Printed)



SECURED GRANT NOTE

\$95,900.00

El Paso, Texas May 14 2002

For value received, I, we, or either of us, **AL RIVERA, MARTHA RIVERA, and GREGORY D. RIVERA**, hereinafter jointly referred to as "Maker", promise to pay to the order of THE CITY OF EL PASO at its office at Two (2) Civic Center Plaza in El Paso, El Paso County, Texas, the sum of NINETY-FIVE THOUSAND NINE HUNDRED AND NO/100THS DOLLARS (\$95,900.00), in legal and lawful money of the United States of America, without interest thereon.

A
2
A
M.R.
The principal on this Note is payable on the first day of each month in 360 monthly installments, commencing with an initial payment of TWO HUNDRED SIXTY-FIVE AND 99/100THS DOLLARS (\$265.99) to be paid on the first day of the month of MARCH, 2003, and 359 consecutive monthly installments of \$266.39 thereafter. In the event Maker complies with the terms of their HOME Financial Terms Contract and Loan Note thereunder, as further discussed herein, such monthly payment shall be forgiven so long as Maker remains in full compliance. Such payments are to be made in lawful money of the United States at the principal office of THE CITY OF EL PASO, 2 Civic Center Plaza, in El Paso, Texas 79901-1196, or at such other place as shall be designated by THE CITY OF EL PASO.

Each Maker, surety and endorser of this Note expressly waives all notices, demands for payment, presentation for payments, notices of intention to accelerate the maturity, protest and notice of protest, as to this Note and as to each, every and all installment hereof, and each agrees that the time of payment hereof may be extended by the principals without further consent of any accommodation Maker, endorser, guarantor or surety.

In the event this Note is placed in the hands of an attorney for collection or collected through any of the courts including bankruptcy proceedings, or if suit is brought on this Note, the Maker(s) hereof agree and promise to pay a reasonable attorney's fee for collection.

As a condition precedent to a transfer of all or any portion of the fee title of the property secured under this Note, Maker shall obtain the written consent of City. As a condition precedent to the assumption of this Note, Maker shall obtain the written consent of City. If, in either instance, as specified in this paragraph, Maker fails to obtain such written consent of City, City may, at its option, declare all of the balance of this Note, including the entire balance of principal on this Note immediately due and payable. If City does choose in its own discretion to give its written consent to Maker to transfer all or any portion of the fee title of the property secured under this Note, or if City does choose in its own discretion to give its written consent to Maker for a third-party to assume this Note, City may, at its option, convert this grant to a loan upon such terms and conditions as City may, in its discretion, specify.

By the terms of this Note, it is to be understood that for each month that Maker has made all payments due on the Loan Note of even date and complied with the HOME Financial Terms

GRANT NOTE
Martha Rivera an

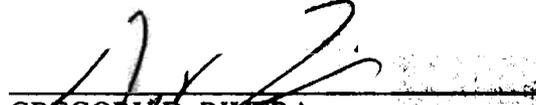
Contract noted herein (incorporated by reference, as though set forth at length) and remains in full compliance with all terms and conditions of all related notes and all security documents securing same, and if Maker has fully complied with all the applicable terms of the Community Development Construction Contract, HOME Financial Terms Contract, all contracts of even date herewith and incorporated by reference herein, City shall not require Maker to make the monthly installments due under this Note to City for that particular month only, as described in paragraph two (2) above. However, if in any particular month, Maker breaches any term or condition of the Secured Grant Note, the aforementioned Loan Note, Construction Contract or Financial Terms Contract, as described directly hereinabove, City at its option, may declare the entire balance of the Secured Grant Note, computed as described, immediately due and payable.

This Note is secured by a Builder's and Mechanic's Lien Contract and Deed of Trust (With Power of Sale) of even date herewith, and referenced herein on the property located at 1326 Wyoming Avenue, El Paso, El Paso County, Texas, and is expressly subject to the terms and conditions as specified in the Community Development Construction Contract of even date herewith (also incorporated by reference herein) and the HOME Financial Terms Contract also of even date herewith; all rights and remedies of City as specified in such above-referenced contracts as to the acceleration of the indebtedness evidenced by this Note, and any other terms and conditions of such contracts are expressly reserved herein and incorporated herewith.

MAKER(S):


AL RIVERA


MARTHA RIVERA


GREGORY D. RIVERA

Acknowledgments on following page:

SECURED GRANT NOTE
Al Rivera, Martha Rivera and Gregory D. Rivera
1326 Wyoming Avenue

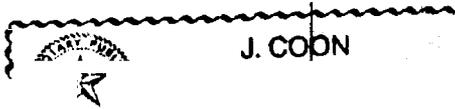
Acknowledgment)

STATE OF TEXAS

COUNTY OF EL PASO

This instrument was acknowledged before me on the 30th day of May
2002, by AL RIVERA.

Notary's Commission Expires:



J. Coon
Notary Public, State of Texas
Notary's Name (Printed)

(Acknowledgment)

STATE OF TEXAS

COUNTY OF EL PASO

This instrument was acknowledged before me on the 30th day of May
2002, by MARTHA RIVERA.

Notary's Commission Expires:

J. Coon
Notary Public, State of Texas
Notary's Name (Printed)

Acknowledgment)

STATE OF TEXAS

COUNTY OF EL PASO

This instrument was acknowledged before me on the 30th day of May
2002, by GREGORY D. RIVERA.

Notary's Commission Expires:

J. Coon
Notary Public, State of Texas
Notary's Name (Printed)