

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

**DEPARTMENT:** Community and Human Development

**AGENDA DATE:** April 5, 2011

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

**DISTRICT(S) AFFECTED:** 8

**SUBJECT:**

That the City Manager be authorized to sign a Loan Assumption Agreement and Modification of Community Development Investor-Owned Financial Terms Contract, Note and Lien (the "Agreement") by and among the City of El Paso and Mario Gonzalez concerning the City's consent to the transfer of the property located at 1115 N. El Paso Street, El Paso, Texas to Jose Garcia and Angela A. Garcia and assumption of all borrower obligations under the loan documents, including modifications thereto.

**BACKGROUND / DISCUSSION:**

In 2001, John and Molly Buttner (original borrowers) received HUD-funded financial assistance from the City for the rehabilitation of a two-unit investor rental property at 1115 N. El Paso. The Buttners defaulted on their loan to the City and during the foreclosure process, Mario Gonzalez assumed the loan and also paid all delinquent amounts owed to the City. However, at this time, Mario Gonzalez is requesting the City to allow an assumption of the loan and all borrower obligations to Jose and Angela A. Garcia.

Although the original five-year affordability period ended in 2006, in consideration of the assumption, there will be an additional five-year affordability period placed on the property (from 2011 – 2016), that will require the two 2-bedroom units maintain rents that are affordable to low to moderate income households that do not exceed 80% of the City's Area Median Income. The maximum rent is \$460 per month. In addition, the assumption agreement requires that 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. Jose and Angela A. Garcia have also successfully completed affordability compliance training with the City.

The City will maintain its first lien position against the property and 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 additional five-year affordability period.

**PRIOR COUNCIL ACTION:**

No

**AMOUNT AND SOURCE OF FUNDING:**

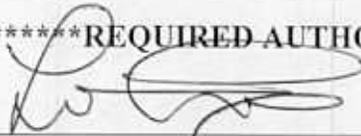
N/A

**BOARD / COMMISSION ACTION:**

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 an Assumption Agreement and Modification of Community Development Investor-Owned Financial Terms Contract, Note, and Lien (the "Agreement") by and among the City of El Paso, Mario Gonzalez ("Owner"), and Jose Garcia and Angela A. Garcia ("Assuming Borrowers"), concerning the City's consent to the transfer of the property located at 1115 N. El Paso, El Paso, Texas to Jose Garcia and Angela A. Garcia and assumption of all borrower obligations under the loan documents, including modifications thereto.

APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2011

### THE CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

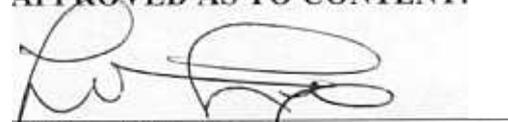
ATTEST:

\_\_\_\_\_  
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

**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**

**ASSUMPTION AGREEMENT AND MODIFICATION OF  
COMMUNITY DEVELOPMENT INVESTOR-OWNED FINANCIAL TERMS  
CONTRACT, NOTE, AND LIEN  
(1115 N. El Paso Street, El Paso, Texas)**

THIS ASSUMPTION AGREEMENT AND MODIFICATION OF COMMUNITY DEVELOPMENT INVESTOR-OWNED FINANCIAL TERMS CONTRACT, NOTE, AND LIEN (the "Assumption Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and among **MARIO GONZALEZ** ("Owner"), **JOSE GARCIA** and **ANGELA A. GARCIA** (collectively, "Assuming Borrower"), and the **CITY OF EL PASO, TEXAS** ("City").

**RECITALS**

**WHEREAS**, on or about October 3, 2000, John Buttner and Molly Buttner (collectively, "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 One Hundred Thirty-Six Thousand and No/100 Dollars (\$136,000.00), 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 October 3, 2000, filed of record in Volume 3873, Page 90, Clerk's File No. 20000073646, Real Property Records of El Paso County, El Paso, Texas and a Deed of Trust dated October 3, 2000, filed of record in Volume 3873, Page 99, Clerk's File No. 20000073647, Real Property Records of El Paso County, El Paso, Texas (collectively, the "Lien(s)") against the following property:

*North ½ of Lots 6 and 7, Block 7, SECOND REVISED MAP OF SUNSET HEIGHTS, an Addition to the City of El Paso, El Paso County, Texas, according to the plat thereof, recorded in Volume 10, Page 47, Plat Records of El Paso County, Texas; also known and numbered as 1115 N. El Paso Street, El Paso, Texas (the "Property"); and*

**WHEREAS**, the City and Original Borrower entered into that certain Community Development Investor-Owned Financial Terms Contract (the "Financial Terms Contract"), dated October 3, 2000, concerning use of the City's U.S. Department of Housing and Urban Development ("HUD") Community Development Block Grant (CDBG) funds for rehabilitation of the Property and fulfillment of rent limitations on the housing units in the Property and low-to-moderate income tenant occupancy requirements contemporaneously executing the Financial Terms Contract, the Loan Note, Lien(s), and Property Agreement Concerning Covenants and Restrictions Running with the Land ("Restrictive Covenants") (hereinafter collectively referred to as the "Loan Documents"); and

**WHEREAS**, on or about September 8, 2006, Mario Gonzalez ("Owner") [joined pro forma by wife Bertha Garcia], Original Borrower, and City entered into a Modification and Assumption Agreement, filed of record under Clerk's File No. 20060092673, by which Owner

assumed the obligations of Original Borrower under the Loan Note, Lien(s), and Financial Terms Contract, as modified therein, in consideration of the City's consent to the conveyance of the Property from Original Borrower to Owner, the loan assumption, and modification of the Loan Note; 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

**WHEREAS**, 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, to modify the Loan Documents to incorporate HUD requirements contained in Title 24 Code of Federal Regulations ("CFR") Part 92, HOME Investment Partnership Program, and to impose an additional five-year affordability period on the Property; 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 ASSUMPTION**

1. Owner, Assuming Borrower, and City hereby acknowledge that: (i) Attachments "1" and "2", attached hereto are true and correct copies of the Financial Terms Contract and Loan Note, respectively; and (ii) City is the present legal and equitable owner and holder of said Loan Note and of the Loan Documents.

2. City hereby represents to Assuming Borrower that, as of March 9, 2011, the unpaid balance of the Loan Note is \$78,871.00.

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, including, without limitation, the obligation, if applicable, to make installment payments of principal and interest (if any); (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; (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 and Owner, as Grantor, as set forth in the Lien(s); and (iv) agrees to observe and perform all of the terms, covenants, liabilities, and conditions of the Original Borrower and Owner under and pursuant to any and all other Loan

Documents. Owner hereby assigns to Assuming Borrower its rights and obligations under the 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 April 1, 2011, in the amount of \$3,400.02 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 Assumption 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 March 9, 2011 is \$6,653.06. 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. 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, (ii) there are no claims of any kind or nature against the Property; and (iii) within ten (10) days of the conveyance of the Property to Assuming Borrower, all past due ad valorem taxes on the Property will have been paid and discharged in full and proof thereof provided to the City.

6. Without waiving the validity and priority of the Lien(s) and provided Assuming Borrower closes on the purchase of the Property, the Owner 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 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. 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 on an annual basis as is required by the Loan Documents and Lien(s), and the Assuming Borrower acknowledges its obligation to pay the ad valorem property taxes imposed on the Property pursuant to the Loan Documents and Lien(s).

