

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

**DEPARTMENT:** Community & Human Development  
**AGENDA DATE:** June 17, 2008  
**CONTACT PERSON/PHONE:** William Lilly, 541-4643  
**DISTRICT(S) AFFECTED:** District No. 5

**SUBJECT:**

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

That the City Manager be authorized to sign a Reaffirmation Agreement between the City of El Paso and Jose A. Lugo, Jr. and Araceli Lugo, which reaffirms the First-Time Homebuyer loan to the City which financed the purchase of the property located at 11908 Royal Woods, El Paso, Texas.

**BACKGROUND / DISCUSSION:**

In May 2008, Jose A. Lugo, Jr. and Araceli Lugo received a \$20,000 loan from the City's HUD-funded First-Time Homebuyer Program to finance the purchase of their home at 11908 Royal Woods. Mr. and Mrs. Lugo filed for Chapter 7 bankruptcy on 4/9/08 and included the City's loan in the schedule of debts. Through their legal counsel, Mr. and Mrs. Lugo are requesting that the City enter into reaffirmation agreement with them in which they reaffirm the outstanding debt (including fees and costs) and agree to continue repayment under the terms of the loan note. The loan note(s) are secured by a Deed of Trust in favor of the City and is currently delinquent by two months.

**PRIOR COUNCIL ACTION:**

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

On 1/15/08, Council authorized the City Manager to sign a similar Chapter 7 reaffirmation agreement between the City and the borrower/debtor in bankruptcy.

**AMOUNT AND SOURCE OF FUNDING:**

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

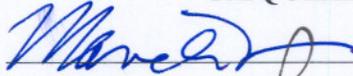
N/A.

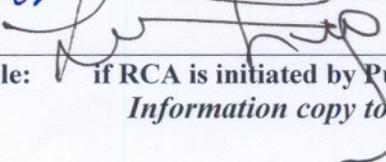
**BOARD / COMMISSION ACTION:**

**Enter appropriate comments or N/A**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required)  **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:**  \_\_\_\_\_  
(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

# RESOLUTION

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

That the City Manager be authorized to sign a Reaffirmation Agreement between the City of El Paso and Jose A. Lugo, Jr. and Araceli Lugo, which reaffirms the First-Time Homebuyer loan note to the City that financed the purchase of the property located at 11908 Royal Woods, El Paso, Texas (District No. 5).

ADOPTED this \_\_\_\_\_ day of **June, 2008**.

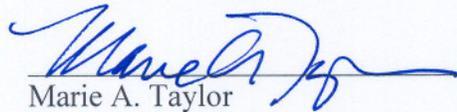
### THE CITY OF EL PASO

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

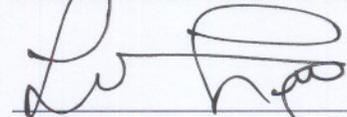
#### ATTEST:

\_\_\_\_\_  
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

<input type="checkbox"/>	Presumption of Undue Hardship
<input type="checkbox"/>	No Presumption of Undue Hardship

(Check box as directed in Part D: Debtor's Statement in Support of Reaffirmation Agreement.)

**UNITED STATES BANKRUPTCY COURT**

Western District of Texas, El Paso Div.

In re Jose A. Lugo, Jr. & Araceli Lugo,  
Debtor

Case No. 04-31793-lmc  
Chapter 7

**REAFFIRMATION AGREEMENT**

*[Indicate all documents included in this filing by checking each applicable box.]*

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Part A: Disclosures, Instructions, and Notice to Debtor (Pages 1 - 5) | <i>[File Part E only if debtor was not represented by an attorney during the course of negotiating this agreement.]</i> |
| <input checked="" type="checkbox"/> Part B: Reaffirmation Agreement                                       |   |
| <input checked="" type="checkbox"/> Part C: Certification by Debtor's Attorney                            | <input type="checkbox"/> Part E: Motion for Court Approval  |
| <input checked="" type="checkbox"/> Part D: Debtor's Statement in Support of Reaffirmation Agreement      | <input type="checkbox"/> Proposed Order Approving Reaffirmation   |

**Name of Creditor:** CITY OF EL PASO, TEXAS

*[Check this box if]* Creditor is a Credit Union as defined in §19(b)(1)(a)(iv) of the Federal Reserve Act

**PART A: DISCLOSURE STATEMENT, INSTRUCTIONS AND NOTICE TO DEBTOR**

**1. DISCLOSURE STATEMENT**

*Before Agreeing to Reaffirm a Debt, Review These Important Disclosures:*

**SUMMARY OF REAFFIRMATION AGREEMENT**

This Summary is made pursuant to the requirements of the Bankruptcy Code.

