

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

DEPARTMENT: Community and Human Development

AGENDA DATE: February 26, 2012

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

DISTRICT(S) AFFECTED: 6

SUBJECT:

That the City Manager be authorized to sign the first amendment to the Neighborhood Stabilization Program (NSP) Development Agreement between the City of El Paso and Paisano Housing Redevelopment Corporation, as well as any related contract documents necessary to effectuate the amendment and to secure and protect the City's lien interest upon the recommendation of the Director of Community and Human Development and approval of the City Attorney's Office.

The Amendment increases the contract amount by \$157,051.99. The additional funds will be used for the construction of an onsite Wellness Center and additional site improvements to include masonry, framing, insulating roofing, earthwork associated with change in site plan design.

Project Name: Paisano Housing Redevelopment Corporation
Project Type: Construction of 15 Rental Units as well as onsite Wellness Center
Project Address: 249 Elvin St. El Paso Texas 79907, Tracts 7-K, 7-K-1, 7-L-1-A and 7-L-1-B, Block 35, Ysleta Grant
Project Amount: \$1,857,051.99
District: 6

BACKGROUND / DISCUSSION:

USE/ PROJECT Construction of fifteen (15) a multi-family apartment community for elderly consisting of five (5) two bedroom – 1 bath, 750 square feet per unit and ten (10) one bedroom –1 bath, 450 square feet per unit. An onsite Wellness Center and additional site improvements additional site improvements to include masonry, framing, insulating roofing, earthwork associated with change in site plan design.. Located at 249 Elvin St. El Paso Texas 79907, Tracts 7-K, 7-K-1, 7-L-1-A and 7-L-1-B, Block 35, Ysleta Grant, in the City of El Paso, El Paso County, Texas

AFFORDABILITY AND RENTAL RATES • 100% of total households earn ≤ 50 % of AMI

PRIOR COUNCIL ACTION:

Introduction of Original Agreement authorizing NSP Development Agreement between the City of El Paso and Paisano Housing Redevelopment Corporation June 28, 2012

AMOUNT AND SOURCE OF FUNDING:

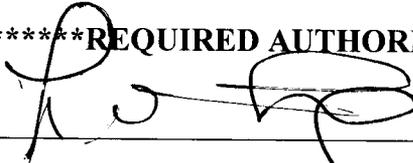
1150034, 07901, G71NSP2

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

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

DEPARTMENT HEAD:



Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

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

That the City Manager be authorized to sign the first amendment to the Neighborhood Stabilization Program (NSP) Development Agreement between the City of El Paso and Paisano Housing Redevelopment Corporation, as well as any related contract documents necessary to effectuate the amendment and to secure and protect the City's lien interest upon the recommendation of the Director of Community and Human Development and approval of the City Attorney's Office.

Dated this 26th day of February 2013.

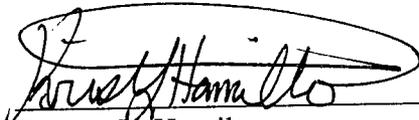
CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Kristen L. Hamilton
Assistant City Attorney

APPROVED AS TO CONTENT:



William L. Lilly, Director
Community and Human Development

**FIRST AMENDMENT TO NEIGHBORHOOD STABILIZATION PROGRAM (NSP)
DEVELOPMENT AGREEMENT**
(Elvin Estates Elderly Rental Housing Project)

This First Amendment to Neighborhood Stabilization Program (NSP) Development Agreement ("Amendment") is made this _____ day of _____, 2013, by and between the **CITY OF EL PASO, TEXAS** (the "City") and **PAISANO HOUSING REDEVELOPMENT CORPORATION** ("PHRC").

WHEREAS, on April 17, 2012, the City and PHRC entered into a NSP Program Development Agreement (the "Agreement"), for the purposes of acquisition, development and construction of 15 affordable assisted elderly rental units; and

WHEREAS, on June 14, 2012, the City and PHRC consummated the conveyance of the lots and now desire to amend the Agreement to modify the scope of the project, to amend the amount of the forgivable deferred payment promissory note, deed of trust, and to amend certain construction deadlines, all being subject to the conditions and terms stated herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL COVENANTS AND AGREEMENTS, THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:

1. Page 2, Article I, Paragraph 2 is amended to increase the total amount from \$1,700,000.00 to \$1,857,051.99 and shall read as follows:

The City hereby agrees to lend PHRC funds not to exceed the total amount of ONE MILLION EIGHT HUNDRED FIFTY-SEVEN THOUSAND FIFTY-ONE AND 99/100THS DOLLARS (\$1,857,051.99) subject to the terms hereinafter specified, to be drawn from NSP funds.