## **II. VALIDITY AND PRIORITY OF MODIFIED LIEN**

1. City and Assuming Borrower hereby agree to extend and modify the Loan Note, and carry forward the Lien(s) 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 Note and the Lien(s) as modified herein and that said Lien(s) as modified herein shall not in any manner be waived.

2. Assuming Borrower acknowledges that the Loan Note and the Lien are valid and subsisting and further agrees that all terms and provisions of said original Note, as modified, and of the instruments creating or fixing the Lien(s), 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 October 3, 2000, shall be and is modified by the principal balance of the Loan Note being reduced by the lump sum payment of \$3,400.02 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 Assumption Agreement. Following the lump sum payment by Assuming Borrower, Assuming Borrower shall continue to make consecutive monthly payments in the amount of \$566.67 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 under this schedule shall be due on May 1, 2011 and shall continue for one hundred thirty three (133) consecutive monthly payments or until the loan balance is paid in its entirety. This provision is self-executing, but Assuming Borrower agrees to execute and deliver to the City such other and further documents which the City may desire or require to carry out, evidence, and confirm the terms of this provision.

### **IV. MODIFICATION OF FINANCIAL TERMS CONTRACT**

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

1. Throughout the Financial Terms 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 4, Section IV. Covenants, subsection B., the last sentence is deleted and replaced with the following sentence:

Assuming Borrower hereby agrees to comply with all applicable requirements of the United States Department of Housing and Urban Development (HUD) HOME Investment Partnership Program, as contained in Title 24 Code of Federal Regulations ("CFR") Part 92, as may be amended.

3 On page 4, Section IV. Covenants, subsection D., is revised to add the following sentence:

Assuming Borrower agrees to comply with 24 CFR §92.252, specifically to include, but not limited to, subsection (d) "Non discrimination against rental assistance subsidy holders."

4. On page 5, Section IV. Covenants, subsection E, is revised to read as follows:

E. Assuming Borrower agrees that it will not discriminate against any class of individuals protected against discrimination under federal law in soliciting and accepting tenants for the newly constructed or rehabilitated structure. Assuming Borrower further agrees to participate with City in making all good faith efforts necessary to attract as tenants any and all classes of individuals protected against discrimination under federal law as required by the City, pursuant to 24 CFR §92.351 (Affirmative Marketing Policy and Procedures). For the duration of this Agreement, Assuming Borrower agrees to comply with all requirements of the City's Affirmative Marketing Policy and Procedures, of which Assuming Borrower acknowledges review and training thereon. The City reserves the right to amend said attachment and to notify the Assuming Borrower of the changes, without written amendment to this Financial Terms Contract. Further, the City reserves the right to review on an annual basis the records that document Assuming Borrower's affirmative marketing actions. Assuming Borrower agrees to take corrective actions when the affirmative marketing requirements are not met, in accordance with 24 CFR §92.351(a)(2)(v).

5. On page 6, Section IV. Covenants, is revised to add the following subsections (O) through (X):

O. Assuming Borrower agrees that for the entire City-imposed extended affordability period of five (5) years, to commence on the date of execution of the Assumption Agreement and Modification of Community Development Investor-Owned Financial Terms Contract, Note, and Lien (the "Assumption Agreement"), the Property will comply with comply with Subpart F - Project Requirements of Part 92 of Title 24 of the Code of Federal Regulations, HOME Investment Partnerships Program. Assuming Borrower further agrees to continuously comply with 24 CFR §92.250 regarding Maximum Per Unit Subsidy; 24 CFR §92.251 regarding Property Standards; 24 CFR §92.252 regarding Qualification as Affordable Housing: Rental Housing, 24 CFR §92.203 regarding Tenant Income, 24 CFR §92.355 regarding lead-based paint requirements, and applicable subsections and amendments thereto regarding:

- a) rent limitations;
- b) rent schedules;
- c) increases in tenant income;
- d) adjustments of qualifying rent

1. Assuming Borrower shall fulfill the tenant occupancy requirements by reserving 100% of the apartment units that are identified as "High" HOME rent units for tenants whose income is no more than 80% of the City's median income (AMI) for their household size; provided however, that any units that are currently occupied, as of the execution date of the Assumption Agreement, may remain occupied by tenants whose income is over 80% of AMI until such time as the units become vacant. The rents of tenants with income over 80% AMI will be adjusted in accordance with the U.S. Department of Housing and Urban Development Technical Guide for Determining Income and Allowances for the HOME Program. This adjustment may result in a rent increase. At such time as the units become vacant, Assuming Borrower shall comply with the tenant occupancy requirements stated herein.

2. The initial rent schedule for each apartment unit (as identified by bedroom size) is attached hereto as Exhibit "D" and incorporated by reference. The rent schedule specifies the maximum rents that can be charged, taking utilities into account, for High HOME rent units.

3. The current HOME rent limitations are outlined in Exhibit "E", attached hereto and incorporated by reference are subject to periodic adjustments by HUD and will be provided to Assuming Borrower by the City as such is updated. Further, the City will provide updated utility allowances to Assuming Borrower on at least an annual basis.

4. The terms and conditions regarding subsequent rent increases and HUD median income adjustments are specified in Exhibit "F", "HOME Program Rents and Tenant Eligibility," attached hereto and incorporated by reference herein. The City reserves the right to amend said attachment and to notify Assuming Borrower of the changes, without a written amendment to this Financial Terms Contract.

5. The apartment units in the Property must be maintained in compliance with the applicable state and local housing quality standards and code requirements throughout the affordability period, as required by 24 CFR §92.251(c). If none exist, the housing must meet Housing Quality Standards (HQS) found at 24 CFR §982.401.

P. Assuming Borrower agrees to comply with 24 CFR §92.253 regarding Tenant and Participant Protections regarding the leases, federally-prohibited lease terms specifically identified in 24 CFR §92.253 (b), and adoption of written tenant selection policies and criteria that conform to HUD requirements outlined in 24 CFR §92.253(d). Further, Borrower agrees to comply with all applicable state and local tenant-landlord laws.

Q. In order to assure compliance with the Project Requirements of the HOME Program (as defined Title 24 of the Code of Federal Regulations, Part 92, Subparts E and F), Assuming Borrower agrees to submit annually, as required, the following documentation to the City for review and approval:

1. A copy of the tenant application and a description of the tenant qualification process to include Tenant Selection Procedures that Assuming Borrower will utilize to verify tenant incomes.

2. A copy of the lease agreement form that will be utilized for the Property at 1115 N. El Paso Street, El Paso, Texas. Assuming Borrower agrees to attach to its standard lease agreement form, the Mandatory Lease Addendum to control over any conflicting prohibited lease terms, a copy of which is attached hereto as Exhibit "G", which must be completed by Assuming Borrower and every tenant household in connection with the execution of the lease and upon the City's request.

3. 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 Exhibit "F", "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").

R. The parties agree that initial five-year affordability period for the Property has expired and that Assuming Borrower is no longer obligated under any HUD regulation to continue or extend the original affordability period. Assuming Borrower, however, has agreed to

accept a City-imposed extended affordability period as part of the City's consideration for Assuming Borrower's assumption of the Financial Terms Contract and the related loan documents. In furtherance of the City's consideration requirement, Assuming Borrower will execute all documents necessary to impose the Declaration Concerning Covenants and Restrictions Running with the Land, attached as Exhibit "H", to be recorded in the El Paso County Real Property Records in order to enforce the City-imposed extended affordability period against the Property. Assuming Borrower understands and agrees that for the entire City-imposed extended affordability period of five (5) years the Property shall remain affordable to low- to- moderate income individuals and/or households without regard to term of any loan or mortgage or transfer of ownership pursuant to 24 CFR §92.252, as evidenced by and enforced through the Declaration. Subject to any cure period provided to Assuming Borrower, failure to meet the affordability requirements for the designated affordability period, shall constitute an event of default requiring immediate repayment to the City of the entire outstanding amount of the Loan Note and additionally, the City shall be entitled to exercise all rights and remedies reserved to it under Section V. "Events of Default."