**AMOUNT REAFFIRMED**

The amount of debt you have agreed to reaffirm: \$ 13,520.00

*The amount of debt you have agreed to reaffirm includes all fees and costs (if any) that have accrued as of the date of this disclosure. Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.*

**ANNUAL PERCENTAGE RATE**

*[The annual percentage rate can be disclosed in different ways, depending on the type of debt.]*

a. If the debt is an extension of "credit" under an "open end credit plan," as those terms are defined in § 103 of the Truth in Lending Act, such as a credit card, the creditor may disclose the annual percentage rate shown in (I) below or, to the extent this rate is not readily available or not applicable, the simple interest rate shown in (ii) below, or both.

(i) The Annual Percentage Rate disclosed, or that would have been disclosed, to the debtor in the most recent periodic statement prior to entering into the reaffirmation agreement described in Part B below or, if no such periodic statement was given to the debtor during the prior six months, the annual percentage rate as it would have been so disclosed at the time of the disclosure statement: \_\_\_\_\_ %.

— And/Or ---

(ii) The simple interest rate applicable to the amount reaffirmed as of the date this disclosure statement is given to the debtor: \_\_\_\_\_ %. If different simple interest rates apply to different balances included in the amount reaffirmed, the amount of each balance and the rate applicable to it are:

\$ \_\_\_\_\_ @ \_\_\_\_\_ %;  
\$ \_\_\_\_\_ @ \_\_\_\_\_ %;  
\$ \_\_\_\_\_ @ \_\_\_\_\_ %.

b. If the debt is an extension of credit other than under than an open end credit plan, the creditor may disclose the annual percentage rate shown in (I) below, or, to the extent this rate is not readily available or not applicable, the simple interest rate shown in (ii) below, or both.

(i) The Annual Percentage Rate under §128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to entering into the reaffirmation agreement with respect to the debt or, if no such disclosure statement was given to the debtor, the annual percentage rate as it would have been so disclosed: \_\_\_\_\_ %.

— And/Or ---

(ii) The simple interest rate applicable to the amount reaffirmed as of the date this disclosure statement is given to the debtor: 0.00 %. If different simple interest rates apply to different balances included in the amount reaffirmed,

the amount of each balance and the rate applicable to it are:

\$ \_\_\_\_\_ @ \_\_\_\_\_ %;  
 \$ \_\_\_\_\_ @ \_\_\_\_\_ %;  
 \$ \_\_\_\_\_ @ \_\_\_\_\_ %.

c. If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act:

The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.

d. If the reaffirmed debt is secured by a security interest or lien, which has not been waived or determined to be void by a final order of the court, the following items or types of items of the debtor's goods or property remain subject to such security interest or lien in connection with the debt or debts being reaffirmed in the reaffirmation agreement described in Part B.

<u>Item or Type of Item</u>	<u>Original Purchase Price or Original Amount of Loan</u>
Deed of Trust recorded at Vol. 3371, Page 1784, El Paso County, TX Property Records	\$20,000.00

*Optional*---At the election of the creditor, a repayment schedule using one or a combination of the following may be provided:

**Repayment Schedule:**

Your first payment in the amount of \$ \_\_\_\_\_ is due on \_\_\_\_\_ (date), but the future payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable.

---Or---

Your payment schedule will be: \_\_\_\_\_ (number) payments in the amount of \$ \_\_\_\_\_ each, payable (monthly, annually, weekly, etc.) on the \_\_\_\_\_ (day) of each \_\_\_\_\_ ( week, month, etc.), unless altered later by mutual agreement in writing.

---Or---

A reasonably specific description of the debtor's repayment obligations to the extent known by the creditor or creditor's representative.

## 2. INSTRUCTIONS AND NOTICE TO DEBTOR

**Reaffirming a debt is a serious financial decision.** The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.

4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.

5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

6. If the creditor is not a Credit Union and you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D. If the creditor is a Credit Union and you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.

7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you and the creditor of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.

## YOUR RIGHT TO RESCIND (CANCEL) YOUR REAFFIRMATION AGREEMENT

You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

### Frequently Asked Questions:

What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A "lien" is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court.

**NOTE:** When this disclosure refers to what a creditor "may" do, it does not use the word "may" to give the creditor specific permission. The word "may" is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don't have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held.

**PART B: REAFFIRMATION AGREEMENT.**

I (we) agree to reaffirm the debts arising under the credit agreement described below.

1. Brief description of credit agreement:

Principal payable on 15th of each month in 357 monthly installments w/ payment of \$64.00 on 7/15/98, continuing thereafter w/monthly installments of \$56.00 (or more) payable on 15th day of each month for remaining 356 months. \$10 late fee.

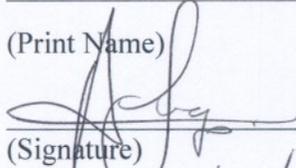
2. Description of any changes to the credit agreement made as part of this reaffirmation agreement: None

SIGNATURE(S):

Borrower:

Jose A. Lugo, Jr.