2. Page 2, Article I, Section (B) is revised to add a wellness center, additional site and infrastructure work, landscaping fixtures and utility work to the scope of services and shall read as follows:

B. City hereby agrees to provide NSP funds for the eligible costs for 15 NSP-Assisted Units (to consist of 10 one (1) bedroom units and 5 two (2) bedroom units), a wellness center, additional site and infrastructure work, landscaping fixtures and utility work, according to all terms and conditions as specified in the Agreement, including, but not limited to, the following terms and conditions:

3. Page 2, Article I, Section (b)(1) is amended to increase the total amount from \$1,700,000.00 to \$1,857,051.99 and shall read as follows:

(1) The City hereby agrees to provide the NSP funds allocated to this Project as a Forgivable Deferred Payment Loan of ONE MILLION EIGHT HUNDRED FIFTY-SEVEN THOUSAND FIFTY-ONE AND 99/100THS DOLLARS (\$1,857,051.99) using NSP funds, as evidenced by a Forgivable Deferred Payment Loan Note(s) of even date herewith, attached as

Exhibit "C" and incorporated by reference herein. Provided PHRC complies with the terms and conditions of this Agreement, repayment of the Forgivable Deferred Payment Loan shall be deferred and the entire principal balance shall be forgiven following expiration of the affordability period of TWENTY (20) years, to commence on the date of project completion in described in Section IV. E herein.

4. Page 3, Article I, Section B(3) (a) – (b) is amended to include a wellness center and additional site and infrastructure work to the scope and shall read as follows:

(3)(a) Disbursement of public funds shall be made within ten (10) business days upon receipt by City of PHRC's written request for such, the documentation as required herein has been provided and upon the approval of the Director of the Department of Community and Human Development of the City (the "Director"). PHRC shall not request disbursement of NSP funds until they are needed to pay eligible costs and each disbursement request shall be limited to the amount needed. Such disbursement may be withheld by the Director if, in the reasonable exercise of Director's discretion, the PHRC has failed to fulfill the requirements of this Agreement. A final disbursement will be withheld and not disbursed to PHRC until PHRC provides the City proof of completion and final inspection of the 15 NSP-Assisted Units, wellness center and additional site and infrastructure work. Disbursements shall be made on a pro-rata basis with PHRC's private financing, if any, and in accordance with PHRC's Project Budget, attached hereto as **Exhibit "D"** (the "Project Budget"), which may be updated and revised upon prior approval of the Director, provided however, the City's funding in the revised Project Budget for the 15 NSP-Assisted Units may not exceed \$1,857,051.99. Pursuant to Title 24 of the Code of Federal Regulations ("24 CFR") §570.206, the City's estimated project delivery costs allocated for the Project are \$20,000.00 and are included in the Project Budget. Disbursement of NSP funds for project delivery costs will be at the Director's discretion and in accordance with the Project Budget; provided however, if the Project construction schedule is extended or delayed, the project delivery costs budget item will be proportionately increased with the additional cost being drawn from the construction contingency budget item, thereby reducing the construction contingency funds set-aside for the Project. The final drawdown for this Project must be requested by November 30, 2012.

(b) The purpose of the loan(s) is to provide PHRC with funds to acquire and construct FIFTEEN (15) NSP-assisted elderly rental units ("NSP-Assisted Units"), wellness center and additional site and infrastructure work on Property located at the intersection of Elvin Way and Independence Drive, as more fully described in the Deed of Trust (With Power of Sale). PHRC agrees that within ten (10) months from the date of this Agreement the 15 NSP-Assisted Units will be completed and occupied by tenant households with incomes that do not exceed fifty percent (50%) of the Area Median Income (AMI). There is no other use of said funds authorized by City, and the use of the City's funds by PHRC for any other purpose shall constitute a breach of contract by PHRC for which City may pursue any and all remedies, whether at law or equity, which are available to City, subject to PHRC's rights to cure any default following thirty day written notice, as provided in Section V in this Agreement.

5. Exhibit "A" is amended to add Exhibit "A-1," Amended Deed of Trust, to increase the total amount from \$1,700,000.00 to \$1,857,051.99 which is incorporated by reference herein:

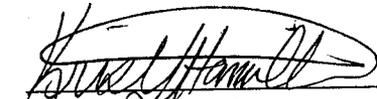
6. Exhibit "B" is amended to add Exhibit "B-1," Amended Declaration Concerning Covenants and Restrictions Running with the Land.
7. Exhibit "C" is amended to increase the total amount from \$1,700,000.00 to \$1,857,051.99 as attached hereto.
8. Exhibit "D" is amended to add Exhibit "D" Attachment 1 as attached hereto describing the additional costs for the wellness center and additional infrastructure work.
9. Exhibit "E" is amended to increase the total amount from \$1,700,000.00 to \$1,857,051.99 as attached hereto.
10. Except as amended herein, the Agreement between the City and Purchaser shall remain in full force and effect.