S. Assuming Borrower further agrees to comply with subpart H - "Other Federal Requirements" of 24 CFR Part 92, as applicable, the federal requirements set forth in 24 CFR Part 5, subpart A, and the federal regulations at 24 CFR Part 87, related to lobbying. Assuming Borrower hereby agrees to sign the Certification, attached hereto and made a part of this Agreement as Addendum A, and if necessary, the Disclosure Lobbying Activities, referenced therein and return said signed Certification and, if necessary, the completed Disclosure of Lobbying Activities, to the City.

T. No person in the United States shall, on the grounds of race, creed, color, national origin, (including immigration status where an alien holds proper work authorization), religion, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape or form in employment or under projects or activities funded in whole or in part with funds made available to the Borrower pursuant to this Agreement, as set forth in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d) and implementing regulations at Title 24 CFR Part 1; Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07) and implementing regulations at Title 24 CFR Part 146; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and implementing regulations at Title 24 CFR Part 8; Title 1 of the Americans with Disabilities Act of 1990 (ADA) and implementing regulations at Title 28 CFR Part 35; and Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended) and implementing regulations at Title 24 CFR Part 100.

U. Assuming Borrower shall maintain such records and accounts, including program records; financial records; program administrative records; equal opportunity and fair housing records; affirmative marketing records; records demonstrating compliance with the income determination and requirements of 24 CFR §92.203; record keeping requirements of 24 CFR §92.508; records supporting exceptions to the conflict of interest prohibition pursuant to 24 CFR §92.356; and any other records as are deemed necessary by the City to assure a proper accounting and monitoring of the project.

V. In accordance with 24 CFR §92.508, Assuming Borrower shall keep and maintain adequate records to demonstrate compliance with HUD requirements:

1. Assuming Borrower shall maintain project records to verify at a minimum: the source and application of HUD funds, including supporting documentation; rent and utility allowance calculations; compliance with on-going property maintenance standards and lead based paint requirements; occupancy requirements are being met; and compliance with rent increase procedures.

2. 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 household, and will include: the tenant's application, initial income verification documents, subsequent income recertification documents and the tenant's lease and lease addendum.

3. Records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five-year period or until five years after the City-imposed extended affordability period terminates, whichever date is later.

4. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required record, whichever is later.

5. Assuming Borrower further agrees to allow the City to conduct periodic project monitoring and evaluation activities as determined necessary by City and HUD and/or their designees. Assuming Borrower agrees that it will make its premises and records available for such on-site, physical inspection and monitoring.

W. Upon reasonable request, the City shall have the right at all times to inspect Assuming Borrower's business premises, and its books and records relating to employment. Assuming Borrower agrees that it will make its premises and records available for such inspection by the City. Assuming Borrower further agrees that City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of Assuming Borrower for the purpose of making an audit, examination, excerpts, and transcriptions.

X. If applicable, Assuming Borrower must meet conditions and limitations for use of HUD funds involving faith-based activities, as specified in 24 CFR §92.257.

6. On page 6, Section V. Events of Default, is revised to add subsection (7), to read as follows:

(7) Assuming Borrower's failure to comply with the Declaration and the City-imposed extended affordability period, so long as such affordability period is in effect.

7. On page 7, 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: Jose and Angela A. Garcia  
1284 A.L. Gill Drive  
El Paso TX 79936**

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

This Financial Terms Contract shall remain in effect for the five-year City-imposed extended affordability period and for five years thereafter or until full repayment of the Loan Note, whichever date is later.

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

3. This Assumption 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. EXCEPT AS PROVIDED, 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 Assumption 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(S):

  
\_\_\_\_\_  
Jose Garcia

  
\_\_\_\_\_  
Angela A. Garcia

OWNER:  
Mario Gonzalez  
464 Narajos  
El Paso, Texas 79907

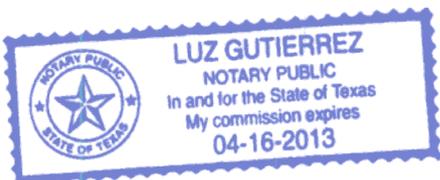
  
\_\_\_\_\_  
Mario Gonzalez

[ACKNOWLEDGMENTS ON FOLLOWING PAGE]

(Acknowledgment)

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

Before me, the undersigned Notary Public, on this 17<sup>th</sup> day of March, 2011 personally appeared Jose Garcia and Angela A. Garcia, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.



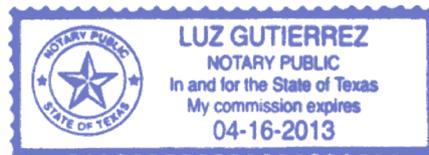
*[Signature]*  
Notary Public in and for the State of Texas

(Acknowledgment)

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

Before me, the undersigned Notary Public, on this 17<sup>th</sup> day of March, 2011 personally appeared Mario Gonzalez, 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.

*[Signature]*  
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, 8<sup>TH</sup> 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.

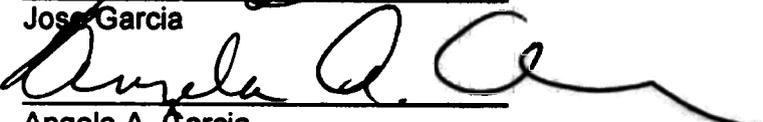
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal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

  
\_\_\_\_\_  
Jose Garcia

  
\_\_\_\_\_  
Angela A. Garcia

1115 N. El Paso Street  
Jose and Angela A. Garcia

**Number of Units** 2 units (Two 2-bedrooms) of which both units must be rented at the Fair Market Rent to households whose income is  $\leq 80\%$  of Area Median Income (AMI)

Tenants to pay gas and electric, water, sewer and trash collection.

Two 2-bedroom Units

**Income Level  $\leq 80\%$  of Area Median Income**

|                        |              |
|------------------------|--------------|
| Fair Market Rent       | \$598        |
| Less Utility Allowance | <u>- 138</u> |
| <b>Maximum Rent</b>    | <b>\$460</b> |

**Note:** The Maximum Rents are guidelines that indicate the most the owner will be allowed to charge based upon HOME Program Rents and Incomes. The maximum rents are the lesser of the Fair Market Rents or the High Home Rents. The Rent and Income guidelines are updated on an annual basis and usually become effective the later part of April. If the guidelines for FY 2010-2011 change, the above rents will be updated accordingly.