(Print Name)



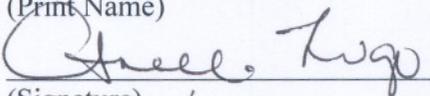
(Signature)

Date: 5/21/08

Co-borrower, if also reaffirming these debts:

Araceli Lugo

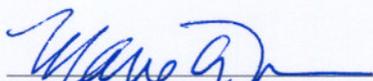
(Print Name)



(Signature)

Date: 5/21/08

Approved as to Form:



Marie A. Taylor

Assistant City Attorney

Accepted by creditor:

CITY OF EL PASO, TEXAS

(Printed Name of Creditor)

2 Civic Center Plaza, 9th Floor, El Paso, TX 79901

(Address of Creditor)

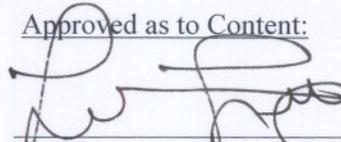
(Signature)

Joyce Wilson, City Manager

(Printed Name and Title of Individual Signing for Creditor)

Date of creditor acceptance:

Approved as to Content:



William Lilly, Director

Community and Human Development

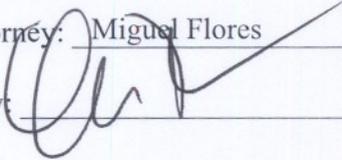
**PART C: CERTIFICATION BY DEBTOR'S ATTORNEY (IF ANY).**

*[To be filed only if the attorney represented the debtor in negotiating the reaffirmation agreement.]*

I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

*[Check box, if applicable and the creditor is not a Credit Union.]* A presumption of undue hardship has been established with respect to this agreement. In my opinion, however, the debtor is able to make the required payment.

Printed Name of Debtor's Attorney: Miguel Flores

Signature of Debtor's Attorney:  \_\_\_\_\_

Date: 5/21/08

**PART D: DEBTOR'S STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT**

*[Read and complete numbered paragraphs 1 and 2, OR, if the creditor is a Credit Union and the debtor is represented by an attorney, read the un-numbered paragraph below. Sign the appropriate signature line(s) and date your signature. If you complete paragraphs 1 and 2 and your income less monthly expenses does not leave enough to make the payments under this reaffirmation agreement, check the box at the top of page 1 indicating "Presumption of Undue Hardship." Otherwise, check the box at the top of page 1 indicating "No Presumption of Undue Hardship"]*

1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is \$ 2499, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total \$ 2481, leaving \$ 18 to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: Expense is already on schedule J.

2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.

Signed: Alvaro Hugo  
(Debtor)  
[Signature]  
(Joint Debtor, if any)  
Date: 5/21/08

— Or —

*[If the creditor is a Credit Union and the debtor is represented by an attorney]*

I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.

Signed: \_\_\_\_\_  
(Debtor)  
\_\_\_\_\_  
(Joint Debtor, if any)  
Date: \_\_\_\_\_

FTHB BH

(Space above this line for recording data)

RECORDED JUN 15 1998 HOUSING REHAB

DEED OF TRUST

\*aka Jose Alberto Lugo

THIS DEED OF TRUST ("Security Instrument") is made on May 22, 1998. The Grantor(s) is/are Jose A. Lugo and Araceli Lugo (hereinafter referred to as "Borrower"). The trustee appointed by Borrower pursuant to this instrument is the City Clerk of the City of El Paso, El Paso County, Texas, whose address is Two Civic Center Plaza - 9th Floor, El Paso, Texas 79901-1196 ("Trustee"). The beneficiary of this Deed of Trust is The City of El Paso, El Paso County, Texas which is a Municipal Corporation duly organized and existing under the laws of The State of Texas and whose address is Two Civic Center Plaza -9th Floor, El Paso, Texas 79901-1196 (hereinafter referred to as "Lender").

Pursuant to the terms of the Loan Note executed of even date, Borrower owes (and acknowledges the validity of such debt[s]) Lender the principal sum of Twenty Thousand and 00/100 Dollars (\$20,000.00). This debt is evidenced by Borrower's Loan Note of even date, which provides for the payment, of the full debt, if not paid earlier, due and payable on March 15, 2028.

This Security Instrument secures to Lender: (a) the repayment of the debt (purchase money) evidenced by the Note(s), with all interest, and including but not limited to any renewals, extensions and modifications to the extent applicable; (b) the payment of all other sums required to preserve Borrower's interest in the property, with interest, as well as performance of all obligations (noted in paragraph 7 of this Deed of Trust) to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note(s). For this purpose, Borrower irrevocably grants and conveys to Trustee, in Trust, with Power of Sale, the following described property located in El Paso County, Texas:

47 1 JAL AL ONE

Lot 45, Block 15, VILLA DEL ESTE UNIT TWO, an Addition to the City of El Paso, El Paso County, Texas, according to the plat thereof, recorded in Volume 72, Pages 16, 16A & 16B, Plat Records of El Paso County, Texas.; also known and numbered as 11908 Royal Woods, El Paso, Texas; \*71 \*\*35 & 35A

together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, minerals, oil, and gas rights, profits, water rights, stock and all fixtures now or hereafter becoming a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is collectively referred to in this Security Instrument as the "Property".