IN WITNESS WHEREOF, the City and Purchaser have executed this First Amendment to the Agreement as of the date first written above.

CITY OF EL PASO:

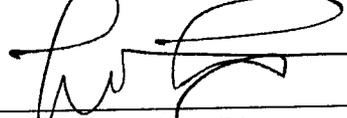
 Joyce A. Wilson
 City Manager

APPROVED AS TO FORM:



 Kristen C. Hamilton
 Assistant City Attorney

APPROVED AS TO CONTENT:



 William L. Lilly, Director
 Community and Human Development

PAISANO HOUSING REDEVELOPMENT CORPORATION

Name (Printed): _____

Title: _____

[Acknowledgments on Following Page]

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2013, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas (City).

Notary Public, State of Texas

My Commission Expires:

ACKNOWLEDGMENT

STATE OF §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2013, by _____, as _____ of Paisano Housing Redevelopment Corporation, on behalf of said entity. (Purchaser)

Notary Public, State of _____

My Commission Expires:

EXHIBIT "A"

Lot 1, Block 1, ELVIN ESTATES, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof filed April 30, 2012, under Clerk's File No. 20120031786, Real Property Records, El Paso County, Texas.

EXHIBIT "A-1"

**AMENDED DEED OF TRUST
AMENDING DOC. NO. 20120047642**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

WHEREAS, Grantor and the Beneficiary entered into the Deed of Trust recorded in the real property records as Doc. No. 20120047642 on June 14, 2012, and now hereby amend said Deed of Trust because the amount of Neighborhood Stabilization Program (NSP) Funds has been increased from \$1,700,000.00 to \$1,857,051.99 to cover construction of 15 assisted rental units, a wellness center and additional site and infrastructure work.

DATE: _____, 20__

Grantor: PAISANO HOUSING REDEVELOPMENT CORPORATION

Grantor's Mailing Address (including county):

c/o The Housing Authority of the City of El Paso (HACEP)
5300 E. Paisano Drive
El Paso, Texas 79905
El Paso County, Texas

Trustee: The City Clerk of the City of El Paso

Trustee's Mailing Address (including county):

P. O. Box 1890
El Paso, Texas 79950-1890
El Paso County, Texas

Beneficiary: The City of El Paso, Texas

Beneficiary's Mailing Address (including county):

Director
Department of Community & Human Development
P. O. Box 1890
El Paso, Texas 79950-1890
El Paso County, Texas

Forgivable Deferred Payment Loan: \$1,857,051.99

Date: _____, 20__

AMENDED DEED OF TRUST
Amending Doc. No. 20120047642
Paisano Housing Redevelopment Corporation
Elvin Estates (Elvin Way/Independence Drive)

Amount: ONE MILLION EIGHT HUNDRED FIFTY-SEVEN THOUSAND FIFTY-ONE
AND 99/100THS DOLLARS (\$1,857,051.99)

Maker: PAISANO HOUSING REDEVELOPMENT CORPORATION

Terms of Payment: See Note and the parties' NSP Development Agreement (the "Agreement"), dated April 17, 2012, all executed between Grantor and Beneficiary. Any default thereunder shall be a default hereunder, including, but not limited to, default by failing to meet the affordability requirements contained therein and in 24 CFR §92.252 for the specified time period.

Property Encumbered by this Deed of Trust (including any improvements):

Lot 1, Block 1, ELVIN ESTATES, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof filed April 30, 2012, under Clerk's File No. 20120031786, Real Property Records, El Paso County, Texas (the "Property").

For value received and to secure payment of the note and performance of all obligations in the note, Grantor conveys the property to Trustee in trust. Grantor warrants and agrees to defend the title to the property. Grantor agrees to perform all covenants noted below:

GRANTOR'S OBLIGATIONS

Grantor agrees to:

1. keep the property in good repair and condition;
2. pay all taxes and assessments on the property when due;
3. preserve lien priority as it is established in this deed of trust;
4. maintain, in a form acceptable to Beneficiary, an insurance policy that:
 - a. covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Beneficiary approves a smaller amount in writing;
 - b. contains an 80% coinsurance clause;
 - c. provides fire and extended coverage, including windstorm coverage;
 - d. protects Beneficiary with a standard mortgage clause;
 - e. provides flood insurance at any time the property is in a flood hazard area;and
 - f. contains such other coverage as Beneficiary may reasonably require;
5. comply at all times with the requirements of the 80% coinsurance clause;
6. deliver the insurance policy to Beneficiary and deliver renewals to Beneficiary at least ten days before expiration;
7. keep any buildings occupied as required by the insurance policy; and