Affordability Period is **5 years** (CDBG rehabilitation)

R. Tillman Revised March 16, 2011

**EXHIBIT "E"**

**HOME PROGRAM RENTS AND INCOMES – FISCAL  
YEAR 2010  
UPDATED ANNUALLY FOR THE CITY OF EL PASO**

AS PUBLISHED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT IN THE FEDERAL REGISTER

| FY 2010 HOME PROGRAM RENTS   |                    |            |        |        |        |        |
|--|--------------------|------------|--------|--------|--------|--------|
| EFFECTIVE MAY 17, 2010<br>(All utilities paid and includes appliances) |                    |            |        |        |        |        |
| PROGRAM  | SRO                | EFFICIENCY | 1-BDRM | 2-BDRM | 3-BDRM | 4-BDRM |
| FAIR MARKET RENT   | 351                | 468        | 502    | 598    | 858    | 1017   |
| LOW (50%) HOME RENT  | 305                | 407        | 436    | 523    | 605    | 675    |
| HIGH (65%) HOME RENT   | 383                | 510        | 548    | 659    | 753    | 820    |
| MINIMUM SIZE (SQ.<br>FT) R.= REHAB,<br>N=NEW                           | 125 (R)<br>150 (N) | 300        | 450    | 750    | 900    | 1000   |

At least 20 percent of the HOME-assisted Units in a project with five or more rental units must be occupied by very low-income families at rents not to exceed the low HOME rent

| HOME RENTAL HOUSING INCOME GUIDELINES - FISCAL YEAR 2010<br>EFFECTIVE MAY 17, 2010 |   |  |  |
|--|---|--|--|
| NUMBER<br>IN<br>FAMILY   | VERY LOW INCOME<br>LIMIT FOR FAMILIES<br>OCCUPYING NOT LESS<br>THAN 20% OF THE<br>UNITS | INCOME LIMIT FOR<br>FAMILIES OCCUPYING NOT<br>LESS THAN 100% OF THE<br>UNITS<br><br>(60% OF MEDIAN INCOME) | LOW-INCOME LIMIT FOR<br>FAMILIES OCCUPYING<br>NOT MORE THAN 10% OF<br>THE UNITS<br><br>(80% OF MEDIAN) |
| 1  | \$16,300  | \$19,560   | \$26,050   |
| 2  | \$18,600  | \$22,320   | \$29,800   |
| 3  | \$20,950  | \$25,140   | \$33,500   |
| 4  | \$23,250  | \$27,900   | \$37,200   |
| 5  | \$25,150  | \$30,180   | \$40,200   |
| 6  | \$27,000  | \$32,400   | \$43,200   |
| 7  | \$28,850  | \$34,620   | \$46,150   |
| 8  | \$30,700  | \$36,840   | \$49,150   |

W/CDPublic/HR Program Handbook/Chapter 2/Attachment A (Revised 5/2010)

**ATTACHMENT TO EXHIBIT "E"**  
**UTILITIES ALLOWANCES**  
**APARTMENTS/WALK-UP/ELEVATED APARTMENTS**  
**FOR USE WITH RENT WORKSHEET**

**Section 8 Existing Housing Allowances for  
Resident Furnished Utilities and Other Services  
Effective September 1, 2009**

| Locality: El Paso Texas                         |   |       |       |       |       |       |
|---|---|-------|-------|-------|-------|-------|
| Utility or Service                              | Monthly dollar allowances by number of bedrooms |       |       |       |       |       |
| Utility or Service:                             | 0 BR  | 1 BR  | 2 BR  | 3 BR  | 4 BR  | 5 BR  |
| Heating   |   |       |       |       |       |       |
| A. Natural Gas                                  | 4.00  | 4.00  | 5.00  | 5.00  | 6.00  | 7.00  |
| B. Electric                                     | 11.00   | 16.00 | 21.00 | 26.00 | 31.00 | 36.00 |
| A. Refrigerated                                 | 10.00   | 14.00 | 21.00 | 28.00 | 36.00 | 43.00 |
| B. Evaporative Cooling                          | 10.00   | 13.00 | 17.00 | 21.00 | 27.00 | 31.00 |
| Cooking   |   |       |       |       |       |       |
| A. Natural Gas                                  | 2.00  | 2.00  | 3.00  | 4.00  | 4.00  | 5.00  |
| B. Electric                                     | 7.00  | 9.00  | 12.00 | 14.00 | 17.00 | 19.00 |
| Other Electric Lighting, Refrigeration,<br>Etc. | 19.00   | 28.00 | 36.00 | 45.00 | 54.00 | 63.00 |
| Water Heater                                    |   |       |       |       |       |       |
| A. Natural Gas                                  | 3.00  | 4.00  | 6.00  | 7.00  | 9.00  | 10.00 |
| B. Electric                                     | 13.00   | 18.00 | 25.00 | 31.00 | 38.00 | 44.00 |
| Water   | 12.00   | 12.00 | 15.00 | 18.00 | 21.00 | 24.00 |
| Sewer   | 19.00   | 19.00 | 22.00 | 25.00 | 27.00 | 30.00 |
| Trash Collection                                | 18.00   | 18.00 | 18.00 | 18.00 | 18.00 | 18.00 |
| Appliances                                      |   |       |       |       |       |       |
| A. Range  | 12.00   | 12.00 | 12.00 | 12.00 | 12.00 | 12.00 |
| B. Refrigerator                                 | 13.00   | 13.00 | 13.00 | 13.00 | 13.00 | 13.00 |
| Other Specify Monthly Electric Fee \$4.50       | 5.00  | 5.00  | 5.00  | 5.00  | 5.00  | 5.00  |
| Other Specify Monthly Gas Fee \$10.80           | 11.00   | 11.00 | 11.00 | 11.00 | 11.00 | 11.00 |

**TOTAL TENANT CREDIT**

CDPublic/HOME Program/Investors 2009 Utilities Allowance

**HOME PROGRAM RENTS & TENANT ELIGIBILITY**

**I. HOME Rent Limitations and the Affordability Period**

A. Except as otherwise provided, for this Project all the units 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 ( $\leq 80\%$  AMI). 24 CFR §92.252(a).

B. The units must meet the City-imposed extended affordability period of five years, commencing on the execution date of the Assumption Agreement.

**II. 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 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' Financial Terms 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 HUD-assisted units. The Assuming Borrower shall promptly meet with the City to resolve the monthly rent to be charged for each HUD-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 HUD-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.

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 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' Financial Terms 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

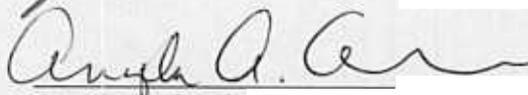
Assuming Borrower must adjust the tenant's rent according to 24 CFR Part 5 and must rent the next available comparable unit in a manner that complies with the required Floating Unit ratio of "High" Home rental units for the Project. If the tenant's income is over 80% AMI the rent will be 30% of the tenant's income.

ASSUMING BORROWER:

Date: March 17, 2011

  
\_\_\_\_\_  
Jose Garcia

Date: March 17, 2011

  
\_\_\_\_\_  
Angela A. Garcia

## LEASE ADDENDUM

Property Address, Unit/Apartment No.: \_\_\_\_\_

- 1 This lease addendum is an addendum to the lease agreement ("lease agreement"), entered into on \_\_\_\_\_, between \_\_\_\_\_ ("Owner") and \_\_\_\_\_ ("Tenant") for the leasing of the premises listed above.
2. Purpose of the Addendum. The lease for the above-referenced unit/apartment is being amended to include the provisions of this addendum, to comply with HUD regulations regarding tenant leases for HUD-funded rental rehabilitation projects.
3. Conflict with Other Provisions of the Lease. The provisions of this addendum supersede in all respects any conflicting provisions contained in the lease agreement. To the extent any conflict exists between the lease agreement and this addendum, the provisions of this addendum shall govern.
- 4 Terms of the Lease. The term shall begin on \_\_\_\_\_, \_\_\_\_\_ and shall continue for one year, unless the Owner and Tenant have mutually agreed to a lesser term in the lease agreement, which may not be for a period that is less than thirty (30) days.
5. Prohibited Lease Terms. Any of the following provisions contained in the lease agreement shall be null and void and unenforceable:
  - 5.1 **Confession of Judgment.** Any and all provisions in the lease agreement in which the Tenant agrees to be sued, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease.
  - 5.2 **Treatment of Property.** Any and all provisions in the lease agreement governing the right of the Owner or its agents to take, hold, or sell personal property of household members without notice to the Tenant and a court decision on the rights of the parties, with the exception of personal property remaining in a housing unit after the Tenant has moved out of the unit which is disposed of in accordance with Texas law.
  - 5.3 **Excusing the Owner from Responsibility.** Any and all provisions in the lease agreement that excuse the Owner or its agents from legal responsibility for any action or failure to act, whether intentional or negligent.