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances currently of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a Uniform Security Instrument covering real property.

UNIFORM COVENANTS - Borrower and Lender covenant and agree as follows:

- 1. Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on any debt evidenced by the Note(s) secured hereby (and any other notes or obligations which may affect or impair lender's security interest) and any prepayment and late charges due under the Note(s) or obligations.
- 2. Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Senior Lien Holder on the day monthly payments are due under the First Mortgage, until the Note is paid in full, a sum

("Funds") equal to one-twelfth of: (a) yearly taxes and assessments which may attain priority over this Security Instrument; (b) yearly hazard or property insurance premiums; (c) yearly mortgage insurance premiums, if any; and (d) yearly flood insurance premiums, if any. These items are called "escrow items". The Funds shall be held in an institution in which deposits or accounts of which are insured or guaranteed by a federal or state agency.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under this Deed of Trust shall be applied as follows: first, to late charges due under the Note(s); second, to prepayment charges due under the Note(s); and third, to principal due under the Note(s).
4. **Prior Deeds of Trust; Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument. Borrower shall pay these obligations in the manner provided in paragraph 2 of this Deed of Trust, or if not paid in that manner, Borrower shall pay them on time directly to the person or party owed payment. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender copies of receipts evidencing the payments.

Except for the lien of the First Deed of Trust, hereinafter referred to as "First Deed of Trust", Borrower shall promptly discharge any lien or any other legal debt which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien or forfeiture of any part of the Property; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. Except for the lien of the First Deed of Trust, if Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Subordination.** Lender and Borrower acknowledge and agree that this Subordinate Deed of Trust is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Deed of Trust and to all advances heretofore made or which may hereafter be made pursuant to the First Deed of Trust provided such sums are advanced for the purpose of: (a) protecting or further securing the lien of the First Deed of Trust, curing defaults by the Borrower under the First Deed of Trust or for any other purpose expressly permitted by the First Deed of Trust and Lender hereby consents in advance, in writing to same or; (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Property and Lender hereby consents in advance, in writing to same. The terms and provisions of the First Deed of Trust are paramount and controlling, and they supersede any other terms and provisions hereof in conflict with same. In the event of a foreclosure or deed in lieu of foreclosure of the First Deed of Trust, any provisions herein or any provisions in any other collateral agreement restricting the use of the Property to low or moderate income households or otherwise restricting the Borrower's ability to sell the Property shall have no further force or effect to the extent allowable by Federal Law. Any person (including that person's successors or assigns) receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the First Deed of Trust shall receive title to the Property free and clear from such restrictions to the extent allowable by Federal Law.

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

6. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender

may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 8 and seek reimbursement from Borrower for all such costs incurred.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgagee clause. All requirements hereof pertaining to insurance shall be deemed satisfied if the Borrower complies with the insurance requirements under the First Deed of Trust. All original policies of insurance required pursuant to the First Deed of Trust shall be held by the Senior Lien Holder; provided, however, Lender shall be named as a loss payee as its interest may appear and shall be named as an additional insured. If Lender requires, Borrower shall promptly give to Lender copies of all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier, the Senior Lien Holder and Lender. Lender may make proof of loss if not made promptly by the Senior Lien Holder or the Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not respond within 30 days to a notice from Lender that the insurance carrier has informed Lender that Borrower abandoned the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given. Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraph 1 or change the amount of the payments. If under paragraph 24 of this Deed of Trust, the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to Lender's acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition. Notwithstanding the above, the Lender's rights to collect and apply the insurance proceeds hereunder shall be subject and subordinate to the rights of the Senior Lien Holder to collect and apply such proceeds in accordance with the First Deed of Trust.

7. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within ten (10) days after the execution of this Security Instrument. Borrower shall occupy the Property as Borrower's principal residence for a minimum period of ten (10) years from the date of acquisition and the execution of this Security Instrument. Borrower shall not destroy, damage or substantially change the Property, allow the Property to deteriorate or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 20 of this Deed of Trust, by causing the action or proceeding to be dismissed and that after such dismissal, said dismissal in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note(s), including, but not limited to, representations concerning; (i) Borrower's occupancy of the Property as a principal residence and; (ii) Borrower's income.
8. **Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, including sums secured by the First Deed of Trust. Lender may also take such additional legal actions as it deems necessary, including but not limited to appearing in court, paying reasonable attorneys' fees and entering on the Property to make

repairs. Although Lender may take action under this paragraph (8), Lender is not required to do so. Lender may look to Borrower for all such costs incurred.

Any amounts disbursed by Lender under this paragraph (8) shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

Prior to taking any actions under this Section, however, Lender shall notify the Senior Lien Holder of such default in the manner provided in Section 24 of this Security Instrument, and shall provide the Senior Lien Holder with the opportunity to cure any such default under this Security Instrument. All amounts advanced by the Senior Lien Holder to cure a default hereunder shall be deemed advanced by the Senior Lien Holder and shall be secured by the First Deed of Trust. In addition, the Lender agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the Senior Lien Holder at least 60 days' prior written notice. Any action by Lender hereunder to foreclose or accept a deed in lieu of foreclosure shall be subject to the "due on sale" provisions of the First Deed of Trust.