8. pay off all prior notes that Grantor is personally liable to pay regarding this property and abide by all prior lien instruments.
9. comply at all times with the terms, representations, and conditions of the Note, and with all terms and conditions as specified in the parties' Agreement, incorporated by reference herein and secured by this deed of trust, including, but not limited to, the following covenants:
 - a. comply with 24 CFR §92.254 Qualification as Affordable Housing: Rental Housing
 - b. comply with the requirements of 24 CFR §92.252 and the affordability period(s) set forth in the parties' Agreement concerning maximum rent limitations and tenant eligibility for NSP-assisted unit occupancy.

BENEFICIARY'S RIGHTS

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.
2. If the proceeds of the note are used to pay any debt secured by prior liens, Beneficiary is subrogated to all of the rights and liens of the holders of any debt so paid.
3. Beneficiary may apply any proceeds received under the insurance policy either to reduce the note or to repair or replace damaged or destroyed improvements covered by the policy.
4. If Grantor fails to perform any of Grantor's obligations, Beneficiary may perform those obligations and be reimbursed by Grantor on demand at the place where the note is payable for any sums so paid, including attorney's fees, plus interest on those sums from the dates of payment at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this deed of trust.
5. If Grantor defaults on the note or fails to perform any of Grantor's obligations or if default occurs on a prior lien note or other instrument, Beneficiary may:
 - a. declare the unpaid principal balance and earned interest on the note immediately due;
 - b. request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and
 - c. purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited on the note.
6. If the Property, or any interest therein, is sold or transferred or any lien or encumbrance is created against the property without the prior written consent of the Beneficiary, the note secured by this deed of trust may, at the option of the holder thereof, be accelerated and the entire amount thereof shall be then immediately due and payable and the Beneficiary shall be entitled to foreclose the liens securing the note if it is not paid in full upon acceleration.

TRUSTEE'S DUTIES

If requested by Beneficiary to foreclose this lien, Trustee shall:

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;
2. sell and convey all or part of the property to the highest bidder for cash with a general warranty binding Grantor, subject to prior liens and to other exceptions to conveyance and warranty; and
3. from the proceeds of the sale, pay, in this order:
 - a. expenses of foreclosure, including a commission to Trustee of 5% of the bid;
 - b. to Beneficiary, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
 - c. any amounts required by law to be paid before payment to Grantor; and
 - d. to Grantor, any balance.

GENERAL PROVISIONS

1. If any of the property is sold under this deed of trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
2. Recitals in any Trustee's deed conveying the property will be presumed to be true.
3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
4. This lien shall remain superior to liens later created even if the time of payment of all or part of the note is extended or part of the property is released.
5. If any portion of the note cannot be lawfully secured by this deed of trust, payments shall be applied first to discharge that portion.
6. Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the property. After deducting any expenses incurred, including attorney's fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the note. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting such sums.
7. Grantor assigns to Beneficiary absolutely, not only as collateral, all present and future rent and other income and receipts from the property. Leases are not assigned. Grantor warrants the validity and enforceability of the assignment. Grantor may as Beneficiary's licensee collect rent and other income and receipts from the property as long as Grantor is not in default under the note or this deed of trust. Grantor will apply all rent and other income and receipts from the property to payment of the note and performance of this deed of trust, but if the rent and other income and receipts from the property exceed the amount due under the note and deed of trust, Grantor may retain the excess. If Grantor defaults in payment of the note or performance of this deed of trust, Beneficiary may terminate Grantor's license to collect and then as Grantor's agent may rent the property if it is vacant and collect all rent and other income and receipts from

the property. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the property. Beneficiary may exercise Beneficiary's rights and remedies under this paragraph without taking possession of the property. Beneficiary shall apply all rent and other income and receipts from the property collected under this paragraph first to expenses incurred in exercising Beneficiary's rights and remedies and then to Grantor's obligations under the note and this deed of trust in the order determined by Beneficiary. Beneficiary is not required to act under this paragraph, and acting under this paragraph does not waive any of Beneficiary's other rights or remedies. If Grantor becomes voluntarily or involuntarily bankrupt, Beneficiary's filing a proof of claim in bankruptcy will be tantamount to the appointment of a receiver under Texas law.