- 5.4 **Waiver of Legal Notice.** Any and all provisions in the lease agreement in which the Tenant agrees that the Owner may institute a lawsuit without notice to the Tenant.
- 5.5 **Waiver of Court Proceedings for Eviction.** Any and all provisions in the lease agreement in which the Tenant agrees that the Owner may evict the Tenant or household members without instituting a civil court proceeding in which the Tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
- 5.6 **Waiver of Jury Trial.** Any and all provisions in the lease agreement in which the Tenant agrees to waiver of a trial by jury.
- 5.7 **Waiver of Right to Appeal Court Decision.** Any and all provisions in the lease agreement in which the Tenant waives the right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.
- 5.8 **Tenant Chargeable with Cost of Legal Actions Regardless of Lawsuit Outcome.** Any and all provisions in the lease agreement in which the Tenant is chargeable with costs of legal actions regardless of outcome including agreement by the Tenant to pay attorney's fees or other legal costs even if the Tenant wins in a court proceeding by the Owner against the Tenant. The Tenant, however, may be obligated to pay costs if the Tenant loses.

6. Termination of Tenancy.

- 6.1 **Grounds for Termination or Nonrenewal.** An owner may not terminate the tenancy or refuse to renew the lease of a Tenant except for:
- (a) serious or repeated violation of the terms and conditions of the lease; or
  - (b) violation of applicable Federal, State, or local law; or
  - (c) completion of the tenancy period for transitional housing; or
  - (d) other good cause
- 6.2 **Notices.** To terminate or nonrenew the tenancy, Owner must serve written notice upon the tenant specifying the grounds for the action at least thirty (30) days before the termination of the tenancy.

7. **Nondiscrimination.** The Owner and its agents shall not discriminate against the Tenant in the provision of services, or in any other manner, on the grounds of age, race, color, creed, religion, sex, handicap, national origin or familial status.
  
8. **Tenant Agreement to Provide Requested Information.** Tenant understands that the unit/apartment leased under this agreement has received governmental subsidies and that, as a condition of the government subsidy, Tenant is required and hereby agrees to provide Owner with any information and sign any releases that are necessary to allow Owner to verify Tenant's income and assets and otherwise comply with government rules and regulations. Tenant agrees to provide Owner accurate and complete information regarding Tenant's income and assets and to do so by the date specified in Owner's request. Tenant understands that the intentional failure to supply accurate and complete information regarding Tenant's income shall constitute a serious lease violation. All Tenant files will be available for inspection by all applicable federal, state, and local agencies. Tenant hereby consents to release of all such information by Owner to governmental agencies.
  
9. **Severability.** The lease agreement and this lease addendum are deemed to have been made in compliance with all applicable State and local laws, and if any section or part is not lawful, only that section or part shall be void, and the remainder of the lease agreement and this addendum shall remain in full force and effect.
  
10. **HOME Rents.** The allowable HOME rents for the Unit identified above is: \$ \_\_\_\_\_/per month. Rents may be adjusted in accordance with tenant income changes and as a result of changes to rent limits issued by HUD or the City of El Paso; however the Owner will provide at least 30 days written notice to Tenant prior to increasing the rent.
  
- 11 **Copies of Lease Agreement.** The Tenant acknowledges receipt of a copy of this lease addendum and the lease agreement.

BY: \_\_\_\_\_  
 Owner or Owner's Representative      Date

BY: \_\_\_\_\_  
 Tenant      Date

BY: \_\_\_\_\_  
 Tenant 2 (if applicable)      Date

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

COMMUNITY DEVELOPMENT  
INVESTOR-OWNED  
FINANCIAL TERMS CONTRACT  
(ONE TO FOUR UNITS AFTER REHAB)

**ATTACHMENT 1**

THIS CONTRACT is made this 31<sup>st</sup> day of October, 2000, by and between CITY OF EL PASO, hereinafter referred to as "City" and JOHN BUTTNER and MOLLY BUTTNER, hereinafter referred to as "Borrower," (jointly and individually) for the purposes and consideration hereinbelow recited. The terms of this Contract shall be as stated below.

WHEREAS, by sufficient vote of the El Paso City Council on 10-3, 2000, approved such loan to Borrower, subject to the terms specified hereinbelow.

WHEREAS, this loan is made pursuant to the terms of that certain Community Development Investor-Owned Loan No. H00-07-CD/IO/MP-0305 and through the City's Housing Rehabilitation Program, hereinafter referred to as "Program;"

WHEREAS, the City's program requires that for projects that will result in four or fewer dwelling units after rehabilitation, program will provide public financing in the amount of one hundred percent (100%) of the "eligible rehabilitation costs," as defined herein, as a loan to Borrower at zero percent (0%) interest payable over a term of twenty (20) years;

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth and for value received by City from Borrower, the parties hereto do mutually agree to be bound by all terms and conditions of this Contract, and all documents incorporated by reference herein, as follows:

WITNESSETH

I. DESCRIPTION OF PROPERTY AND PROJECT

The subject matter property is legally described as:

*North 1/2 of Lots 6 and 7, Block 7, SECOND REVISED MAP OF SUNSET HEIGHTS, an Addition to the City of El Paso, El Paso County, Texas, according to the plat thereof, recorded in Volume 10, Page 47, Plat Records of El Paso County, Texas; also known and numbered as 1115 North El Paso Street, El Paso, Texas.*

B. Borrower agrees to fully and completely comply with all of the applicable terms and conditions of the Community Development Construction Contract, attached hereto as Exhibit "A" and incorporated by reference herein. Borrower further agrees to take all necessary action to perfect and protect City's lien position as specified in Section III., for the life of the Builder's and Mechanic's Lien Contract and Deed of Trust (with Power of Sale), attached as Exhibit "B," and incorporated by reference herein. City's lien being evidenced by that particular Builder's and Mechanic's Lien Contract and Deed of Trust (with Power of Sale), so attached as Exhibit "B."

C. City hereby agrees to provide public financing in the amount of one hundred percent (100%) of the "eligible rehabilitation costs," as defined herein, for a total amount not to exceed ONE HUNDRED THIRTY-SIX THOUSAND AND NO/100THS DOLLARS (\$136,000.00), as a loan to Borrower at zero percent (0%) interest payable over a term of twenty (20) years, according to all terms and conditions as herein specified. Such loan is evidenced by a Loan Note of even date herewith attached as Exhibit "C" and incorporated by reference herein. The City will provide such public financing, as specified above, upon the following additional terms and conditions:

(1) Loan payments shall be due monthly with the first payment due on the first day of the month as specified in the Loan Note, Exhibit "C". Interest on the loan shall accrue at the rate of zero percent (0%) per annum from the date of drawdown.