Lender and Borrower further agree that a default hereunder shall constitute a default under the First Deed of Trust. In the event of a default hereunder, the Senior Lien Holder shall have the right to exercise all rights and remedies under the First Deed of Trust.

9. **Mortgage Insurance.** If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the mortgage insurance previously in effect, from an alternate mortgage insurer approved by Lender.
10. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.
11. **Condemnation; Abandonment.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender subject to the terms of the First Deed of Trust.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: the total amount of the sums secured immediately before the taking, divided by the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower.

In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraph 1 or change the amount of such payments.

12. **Borrower Not Released: forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.
13. **Successors and Assigns Bound: Joint and Several Liability: Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 19 of this Deed of Trust. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note(s): (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent; provided, however, that such modification or accommodation shall not be made without the prior written consent of the Senior Lien Holder.
14. **Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note(s) or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayments charge under the Note(s).
15. **Legislation Affecting Lender's Rights.** If enactment or expiration of applicable laws has the effect of rendering any provision of the Note(s) or this Security Instrument unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument and may invoke any remedies permitted by paragraph 24 of this Deed of Trust. If Lender exercises this option, Lender shall follow the procedure specified in the paragraph 19 of this Deed of Trust.
16. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by hand delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by written notice in writing to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by written notice to Borrower. Any notice required to be given to the Senior Lien Holder shall be given by first class mail to the following address:

Nations Banc Mortgage Corporation  
1801 N. Lee Trevino  
El Paso, TX 79936

or such other address the Senior Lien Holder designates by written notice to the Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given in writing as provided in this paragraph.

17. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note(s) conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the

Note(s) which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note(s) are declared to be severable.

18. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note(s) and of this Security Instrument.
19. **Transfer of the Property or a Beneficial Interest in Borrower.** Except for a conveyance to the trustee under the First Deed of Trust, if all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower and the Senior Lien Holder prior written notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

Notwithstanding Lender's right to invoke any remedies hereunder, as provided in paragraph 8 of this Deed of Trust, Lender agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the Senior Lien Holder at least 60 days' prior written notice.

The Borrower and the Lender agree that whenever the Note(s) or this Security Instrument gives the Lender the right to approve or consent with respect to any matter affecting the Property (or the construction of any improvements thereon), and a right of approval or consent with regard to the same matter is also granted to the Senior Lien Holder pursuant to the First Deed of Trust, the Senior Lien Holder's approval or consent or failure to approve or consent, as the case may be, shall be binding on the Borrower and the Lender.

20. **Borrower's Right to Reinstate.** If Borrower meets all required legal criteria, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) Five (5) days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument provided any default has been fully cured; or (b) entry of a judgment enforcing this Security Instrument. Borrower shall (a) pay Lender all sums which then would be due under this Security Instrument and the Note(s) as if no acceleration had occurred; (b) cure any default of any other covenants or agreements; (c) pay all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) take such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 19 of this Deed of Trust.
21. **Sale of Note; Change of Loan Servicer.** The Note(s) or a partial interest in the Note(s) (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note(s) and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note(s).

If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 16 of this Deed of Trust and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

22. **No Assignment.** Until the loan secured by the First Deed of Trust has been satisfied in full, the Lender and the Borrower agree that the Note(s) and the Security Instrument will not be assigned without the Senior Lien Holder's prior written consent.
23. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the property that is in violation of any Environment Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Prior to taking any such remedial action, however, the Borrower shall notify the Senior Lien Holder that such remedial action is necessary and shall obtain the Senior Lien Holder's prior written consent for such remedial action.

As used in this paragraph 23, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 23, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

**NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:**

24. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument.

**THE NOTICE SHALL SPECIFY:**

(a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, (and with respect to the Senior Lien Holder, 60 days from the date the notice is given to the Senior Lien Holder), by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice will trigger an acceleration of the sums secured by this Security Instrument and sale of the Property.

The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, and the Senior Lien Holder has not exercised its right to cure the default, then Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Notwithstanding Lender's right to invoke any remedies hereunder, as provided in Paragraph 8 of this Deed of Trust, the Lender agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the Senior Lien Holder at least 60 days prior written notice. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph of this Deed of Trust, including, but not limited to, reasonable attorneys' fees and costs related thereto.