8. When the context requires, singular nouns and pronouns include the plural.

9. The term note includes all sums secured by this deed of trust.

10. This deed of trust shall bind, inure to the benefit of, and be exercised by successors in interest of all parties.

11. If Grantor and Maker are not the same person, the term Grantor shall include Maker.

Grantor: **PAISANO HOUSING REDEVELOPMENT CORPORATION**

By: _____
Name (printed)/Title: _____

(Execution of this instrument by the above-referenced officer is relied upon by City as an express representation that such officer has authority to execute this document.)

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 20__, by _____ as _____ of PAISANO HOUSING REDEVELOPMENT CORPORATION, on behalf of said entity.

Notary's Commission Expires:

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

AMENDED DEED OF TRUST
Amending Doc. No. 20120047642
Paisano Housing Redevelopment Corporation
Elvin Estates (Elvin Way/Independence Drive)

AFTER RECORDING RETURN TO:
City of El Paso
Dept. of Community Development
P. O. Box 1890
El Paso, Texas 79950-1890

PREPARED IN THE OFFICE OF:
City Attorney
City of El Paso
Two Civic Center Plaza, 9th Flr.
El Paso, Texas 79901-1196

EXHIBIT "B-1"

As part of the consideration for and as a condition of the City's loan(s) to the Owner, under the above-referenced Agreement, the Owner has agreed to comply with the Code of Federal Regulations, which requires the above-referenced Covenants and Restrictions Running with the Land in consideration of the mutual benefits to the City and the Owner, as set out in various funding agreements, the Owner hereby grants and creates the Covenants and Restrictions Running with the Land which are set forth below and which shall apply to the Owner's Property, specifically including the property rehabilitated with the funds advanced in the Agreement noted above, and FIFTEEN (15) NSP-assisted rental units, a wellness center and additional site and infrastructure built thereon, hereinafter called the "Project".

NOW, THEREFORE, the parties, for and in consideration of the receipt of the NSP funds, and such other covenants and conditions herein contained, do hereby agree for themselves, their heirs, executors, administrators, and assigns, as follows:

COVENANTS AND RESTRICTIONS

Section I. Income, Rental, Occupancy, and Use Restrictions

1. The Owner shall not convert any units in the Project to condominium ownership or to any form of cooperative ownership.
2. Except to the extent permitted by law, the Owner shall not discriminate against current or prospective tenants on the basis of the receipt of, or eligibility for, housing assistance under any federal, state or local housing assistance programs, or on the basis that such tenants have a minor child or minor children who reside with them. The Owner shall comply with 24 CFR §92.252, specifically to include, but not limited to subsection (d) "Non discrimination against rental assistance subsidy holders".
3. The Owner shall not illegally or unconstitutionally discriminate against or segregate any person or group of persons on account of gender, marital status, race, age, disability, color, religion, creed, national origin or ancestry in the lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property.
4. The Owner represents, warrants, and covenants throughout the term of this Declaration and in order to satisfy the requirements of 24 CFR §92.252 and the City, that the NSP -assisted units shall meet the following requirements:

(a) *Rent limits.* The Owner shall lease one hundred percent of the NSP -assisted units that are hereby identified as "Low" HOME rent units to qualified tenants whose income is no more than 50% of the City's median income for their household size ("Very Low-Income" tenants). The initial rent schedule for the Property is contained in the parties' Agreement and amendments thereto, which is incorporated and referenced herein for all purposes. The maximum NSP/HOME rent limits are recalculated on a periodic basis after HUD determines fair market rents and median incomes. The City will provide the Owner

with information on updated NSP/HOME rent limits on an annual basis or whenever HUD revises the limits. Annually and upon request, the City will review the Owner's request to adjust project rents. The City must review and approve all increases in rents for NSP-assisted units. It is the Owner's responsibility to request an annual increase in rent in accordance with the City's procedures and requirements, as further specified in the parties' Agreement, "NSP Program Rents and Tenant Eligibility." However, in no event shall the rents for Low-Income and Very Low-Income tenants exceed the most recent HUD determination of federal HOME Program rents for the City of El Paso, Texas.

(b) *Tenant Income Limits.* Income-eligible tenants shall occupy the NSP-assisted units at all times during the term of this Declaration. Tenant income limits for Very Low and Low-Income households shall be 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 the Owner must re-examine each tenant's annual household income. The Owner 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, 24 CFR Part 5, and the income examination, re-examination, and verification requirements contained in the parties' Agreement.

(c) *Property Standards.* All NSP-assisted units are and shall remain habitable according to city local codes throughout the term of this Declaration.

(d) The tenant income, rent, occupancy, and use restrictions stated herein shall apply for the entire HUD-mandated minimum affordability of **TWENTY (20)** years from the date of project completion, as said term is defined in the parties' Agreement.