(2) Borrower shall have not more than twenty (20) years from the due date of the first payment in which to repay in full all principal and interest due and owing on such loan.

(3) Borrower shall make payments monthly and such payments shall be calculated over 240 months in monthly installments. The total amount used to compute such payments shall be determined as specified by the terms and conditions of a certain Loan Note of even date herewith, attached as Exhibit "C" hereto, and incorporated herein.

(4) The purpose of this Loan is to provide Borrower with funds to rehabilitate Borrower's property located at 1115 North El Paso Street, El Paso, El Paso County, Texas, as more fully described in a certain Builder's and Mechanic's Lien Contract and Deed of Trust (with Power of Sale) of even date herewith, attached hereto as Exhibit "B," and incorporated by reference herein. There is no other use of said funds authorized by City, and the use of the City's funds by Borrower for any other purpose shall constitute a breach of contract by Borrower for which City may pursue any and all remedies, as specified herein, and any other remedies available to City.

D. Borrower may prepay at any time all or part of the current balance. Such prepayment, if any is made, will be applied first to any interest due and then to the reduction of principal. In the event a prepayment is made, the rate of interest on such prepayment shall be the interest rate then in effect under the terms of this Contract.

## II. REPRESENTATIONS AND WARRANTIES

A. Borrower represents that the information furnished to City upon which City relied to make this loan is correct and true. Borrower hereby represents that each of said Borrowers has the authority and capacity to commit to a financial obligation. Specifically, but not by way of limitation, this authority includes signing a loan agreement or any instrument related thereto and incurring a financial obligation to rehabilitate the building located at 1115 North El Paso Street, El Paso, El Paso County, Texas, as more fully described in Exhibit "B" attached hereto and incorporated by reference herein. Borrower further represents that it owns any and all buildings referenced above.

B. Borrower agrees and understands that approval of this loan has been made by consideration of and reliance upon various data furnished by Borrower, including, but not limited to, data regarding the private financing, and agrees that should any of said data prove to be false or deliberately misleading in any way, the City shall have the right to unilaterally terminate this contract for unremedied breach thereof and demand restitution in full of all principal advanced under the terms of the loan, as evidenced by Exhibit "C," plus interest computed at an interest rate of zero percent (0%) per annum.

C. This Contract is entered into in the City and County of El Paso, Texas and shall be governed and construed under the laws of the State of Texas. Venue shall be in El Paso County, Texas for all purposes.

### III. CONDITIONS PRECEDENT

Borrower agrees to fully comply with the following terms and conditions, as a condition precedent to Borrower's receipt of any and all public financing described herein:

A. Borrower agrees to grant to City the following collateral as security for the City loan and bank has agreed thereto:

(1) A *first* lien on the following described real property:

*North ½ of Lots 6 and 7, Block 7, SECOND REVISED MAP OF SUNSET HEIGHTS, an Addition to the City of El Paso, El Paso County, Texas, according to the plat thereof, recorded in Volume 10, Page 47, Plat Records of El Paso County, Texas; also known and numbered as 1115 North El Paso Street, El Paso, Texas.*

B. This lien shall be subservient only to the following described liens on the above described property:

NONE

C. Borrower agrees to take any and all necessary action to perfect such liens and to protect City's lien priority position in such security, as described above. Any loans made under future advance clauses of any previous loans, without the City's written consent hereunder, shall constitute a breach of this Contract.

D. Borrower agrees to ensure that the City be named in both the performance and payment bonds, if such bonds are required under the terms of the Contract between Borrower and Contractor for the rehabilitation of the property described herein, and that the City be authorized to call each bond if the City deems it necessary.

E. Borrower shall also furnish to City acceptable evidence of liability and casualty insurance on said real estate and improvements thereon which shall be sufficient to guarantee payment of the Borrower's indebtedness. This insurance coverage shall name the City as an additional insured.

F. Borrower agrees to obtain all necessary permits, licenses, and special privileges which may be required by the City prior to conducting the rehabilitation work on the property subject to the Contract. In the event Borrower must pay any fees for obtaining any of the above items to the City, Borrower agrees to pay such to the City. Borrower shall also comply with any county, state or federal requirements which apply to its rehabilitation activities.

G. Borrower understands, covenants and agrees to fully and completely comply with all terms and conditions of the Community Development Construction Contract, Exhibit "A."

If Borrower breaches any term or condition of this Section III. entitled "Conditions Precedent," the entire principal and accrued interest on the loan, as evidenced by Exhibit "C," shall immediately be declared due and payable, and City shall be entitled to exercise all rights and remedies reserved to it under Section V., entitled "Events of Default".

#### IV. COVENANTS

A. Borrower agrees that the public funds advanced hereunder shall be used only to perform the work, as stated in the work schedule approved for such structure to be rehabilitated and used to bid said work. Borrower agrees that the public funds advanced hereunder shall be used only as compensation for "eligible rehabilitation costs" incurred in performing such work, as specified directly below. Borrower hereby acknowledges and agrees that the public funds shall not be used for any other purpose.

B. "Eligible rehabilitation cost(s)" as the term is used herein shall include the actual construction cost, required appraisals, title searches, insurance, attorney's fees, architectural fees, escrow charges, tax recordation costs and credit reports, all in the amounts associated directly with the rehabilitation of the structure, as well as relocation payments made by the property owners, in accordance with the Community Development Investor-Owned Program, to tenants who are displaced or temporarily relocated as a result of Program projects. Borrower hereby agrees to comply with all requirements of the United States Department of Housing and Urban Development (HUD) Housing Assistance Payment Section 8 Program.

C. Borrower also agrees to comply fully with all requirements of the Tenant Assistance Policies as developed by the City. A copy of the City's Tenant Assistance Policy has been provided to Borrower during the application process.

D. Borrower agrees that it will 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.

E. Borrower agrees that it will not discriminate against any class of individuals protected against discrimination under federal law in soliciting and accepting tenants for the rehabilitated structure. Borrower further agrees to participate with City in making all good faith efforts necessary to attract as tenants any and all classes of individuals protected against discrimination under federal law.

F. Borrower further agrees that within ninety (90) days after the date the City of El Paso, Office of Housing Rehabilitation, signs the Owner's Acceptance Form for the rehabilitated property, as described herein, Borrower will furnish to City data on the demographic characteristics of tenants occupying the rehabilitated structure initially after rehabilitation. Such data must be of a quality acceptable to the Director of the Department of Community and Human Development in the reasonable exercise of his discretion.

G. Borrower agrees to comply with the Federal Fair Housing Law and other Federal Rules, regulations and policies applicable to the performance of this Contract.

H. Borrower hereby agrees that in all solicitations for employment applications, Borrower shall hold itself out as an equal opportunity employer. Borrower shall fully comply with all federal and state laws, regulations, and executive orders regarding equal employment and shall further comply with Davis-Bacon compensation requirements, if applicable to Borrower.

I. Borrower agrees to execute any and all notes, security agreements, financing statements, builder's and mechanic's liens and deeds of trust (with Power of Sale) and any other documents necessary for perfection of City's lien in the form submitted by Counsel for the City.

J. Borrower agrees to sign all notes, security agreements, financing statements, builder's and mechanic's liens and Deeds of Trust (with Power of Sale) and close on the loan advanced herein within thirty (30) calendar days from the date this Contract is approved by City Council.