If Lender invokes the power of sale, Lender or Trustee shall give notice of the time, place and terms of sale by posting and recording the notice at least 21 days prior to sale as provided by applicable law to Borrower, the Senior Lien Holder and to the other persons prescribed by applicable law. Lender shall mail a copy of the notice of sale to Borrower in the manner prescribed by applicable law. Sale shall be made in public on the first floor of the El Paso County Courthouse between the hours of 10 a.m. and 4 p.m. on the first Tuesday in any month. Borrower authorizes

Trustee to sell the Property to the highest bidder for cash in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying indefeasible title to the Property with covenants of general warranty. Borrower covenants and agrees to defend generally the purchaser's title to the Property against all claims and demands. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

25. **Home Fund Restrictions.** This Security Instrument secures sums advances for the purchase, with or without rehabilitation, of a principal residence qualifying as affordable housing under Title 24 Code of Federal Regulations Part 92, Home Investment Partnerships Program. As such, the Borrower hereby covenants and agrees that the Property is subject, for a minimum period of ten (10) years to certain recapture provisions, as established by Lender and determined by the United States Department of Housing and Urban Development to be appropriate, to ensure that the Property remains the principal residence of the Borrower for the duration of this period of affordability (with such affordability restrictions terminating upon foreclosure, transfer in lieu of foreclosure or an assignment of an FHA insured mortgage to HUD). The Lender may recapture the full HOME investment advanced hereunder out of the net proceeds (sales price minus loan repayment, [other than HOME funds] and closing costs) of the Property.
26. **Lender in Possession.** Upon acceleration under paragraphs 19 or 24 of this Deed of Trust or abandonment of the Property, Lender (in person, by agent or by judicially appointed receiver) shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. Any rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Security Instrument.
27. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.
28. **Substitute Trustee.** Lender, at its option and with or without cause, may from time to time remove Trustee and appoint, by power of attorney or otherwise, a successor trustee to any Trustee appointed hereunder. Any successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.
29. **Modification of First Deed of Trust Loan Documents.** The Lender consents to any agreement or arrangement in which the Senior Lien Holder waives, postpones, extends, reduces or modifies any provisions of the First Deed of Trust Loan Documents, including any provisions requiring the payment of money.
30. **Partial Invalidity.** In the event any portion of the sums intended to be secured by this Security Instrument cannot be lawfully secured hereby, payments in reduction of such sums shall be applied first to those portions not secured hereby.
31. **Waiver of Notice of Intention to Accelerate.** Borrower waives the right to notice of intention to require immediate payment in full of all sums secured by this Security Instrument except as provided in paragraphs 19 and 24 of this Deed of Trust.

**BY SIGNING BELOW, THE BORROWER(S) ACCEPT(S) AND AGREE(S) TO THE TERMS AND COVENANTS CONTAINED IN THIS SECURITY INSTRUMENT.**

**IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.**

Jose A. Lugo aka Jose Alberto Lugo

Araceli Lugo

SENIOR LIEN HOLDER: Nations Banc Mortgage Corporation

CONTACT:
NAME: Raquel McCoy
TITLE: Account Executive

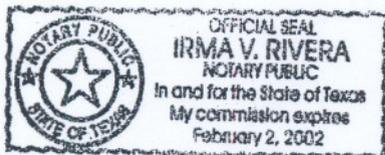
ACKNOWLEDGMENT

STATE OF TEXAS )
COUNTY OF EL PASO )

BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC in and for the County and State, on this day personally appeared Jose A. Lugo and Araceli Lugo known to me to be the person(s) whose name(s) IS/ARE subscribed to the foregoing instrument, and acknowledged to me that HE/SHE/THEY executed the same for the purposes and consideration therein expressed. \*aka Jose Alberto Lugo

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 22 day of May, 19 98

Irma V. Rivera
Notary Public in and for the State of Texas



My commission expires:

RETURN TO:
CITY OF EL PASO
HOUSING REHABILITATION 9TH FLOOR
TWO CIVIC CENTER PLAZA
EL PASO, TX 79901

Doc# 98035886

# Pages: 9

Date : 05-28-1998

Time : 04:00:00 P.M.

Filed & Recorded in

Official Records

of EL PASO County, TX.

HONORABLE HECTOR ENRIQUEZ, JR

COUNTY CLERK

Rec. \$ 25.00

10

END OF  
INSTRUMENT

ANY PROVISIONS HEREIN WHICH RESTRICTS THE SALE, RENTAL  
OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR  
OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW  
STATE OF TEXAS COUNTY OF EL PASO

I hereby certify that this instrument was filed on the date and time stamped  
hereon by me and was duly recorded in the volume and page of the Official  
Public Record of Real Property El Paso County.

MAY 28 1998



EL PASO COUNTY, TEXAS

h

## LOAN NOTE

\$20,000.00

El Paso, Texas May 22, 1998

J. A. L. aka Jose Alberto Lugo

FOR VALUE RECEIVED, I, we, or either of us, Jose A. Lugo and Araceli Lugo, (hereinafter jointly referred to as Maker), hereby promise to pay to the order of THE CITY OF EL PASO, (hereinafter referred to "Payee") at Two Civic Center Plaza, El Paso, Texas 79901-1196, or at such other address as the holder of this Note may designate from time to time in writing, the principal sum of Twenty Thousand AND 00/100THS DOLLARS (\$20,000.00) without interest thereon.