Section II. Representations, Covenants, and Warranties of the Owner

1. The Owner intends, declares, and covenants, on behalf of itself and all further owners and operators of the Property that, during the term of this Declaration, all of the covenants and restrictions set forth herein regulating and restricting the use, occupancy, and transfer of the Property: (i) shall be and are covenants running with the Property, encumbering the Property, and are binding upon the Owner's successors in title and all subsequent owners and operators of the Property; (ii) are not merely personal covenants of the Owner; and (iii) shall bind the Owner and its and their respective successors and assigns grantees and lessees, claimants during the term of this Declaration. The Owner hereby agrees that any and all requirements of the laws of the State of Texas to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full.
2. The Department of Housing and Urban Development and the City of El Paso, Texas shall be deemed beneficiaries of the covenants and restrictions contained herein, and such covenants and restrictions shall run in favor of HUD and the City of El Paso for the entire term during which such covenants and restrictions shall be in force and effect. Such beneficiaries shall have the right to exercise all the rights and remedies hereunder, and to maintain any actions at law or suits in equity or other property proceedings to enforce the curing of any breach

hereof along with any other relief as may be available. Owner agrees that the City and HUD may examine any of its records pertaining to the requirements hereof.

3. All references herein to Owner are understood to include all successors, assigns, grantees, lessees and all other claimants to Owner's Property, which are not prior in title hereto, whether or not their claim is through Owner.
4. Owner shall not convey, transfer, sell or encumber all or any portion of the Property, or permit the same, without the prior written consent of the City.
5. Notwithstanding anything in this instrument to the contrary, the provisions hereof are subordinate to all applicable HUD mortgage insurance regulations and related administrative requirements. In the event of any conflict between the provisions in this instrument and the provisions of any applicable HUD regulations, related HUD administrative requirements, or HUD/FHA loan documents, the HUD regulations, related administrative requirements or loan documents shall control.
6. During any period of time in which the Owner is not in compliance with the income or rent guidelines for any HOME-assisted unit(s), the Owner shall either (1) repay the subsidy provided by the City under the parties' Agreement for the unit not in compliance; or (2) extend the affordability period of the unit(s) for the length of time they were not in compliance.

Section III. Term of Declaration

1. This Declaration shall be in effect for a total affordability period of TWENTY (20) years commencing on the final date of initial occupancy of the total NSP-assisted rental units on the Property, but not later than the date of project completion as said term is defined in the parties' Agreement, and expiring TWENTY (20) years from said date of project completion.
2. THIS DECLARATION AND THE TOTAL AFFORDABILITY PERIOD SPECIFIED HEREIN SHALL REMAIN IN EFFECT FOR NOT LESS THAN THE TOTAL AFFORDABILITY PERIOD WITHOUT REGARD TO THE TERM OF ANY LOAN OR MORTGAGE OR THE TRANSFER OF OWNERSHIP.
3. Upon the expiration of the term hereof, the City agrees to promptly execute and deliver to Owner, a statement and documentation to certify that the covenants and restrictions contained herein have expired and terminated and if requested, a release instrument duly executed and in recordable form for filing in the El Paso County Real Property Records.

Section IV. Record Keeping

1. During the term of this Declaration, the Owner shall maintain and make available to the City any and all records, documents, and policies necessary to demonstrate compliance with 24 CFR Parts 92 and 570 and the parties' Agreement.

2. The Owner shall maintain all records as required by 24 CFR §92.508 and the City as applicable and shall take any and all actions reasonably required by the City to substantiate the Owner's compliance. The Owner shall submit any other information, documents, or certifications requested by the City, which the City shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the restrictions and covenants specified in this Declaration. The City or its designee may enforce this Declaration and the parties' Agreement of which it is a part in the event the Owner fails to satisfy any of the requirements herein.

Section V. Miscellaneous

1. This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Declaration or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of the Declaration and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
2. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing. The City, and the Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

If to the City:

City of El Paso
Housing Programs Division,
Community and Human Development Department
P. O. Box 1890
El Paso, Texas 79950-1890

If to the Owner:

Paisano Housing Redevelopment Corporation
c/o The Housing Authority of the City of El Paso (HACEP)
5300 E. Paisano Drive
El Paso, Texas 79905

3. The Owner agrees that it will take all actions necessary to effect amendment of this Declaration as may be necessary to comply with 24 CFR Parts 92 and 570, the City, and any and all applicable rules, regulations, policies, rulings, or other official statements pertaining to NSP assistance. The City, together with Owner, may execute and record any amendment or modification to this Declaration and such amendment or modification shall be binding.
4. This Declaration shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, The Owner hereby executes this Declaration Concerning Covenants and Restrictions Running with the Land as of the year and day of the acknowledgment(s).