K. Upon reasonable request, City shall have the right at all times to inspect Borrower's business premises, and its books and records relating to employment. Borrower agrees that it will make its premises and records available for such inspection by City.

L. Borrower is prohibited from assigning this Contract in whole or in part in any manner. Borrower hereby understands and agrees that if the rehabilitated property, as described herein, is sold or transferred in whole or in part within twenty (20) years of the date of this Contract, as recited in paragraph one (1), page one (1) hereinabove, without the written approval of the City, the City, at its option, may declare the entire balance of principal and accrued interest on the Loan Note, Exhibit "C", immediately due and payable.

M. Borrower hereby agrees that it shall not impair, whether by means of affirmative action or inaction, the loan status of the City, as described herein, in the collateral as described herein, used as security for the City loan.

N. Furthermore, Borrower agrees for a period of five (5) years commencing on the date of initial occupancy, that the property to be rehabilitated located at **1115 North El Paso Street**, El Paso, El Paso County, Texas, as more fully described in Exhibit "B", will be rented to low and moderate income individuals and/or families, at rents that do not exceed the maximum rents identified in Exhibit "D", which is attached and incorporated by reference herein.

If Borrower breaches any term or condition of IV. above, entitled "Covenants," the entire principal and interest on the loan amount, as evidenced by Exhibit "C," shall immediately be declared due and payable, and City shall be entitled to exercise all rights and remedies reserved to it under Section V., entitled "Events of Default".

#### V. EVENTS OF DEFAULT

A. City has the right to accelerate the payment of the loan, as evidenced by Exhibit "C," upon breach of this Contract by Borrower, and City further has the right to declare that the entire principal amount and interest amount of the loan is immediately due and payable by Borrower to City at the time of the contract breach. City's right to so call the loan shall apply to all events as specifically designated in Sections III. and IV., and to the following events, but shall not be limited to these events:

- (1) material errors in the representations and warranties given to City by Borrower;
- (2) Borrower's failure to perform any of the covenants or conditions precedent as stated in this Contract;
- (3) any unstayed judgment or unsatisfied lien against Borrower in an amount which, in the City's judgment, may impair its security or perfect its security status regarding the collateral subject to this Contract;
- (4) failure to pay interest or principal on time;
- (5) Borrower's failure to meet the time deadlines for rehabilitation of the property as specified in the Community Development Construction Contract, Exhibit "A"; or
- (6) Borrower's timely payment of principal or interest by check for which insufficient funds exist.

B. City hereby expressly reserves any and all other rights and remedies available to it in the event of Borrower's breach. It is hereby understood and agreed that in the event City agrees to a

FINANCIAL TERMS CONTRACT  
John and Molly Buttner  
1115 North El Paso Street

settlement of any breach of contract by Borrower, this shall not preclude the City from exercising its rights for any further or additional breaches of this Contract. This shall also apply to any instances in which the City allows a period of time to pass so that Borrower has an opportunity to remedy any breach of this Contract.

#### VI. BORROWER'S LIABILITY

Borrower understands and agrees that if Borrower fails to comply with any term or condition, as specified in Section III. entitled "Conditions Precedent" or Section IV. entitled "Covenants", any other term or condition of this Contract, or any other term or condition of any document incorporated by reference herein, that City is entitled to withhold payment of publicly-financed funds under the terms and conditions of this Contract. Borrower will bear sole liability for all obligations in any way related to the rehabilitation of the property described herein and City shall be entitled to all rights and remedies reserved herein.

#### VII. NOTICES

Any communications or notices regarding this Contract shall be effective if sent postage prepaid, certified mail, return receipt requested to the following addresses, unless either party notifies the other in writing of any change of address:

CITY: City of El Paso  
Attn: Director, Department of  
Community and Human Development  
2 Civic Center Plaza  
El Paso, TX 79901-1196

BORROWER: JOHN BUTTNER and MOLLY BUTTNER  
10316 Cardigan Drive  
El Paso, Texas 79925

#### VIII. CONFLICT OF INTEREST

No employee, agent, consultant, officer, or elected or appointed official of City who exercises any functions or responsibilities, or who has been in a position to participate in a decision-making process or gain inside information with regard to the activities governed by this Contract during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Program under this Contract.

#### IX. INDEMNIFICATION

BORROWER HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY SUITS, ACTIONS,

FINANCIAL TERMS CONTRACT  
John and Molly Buttner  
1115 North El Paso Street

DEMANDS, LIABILITIES, TYPE OR DESCRIPTION, BROUGHT OR MADE, AND CLAIMS OF ANY CHARACTER, FOR OR ON ACCOUNT OF ANY INJURIES OR DEATH, OR ACTIONABLE TORTS, SUSTAINED BY ANY PERSON(S), AND DAMAGE OR DESTRUCTION OF ANY PROPERTY ARISING OUT OF, OCCASIONED BY, OR RELATING TO THE PERFORMANCE OF THE CONTRACT, OR THE ACTIVITIES CARRIED OUT HEREUNDER, WHETHER OR NOT BASED IN WHOLE OR IN PART ON THE CITY'S NEGLIGENCE. THIS INDEMNITY SHALL COVER CITY'S ATTORNEY FEES, COURT COSTS, WITNESS EXPENSES, AND ALL OTHER RELATED COSTS INCLUDING JUDGMENTS, AWARDS AND SETTLEMENTS.

X. ENTIRE AGREEMENT

This Contract embodies all of the representations, rights, duties and obligations of the parties, and any prior oral or written agreement not embodied herein shall not be binding upon or inure to the benefit of any of the parties.

This Contract may be executed in any number of counterparts; all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

This Contract is signed this 3rd day of October, 2000, but shall be effective for all purposes as of the date of approval by the El Paso City Council recited hereinabove.

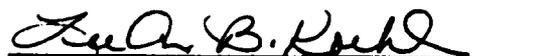
THE CITY OF EL PASO

  
Carlos M. Ramirez, P.E.  
Mayor

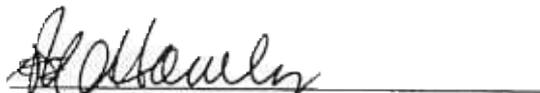
ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
Lee Ann B. Koehler  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
Deborah G. Hamlyn, Director  
Community and Human Development

(Signatures continue on following page)

FINANCIAL TERMS CONTRACT  
John and Molly Buttner  
1115 North El Paso Street

BORROWER(S):

John Buttner  
JOHN BUTTNER

Molly Buttner  
MOLLY BUTTNER

The undersigned agrees to sign as Guarantor  
on this Financial Terms Contract.

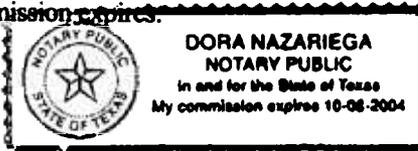
John O. Buttner  
JOHN O. BUTTNER, Guarantor

(Acknowledgment)

STATE OF TEXAS )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 9 day of November, 2000, by  
CARLOS M. RAMIREZ, P.E. as Mayor of THE CITY OF EL PASO.

Notary's commission expires:



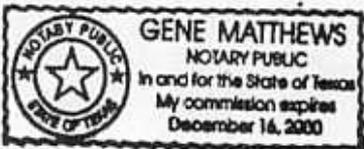
Dora Nazariaga  
Notary Public, State of Texas  
Notary's Name (Printed):

(Acknowledgment)

STATE OF TEXAS )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 12<sup>th</sup> day of October, 2000, by  
JOHN BUTTNER.