The principal on this Note shall be payable on the fifteenth (15<sup>th</sup>) day of each month in 357 monthly installments, commencing with a payment of Sixty Four AND 00/100THS DOLLARS (\$64.00) on July 15, 1998, and continuing thereafter with monthly installments of Fifty Six AND 00/100THS DOLLARS (\$56.00) (or more) payable on the fifteenth (15<sup>th</sup>) day of each month for the remaining 356 months, in lawful money of the United States at the principal office of The City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901-1196, or at such other address as shall be designated by The City of El Paso. There will be no interest charged on this Note unless Maker is declared in default, in which event the Note's rate will be the prime rate then in effect. A \$10.00 late fee will be added to the principal amount of the loan for any payment that is not received by Maker by the twenty-sixth (26<sup>th</sup>) day of each month in which the monthly payment is due. The late fee will be assessed only once on each late payment.

### **PAYMENTS:**

Maker shall make monthly payments to The City of El Paso at Two Civic Center Plaza, El Paso, Texas 79901-1196, or at such other address as may be designated by The City of El Paso.

The indebtedness evidenced by this Note, and any other financial obligation which may hereafter be imposed on Maker by The City of El Paso, is subordinate in right of payment only to the prior payment in full of the indebtedness evidenced by a First Mortgage to the Senior Lien Holder, which is secured by a Deed of Trust to the Senior Lien Holder at the time of this Note's execution.

### **BORROWER'S RIGHT TO PREPAY:**

Maker has the right to make payments of principal at any time before they are due. Maker may make a full prepayment or partial prepayments without paying any prepayment charge. The City of El Paso will use all of Maker's prepayments to reduce the amount of principal that Maker owes under this Note. If Maker makes a partial prepayment, there will be no change in the due date unless The City of El Paso agrees in writing to such changes.

### **LOAN CHARGES:**

This Note shall be governed by the laws of the State of Texas and federal law as applicable. For purposes of determining compliance with applicable laws, the following shall apply to the maximum extent permitted by law: (a) any contract, charge or receipt, whether occurring now or in the future, shall be strictly limited by this provision; (b) the "Maximum Lawful Rate" shall mean the maximum lawful ceiling, rate or amount that holder could have contracted to charge or receive under Texas law or applicable federal law, whichever permits the

LOAN NOTE  
Jose A. Lugo and Araceli Lugo  
11908 Royal Woods

highest maximum ceiling, rate or amount; (c) to the extent Texas law establishes the Maximum Lawful Rate, the parties elect the "indicated rate ceiling" under Texas Article 5069-1.04, as amended; (d) the holder may calculate rates or amounts by amortizing, prorating, allocating and spreading amounts contracted for, charged or received over the full term of the transaction; (e) no contract, charge or receipt shall obligate Maker or any obligor to pay any amount in excess of the Maximum Lawful Amount; and (f) any contract, charge or receipt that, in the event of acceleration or under any other contingency, purports to require the payment or collection of any amount in excess of the Maximum Lawful Amount, shall be automatically constrained and reformed so as not to obligate Maker or any obligor to pay any amount in excess of the Maximum Lawful Amount. If the holder hereof or other person ever contracts for, charges or receives a rate or amount in excess of the Maximum Lawful Amount respecting this Note, the excess (whether denominated principal, time-price differential, interest or otherwise) shall be automatically constrained and subject to reallocation, cancellation, credit, application or refund so as to eliminate any amount in excess of the Maximum Lawful Amount.

**BORROWER'S FAILURE TO PAY AS REQUIRED:**

A. Default: Except as otherwise provided, Maker will be in default: (1) if Maker does not pay the full amount of each and every monthly payment relating to all liens referenced in the Deed of Trust on the date it is due; (2) in the event of the sale or transfer of the Property, or any beneficial interest of the Maker in the Property, or (3) if the Property is not used by Maker as his/her/their principal residence for a total period of ten (10) years from the date of acquisition of the Property and execution of this Note.

B. Notice of Default: If Maker is in default, The City of El Paso may send Maker a written notice advising Maker that if Maker fails to pay the overdue amount by a certain date, The City of El Paso may accelerate the loan and require Maker to pay immediately, in full, the amount of principal which has not been paid. That date must be at least thirty (30) days after the date on which the notice is delivered or mailed to Maker.

C. No Waiver by the Note Holder: Even if, at a time when Maker is in default, The City of El Paso does not require Maker to pay immediately in full as described above, The City of El Paso will still have the right to require Maker to do so if Maker is in default at a later time. Such failure shall under no circumstances constitute a waiver of rights.

D. Payment of Note Holder's Costs and Expenses: If The City of El Paso has required Maker to pay immediately in full as described above, The City of El Paso will have the right to reimbursement by Maker for all of its costs and expenses, including but not limited to attorney's fees, incurred in enforcing this Note to the extent allowed by law. If this Note is placed in the hands of an attorney for collection, or if collected by suit or through probate or bankruptcy court, the Maker agrees to pay an additional fifteen percent (15%) of the principal and interest then owing hereon as attorney's fees.