OWNER: PAISANO HOUSING REDEVELOPMENT CORPORATION

Date: _____

By: _____

Name (printed) _____

Title: _____

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

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 20____, by _____ as _____ of PAISANO HOUSING REDEVELOPMENT CORPORATION., on behalf of said entity.

Notary's commission expires:

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

WHEN RECORDED, RETURN TO:
City of EL Paso, Texas
Community and Human Development Department
P. O. Box 1890
El Paso, Texas 79950-1890
Attn: Housing Programs Manager

EXHIBIT "C"

**FORGIVABLE DEFERRED PAYMENT LOAN
PROMISSORY NOTE**
(Neighborhood Stabilization Program)
(Replacing the Forgivable Deferred Payment Promissory Note
Entered Between the Parties on June 14, 2012)

\$1,857,051.99 El Paso, Texas _____, 20__

WHEREAS, this Note replaces the June 14, 2012 Note because the amount of Neighborhood Stabilization Program (NSP) Funds has been increased from \$1,700,000.00 to \$1,857,051.99 to cover construction of 15 assisted rental units, a wellness center and additional site and infrastructure work.

FOR VALUE RECEIVED, PAISANO HOUSING REDEVELOPMENT CORPORATION, hereinafter referred to as "Maker", promises to pay to the order of THE CITY OF EL PASO (the "City") at its office at Two (2) Civic Center Plaza in El Paso, El Paso County, Texas, the principal sum of ONE MILLION EIGHT HUNDRED FIFTY-SEVEN THOUSAND FIFTY-ONE AND 99/100THS DOLLARS (\$1,857,051.99) or so much thereof as may be advanced, in legal and lawful money of the United States of America, without interest thereon.

The principal on this Note is payable on the first day of each month with an initial payment of SEVEN THOUSAND SEVEN HUNDRED THIRTY-NINE AND 30/100THS DOLLARS (\$7,739.30) and 239 equal monthly installments of SEVEN THOUSAND SEVEN HUNDRED THIRTY-SEVEN AND 71/100THS DOLLARS (\$7,737.71) to be paid on the first day of the month as provided in the Loan Note between Maker and the City related to the property to be constructed located on certain real property in El Paso, El Paso County, Texas, as fully described in a certain Deed of Trust (With Power of Sale) of even date herewith, and incorporated by reference herein. So long as Maker complies with the terms and conditions of the NSP Development Agreement dated April 17, 2012, such monthly payment shall be deferred and the original principal balance shall be forgiven in its entirety TWENTY (20) years after the date of project completion, as said term is defined in the parties' NSP Development Agreement, provided Maker has remained 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.

The forgivable deferred payment loan evidenced by this Note is made for the purpose of the construction of a 15-unit affordable housing development on the property described in the Deed of Trust (With Power of Sale) of even date herewith. As a condition of receiving this loan, Maker agrees to abide by all the terms and conditions of this Note, the parties' NSP Development Agreement, the associated Declaration Concerning Property Covenants Running with the Land of even date herewith, and Title 24 Code of Federal Regulations ("CFR") Parts 92 and 570, the implementation regulations of the United States Department of Housing and Urban Development HOME Investment Partnership Act and Program and Community Development Block Grant Program.

Except as otherwise expressly provided herein, 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 forgivable deferred payment loan to an amortized loan upon such terms and conditions as City may, in its discretion, specify. This Note is not assignable or assumable without the express written consent of the City. Any sale, transfer, leasing or other disposition of the property in violation of this paragraph shall not relieve the Maker of any obligation or obligations under this Note or any related document.

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 herewith and complied with the NSP Development Agreement 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 NSP Development Agreement and all contracts of even date herewith and incorporated by reference herein and made a part hereof for all purposes, 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 this Note, the aforementioned Loan Note or the NSP Development Agreement, as described directly hereinabove, City at its option, may declare the entire balance of this Note immediately due and payable.

In the event of a default by Maker with respect to the hereinabove NSP Development Agreement 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 on this Note at once due and payable, 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 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. 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.

This Note is secured by a Deed of Trust (With Power of Sale) of even date herewith, and referenced herein on the property identified therein, and is expressly subject to the terms and conditions as specified in the NSP Development Agreement, incorporated by reference herein and made a part hereof for all purposes; 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.

This Note and all of the covenants, promises and agreements contained herein shall be binding upon and shall inure to the benefit of Maker and City and their respective executors, administrators, successors and assigns.

Any prepayment must be in accordance with the terms specified in that certain NSP Development Agreement referenced herein.