Notary's commission expires:



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

(Acknowledgments continue on following page)

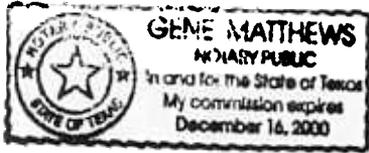
FINANCIAL TERMS CONTRACT  
John and Molly Buttner  
1115 North El Paso Street

(Acknowledgment)

STATE OF TEXAS )  
                                  )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 12<sup>th</sup> day of OCTOBER, 2000, by  
MOLLY BUTTNER.

Notary's commission expires:



*Gene Matthews*  
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 12<sup>th</sup> day of OCTOBER, 2000, by  
JOHN O. BUTTNER, as Guarantor.

Notary's commission expires:



*J. Herrera*  
Notary Public, State of Texas  
Notary's Name (Printed):  
\_\_\_\_\_

LOAN NOTE

\$136,000.00

ATTACHMENT 2

El Paso, Texas October 3, 2000

A. For value received, I, we, or either of us, **JOHN BUTTNER and MOLLY BUTTNER**, hereinafter jointly referred to as "Maker", and **JOHN O. BUTTNER, AS GUARANTOR**, 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 ONE HUNDRED THIRTY-SIX THOUSAND AND NO/100THS DOLLARS (\$136,000.00) 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 Community Development Investor-Owned 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 240 equal monthly installments. Maker and Guarantor shall have twenty (20) years from the due date of the first payment in which to pay all principal and interest due hereunder.

(2) The first of such 240 equal monthly installments shall be due and payable commencing on the first day of the month of AUGUST 1, 2000. The first of the remaining 239 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 240 monthly installments, as hereinabove described, shall be due and payable in an initial payment of \$565.87 and 239 consecutive monthly installments of \$566.67 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 10-

**LOAN NOTE**  
**John and Molly Buttner**  
**1115 North El Paso Street**

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 Community Development Investor-Owned 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 Community Development Investor-Owned 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.

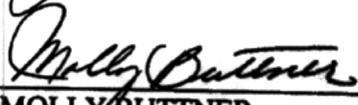
F. As a condition precedent to a transfer of all or any portion of the fee title of the property secured under this Note, Maker shall obtain the written consent of City. As a condition precedent to the assumption of this Note, Maker shall obtain the written consent of City. If, in either instance, as 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  
John and Molly Buttner  
1115 North El Paso Street

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 1115 North El Paso Street, 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 Community Development Investor-Owned 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 Community Development Investor-Owned 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):

  
\_\_\_\_\_  
JOHN BUTTNER  
  
\_\_\_\_\_  
MOLLY BUTTNER

The undersigned agrees to sign as Guarantor on this Loan Note.

  
\_\_\_\_\_  
JOHN O. BUTTNER, Guarantor

(Acknowledgments on following page)

LOAN NOTE  
John and Molly Buttner  
1115 North El Paso Street

(Acknowledgment)

STATE OF TEXAS )

COUNTY OF EL PASO

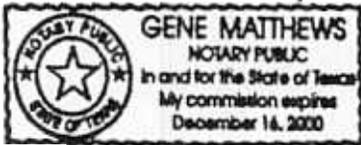
This instrument was acknowledged before me on the 12<sup>th</sup> day of October, 2000, by JOHN BUTTNER.

Notary's Commission Expires:

*Gene Matthews*

Notary Public, State of Texas

Notary's Name (Printed)



(Acknowledgment)

STATE OF TEXAS

COUNTY OF EL PASO

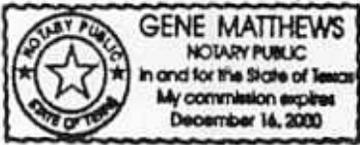
This instrument was acknowledged before me on the 12<sup>th</sup> day of October, 2000, by MOLLY BUTTNER.

Notary's Commission Expires:

*Gene Matthews*

Notary Public, State of Texas

Notary's Name (Printed)



(Acknowledgment)

STATE OF TEXAS )

COUNTY OF EL PASO )

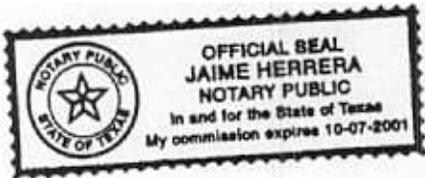
This instrument was acknowledged before me on the 12<sup>th</sup> day of OCTOBER, 2000, by JOHN O. BUTTNER, as Guarantor.

Notary's Commission Expires:

*J*

Notary Public, State of Texas

Notary's Name (Printed)





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 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 two (2) HUD-assisted rental units built thereon, hereinafter called the "Project".

**NOW, THEREFORE**, the parties, for and in consideration of the receipt of the HOME 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. 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 HUD-assisted units shall meet the following requirements:

(a) *Rent limits.* The Owner shall lease all of the HUD-assisted units that are hereby identified as "High" HOME rent units to qualified tenants whose income is no more than 80% of the City's median income for their household size ("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 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 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 HUD-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, "HOME Program Rents and Tenant Eligibility." However, in no event shall the rents for 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 HUD-assisted units at all times during the term of this Declaration, except as otherwise provided in the Agreement. Tenant income limits for 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 HUD-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 City-imposed extended affordability period of five (5) years from the date of filing of this instrument.

## **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 HUD-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 City-imposed extended affordability period of five (5) years commencing on the date of filing of this instrument and automatically expiring five years thereafter.
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 PROVIDED.
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 Part 92 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  
2 Civic Center Plaza, 8<sup>th</sup> Floor  
El Paso, Texas 79901

If to the Owner:

Jose and Angela A. Garcia  
1284 A.L. Gill Drive  
El Paso, Texas 79936

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 Part 92, the City, and any and all applicable rules, regulations, policies, rulings, or other official statements pertaining to HOME Program 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: JOSE GARCIA AND ANGELA A. GARCIA

Date: March 17, 2011

By: [Signature]  
JOSE GARCIA

Date: March 17, 2011

By: [Signature]  
ANGELA A. GARCIA

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

(Acknowledgment)

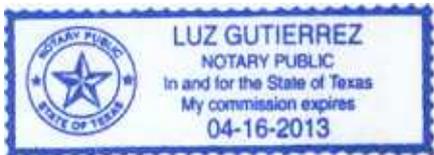
STATE OF TEXAS )

COUNTY OF EL PASO )

This instrument was acknowledged before me on the 17<sup>th</sup> day of March, 2011 by JOSE GARCIA and ANGELA A. GARCIA, as Owner(s).

Notary's commission expires:

[Signature]  
Notary Public, State of Texas  
Notary's Name (Printed):  
LUZ GUTIERREZ



**WHEN RECORDED, RETURN TO:**  
City of EL Paso, Texas  
Community and Human Development Department  
2 Civic Center Plaza, 8<sup>th</sup> Floor  
El Paso, Texas 79901  
Attn: Housing Programs Manager

## EXHIBIT "A"

North  $\frac{1}{2}$  of Lots 6 and 7, Block 7, SECOND REVISED MAP OF SUNSET HEIGHTS, an Addition to the City of El Paso, El Paso County, Texas, according to the plat thereof, recorded in Volume 10, Page 47, Plat Records of El Paso County, Texas; also known and numbered as 1115 N. El Paso Street, El Paso, Texas