**GIVING OF NOTICES:**

Unless applicable law requires a different method, any notice that must be given to Maker under this Note shall be given by hand delivery or by U. S. first class mail to Maker at the

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11908 Royal Woods

Property Address set forth in the Deed of Trust, or at such different address if Maker provides to The City of El Paso a written notice of same.

**OBLIGATIONS OF PERSONS UNDER THIS NOTE:**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to the same extent. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made pursuant to this Note. The City of El Paso may enforce its rights under this Note against each person individually or against all of them together. Therefore, any Maker, guarantor, surety or endorser may be required to pay the full amount owed under this Note.

**WAIVERS:**

Each Maker, surety and endorser of this Note expressly waives all notices, demands for payment, presentations for payment, notices of intention to accelerate maturity, protest and notice of protest, as to this Note and as to each, every and all installments hereof, and further agrees that the time of payment hereunder may be extended without further consent of any accommodation Maker, endorser, guarantor or surety, which shall not operate to release the security for this obligation or any person liable hereon in any manner. Failure of the holder of this Note to exercise any right given to it hereunder shall not be deemed laches or waiver thereof, but any such right shall be exercised by the holder at any time after default by any person hereon and against any security of person liable hereon.

**SECURED NOTE:**

In addition to the protection given to The City of El Paso under this Note, a Deed of Trust, of even date, secures The City of El Paso from any losses which might result if Maker does not keep the promises made pursuant to this Note. The Deed of Trust is and shall be subject to and subordinate in all respects to the terms, covenants and conditions of the First Mortgage of the Senior Lien Holder and the Deed of Trust securing same. The Deed of Trust hereinafter defined as the Deed of Trust securing the obligations underlying this Note describes how and under what conditions Maker may be required to make immediate payment in full of all amounts Maker owes under this Note. Those conditions include, but are not limited to, the transfer of the Property or any beneficial interest of Maker in the Property, and if the Property is not used by Maker as his/her/their principal residence for a total period of ten (10) years from the date of acquisition of the Property and execution of this Note. However, this right shall not be exercised by The City of El Paso if such exercise is prohibited by federal laws of the date of this Security Instrument.

If The City of El Paso exercises its right to accelerate, The City of El Paso shall give Maker and the Senior Lien Holder prior written notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date notice is delivered or mailed within which Maker must pay all sums secured by this Security Instrument. If Maker fails to pay these sums





LoanLink Main Menu > Account Status Information > Details  
**ACCOUNT STATUS INFORMATION**

Project: 567

Account: 042004

**Client Info**

**Borrower Info**

Client : EL PASO  
 Project : F.T.H.B  
 City : EL PASO  
 State : TX Zip Code 79901-  
 Tax ID : 75-3321233  
 Main/Sub Account :  
 Total Payment Amount :

First : JOSE  
 Middle :  
 Last : LUGO  
 Co-Borrower : ARACELI LUGO  
 Address : 11908 ROYAL WOODS  
 City : ELPASO  
 State : TX Zip Code : 79936-  
 Phone : --  
 Tax ID : XXX-XX-f ~,  
 Co-Borr.  
 Tax ID :

**Contract Fields**

Date Opened	09/05/2003	Payment Amount	\$56.00	Loan Type	PRIN ONLY
Original Balance	\$20,000.00	Escrow Amount	\$0.00	Print Coupon?	1
Interest Rate	0.00	Agency Fee	\$0.00	Coupons Printed?	
Int. Start Date		Borrower Fee	\$0.00	Loan Note Date	05/05/1998
30 Day Int?	INT 365	Full Payment Amt.	\$56.00	ACH Partic.	N
Int. Only?	N	Payment Due Date	03/15/2008	Ins. Monitoring	N

*PAST DUE 2 mos. (5-15-2008)*

Loan ID: 7      Payment Freq.      MONTHLY      Tax Monitoring      N  
 Maturity Date: 4/15/2028      Late Charge A/U      \$10.00  
 Status: KR07      Late Charge Days      10

Property Information

Address: 119 DRYAL WOODS  
 EL PASO  
 TX Zip: 79936-

Balance Information

Account Status	OPEN	Delinq. Status	30-59 Days	Number of Payments	2
Unpaid Charge	\$0.00		Date Last Payment		02/25/2008
Unpaid Service Bal	\$0.00		Principal Last Payment		\$56.00
Unpaid Row Bal	\$0.00		Interest Last Payment		\$0.00
Unpaid Int Bal	\$0.00		Date Int. Paid to		
Unpaid A/c Bal	\$0.00		YTD Principal		\$1,232.00
Unpaid Applied Bal	\$10.00		YTD Interest		\$0.00
Unpaid Principal Bal	\$13,520.00		Reference		09914/4274
Unpaid Int	\$0.00		First Payment Received		1/6/2005
Unpaid Paym	07/15/1998				

None of the information on this report should be construed as loan payoff information.  
 Please contact AmeriNational representatives for payoff information.  
 Report prepared by AmeriNational Community Services.