If any provision of this Note shall be found to be unenforceable or illegal, the remaining provisions shall not be affected thereby and shall remain in full force and effect.

APPLICABLE LAW: THIS NOTE SHALL BE GOVERNED IN ALL RESPECT, INCLUDING WITHOUT LIMITATION VALIDITY, INTERPRETATION AND EFFECT, BY AND SHALL BE ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

ENTIRE AGREEMENT: THIS NOTE AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, Maker has duly executed, and is liable hereon as of the date and year above first written.

MAKER:
PAISANO HOUSING
REDEVELOPMENT CORPORATION

By: _____
Name (printed)/Title: _____

(By signing on behalf of Maker, Maker's representative(s) expressly represents this action has been fully authorized by Maker in any and all forms required by Maker to constitute a binding contract)

[Acknowledgment on Following Page]

EXHIBIT "D"

EXHIBIT "D" ATTACHMENT 1

Project Name: NSP Elvin Estates
Developer: Paisano Housing Redevelopment
Address: 249 Elvin St. El Paso, Texas

Uses

Construction:

Wellness Center	\$37,041.00
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Soft Costs:

Architect and Engineering Design Fees	\$7,445.00
Payment and Performance Bonds	\$3,065.00
Site Work and Landscaping	\$16,690.00
Additional Improvement to include masonry framing, insulation, roofing, earthwork, utilities overhead and profit.	\$25,880.98
PHRC Mangement Fee (5% of price increase)	\$4,685.80
Additional Work Crews	\$45,000.00
Phone Cable underground conduit	\$2,272.53
El Paso Water Utilities Fees	\$14,972.68

TOTAL AMMENDMENT COSTS:	\$157,052.99
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NEW CONTRACT SUM:	\$1,857,051.99
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EXHIBIT "E"

EXHIBIT "E" ATTACHMENT 1 AMMENDMENDEDED CONSTRUCTION SCHEDULE

REVISED ELVIN ESTATES CONSTRUCTION SCHEDULE WITH ADDITIONAL WORK CREWS

1/9/2013

DESCRIPTION	JANUARY				FEBRUARY	
	7-13	14-20	21-27	28-3	4-10	11-17
BUILDING A						
Drywall	[Actual Work Crews]					
Interior Paint	[Actual Work Crews]					
Finish Carpentry	[Actual Work Crews]					
VCT Flooring	[Actual Work Crews]					
Cabinets & Countertops	[Actual Work Crews]					
MPE Finals	[Actual Work Crews]					
Specialties	[Actual Work Crews]					
BUILDING B						
Insulation	[Actual Work Crews]					
Drywall	[Actual Work Crews]					
Interior Paint	[Actual Work Crews]					
Finish Carpentry	[Actual Work Crews]					
VCT Flooring	[Actual Work Crews]					
Cabinets & Countertops	[Actual Work Crews]					
MPE Finals	[Actual Work Crews]					
Specialties	[Actual Work Crews]					
BUILDING C						
Insulation	[Actual Work Crews]					
Drywall	[Actual Work Crews]					
Interior Paint	[Actual Work Crews]					
Finish Carpentry	[Actual Work Crews]					
VCT Flooring	[Actual Work Crews]					
MPE Finals	[Actual Work Crews]					
Specialties	[Actual Work Crews]					
BUILDING D						
Insulation	[Actual Work Crews]					
Drywall	[Actual Work Crews]					
Interior Paint	[Actual Work Crews]					
Finish Carpentry	[Actual Work Crews]					
VCT Flooring	[Actual Work Crews]					
Cabinets & Countertops	[Actual Work Crews]					
MPE Finals	[Actual Work Crews]					
Specialties	[Actual Work Crews]					
BUILDING E						
Interior Paint	[Actual Work Crews]					
Finish Carpentry	[Actual Work Crews]					
VCT Flooring	[Actual Work Crews]					
Cabinets & Countertops	[Actual Work Crews]					
MPE Finals	[Actual Work Crews]					
Specialties	[Actual Work Crews]					
SIWAWORK						
Sanitary Sewer	[Actual Work Crews]					
Water	[Actual Work Crews]					
Gas	[Actual Work Crews]					
Electrical	[Actual Work Crews]					
Phone and Cable	[Actual Work Crews]					
Concrete Curb	[Actual Work Crews]					
Pavement	[Actual Work Crews]					
Sidewalk	[Actual Work Crews]					
Site Grading	[Actual Work Crews]					
Gazebo	[Actual Work Crews]					
Landscaping	[Actual Work Crews]					
Park Amenities	[Actual Work Crews]					

Actual Work Crews
 Proposed Additional Work Crews