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

DEPARTMENT: **Community and Human Development**

AGENDA DATE: **Introduction** July 10, 2012
Public Hearing July 17, 2012

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

DISTRICT(S) AFFECTED: **District 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.

Approve an ordinance authorizing the City Manager to sign a contract of sale and other necessary documents between the City of El Paso and Roberto Sergio and Loruama Hernandez which will allow the City to convey Lot 19, Block 3, Hueco Mountain Village Replat A, City of El Paso, El Paso County, Texas, 79936 El Paso, El Paso County to Roberto Sergio & Loruama

This sale is an activity under the Neighborhood Stabilization Program1 (NSP1). The purchase price for this property is $84,000.00. This household is obtaining first mortgage financing from a participating NSP mortgage lender in the amount of $52,676.00. The City's NSP1 program will provide approximately $33,576.000 in housing assistance to this applicant. This amount is comprised of approximately $5,530.00 in down payment/closing cost assistance and approximately $28,046.00 in the form of a principal reduction loan.

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

This residential property was a previous foreclosure. The City subsequently purchased this property with NSP1 funds awarded by the Department of Housing and Urban Development (HUD). The City's NSP HUD program is designed for the City to rehabilitate a previously foreclosed or abandoned residential property and to bring the structure up to building code standards. The property is then sold to an eligible NSP1 household who has qualified for homebuyer assistance from NSP1 funds based on program guidelines. This NSP1 applicant was determined to meet the guidelines for homebuyer assistance under the NSP1 program guidelines.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one?

On November 18, 2008, City Council approved a resolution amending the 2005-2010 Consolidated Plan to add a Neighborhood Stabilization Program (NSP) component, amending the City's 2008-2009 Annual Action Plan to add NSP-funded activities, and approval of the International Building Code (IBC) definition of "blighted structure", and authorizing the City Manager to take any actions necessary to accomplish the intent of the resolution upon approval by the City Attorney's Office and Director of Community and Human Development.

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

N/A

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A

N/A

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

DEPARTMENT HEAD: _____

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

Information copy to appropriate Deputy City Manager

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT OF SALE AND ANY OTHER NECESSARY DOCUMENTS BETWEEN THE CITY OF EL PASO AND ROBERTO SERGIO AND LORUAMA HERNANDEZ WHICH WILL ALLOW THE CITY TO CONVEY LOT 19, LESS THE NORTHERLY 4.36 FEET THEREOF AND LESS THE SOUTHERLY 0.77 FEET THEREOF, BLOCK 3, HUECO MOUNTAIN VILLAGE REPLAT A, AN ADDITION TO THE CITY OF EL PASO, EL PASO COUNTY, TEXAS (3699 PRAIRIE ROSE STREET, EL PASO, TEXAS), TO ROBERTO SERGIO AND LORUAMA HERNANDEZ.

WHEREAS, in conjunction with the City's Neighborhood Stabilization Program, the City of El Paso acquired by use of federal funds from the U.S. Department of Housing and Urban Development (HUD), certain abandoned or foreclosed real property legally described as: Lot 19, Less the Northerly 4.36 feet thereof, and Less the Southerly 0.77 feet thereof, Block 3, HUECO MOUNTAIN VILLAGE REPLAT A, An Addition to the City of El Paso, El Paso County, Texas, also known as 3699 PRAIRIE ROSE, El Paso, El Paso County, Texas; and

WHEREAS, the City will or has invested additional federal program funds to rehabilitate the identified property for the program purpose of redeveloping foreclosed or abandoned residential properties for purchase by low to moderate-income households in El Paso as affordable housing units; and

WHEREAS, the City of El Paso has received an independent appraisal of the market value of its interest in the identified property; and

WHEREAS, pursuant to Texas Local Government Code §272.001(g) the City is authorized to sell, exchange, or otherwise convey land or interests to an entity for the development of low-income or moderate-income housing and for less than its fair market value if the conveyance serves a public purpose and under terms and conditions of the transaction so as to effectuate and maintain the public purpose; and

WHEREAS, ROBERTO SERGIO AND LORUAMA HERNANDEZ have been income qualified, in accordance with the Part 5 HUD income verification requirements under the City's Neighborhood Stabilization Program, and ROBERTO SERGIO AND LORUAMA HERNANDEZ represent that they will occupy the property as her/his principal residence for the term of the requisite affordability period, as specified in the contract of sale between ROBERTO SERGIO ANDLORUAMA HERNANDEZ and the City; and

WHEREAS, the City Council finds that the conveyance of the City's interest in the identified property to ROBERTO SERGIO AND LORUAMA HERNANDEZ at its fair market value or less serves a public purpose by promoting and establishing high quality, affordable housing units for purchase by low to moderate-income families in distressed neighborhoods as part of the City's HUD-funded Neighborhood Stabilization Program; and

WHEREAS, the public purpose will be maintained by the terms and conditions of the parties' contract of sale and certain deed restriction in the conveyance deed to enforce the affordability requirements and recapture of federal funds invested by the City in the property; and

WHEREAS, ROBERTO SERGIO AND LORUAMA HERNANDEZ have submitted an offer to purchase the property for the total amount of $84,000.00, to be treated as program income as required by HUD.

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

That the City Manager be authorized to sign a Contract of Sale (including contract amendments to extend the closing date, rearrangements of third-party and/or city financing, or reduction of purchase price in conformance with NSP program guidelines), Special Warranty Deed with Vendor's Lien, and all other related and necessary documents, in a form approved by the City Attorney's Office, conveying the following property to ROBERTO SERGIO AND LORUAMA HERNANDEZ:

> Lot 19, Less the Northerly 4.36 fee thereof, and Less the Southerly 0.77 feet thereof, Block 3, HUECO MOUNTAIN VILLAGE REPLAT A, An Addition to the City of El Paso, El Paso County, Texas; also known as 3699 PRAIRIE ROSE, El Paso, El Paso County, Texas

PASSED AND APPROVED this _____ day of _____, 2012.

THE CITY OF EL PASO

ATTEST:

_____
John F. Cook, Mayor

_____
Richarda Duffy Momsen, City Clerk

APPROVED AS TO CONTENT:

_____
William Lilly, Director
Community and Human Development

APPROVED AS TO FORM:

_____
Marie A. Taylor,
Assistant City Attorney

CHD/12/NSP/ORD/3699 Prairie Rose
12-1039-182 123080_MAT
ORDINANCE NO. _____

STATE OF TEXAS §
§ **CONTRACT OF SALE**
COUNTY OF EL PASO § (Neighborhood Stabilization Program)

This Contract of Sale ("Contract") is entered into this _____ day of _____, 20____, by and between the **CITY OF EL PASO, TEXAS**, hereinafter referred to as the "City" and **ROBERTO SERGIO AND LORUAMA HERNANDEZ**, hereinafter referred to as the "Buyer."

NOW THEREFORE, for and in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Description of Property**. The City hereby agrees to sell and convey and the Buyer hereby agrees to acquire the following described real property located in El Paso County, Texas:

> Lot 19, Less the Northerly 4.36 feet thereof, and Less the Southerly 0.77 feet thereof, Block 3, HUECO MOUNTAIN VILLAGE REPLAT A, An Addition to the City of El Paso, El Paso County, Texas, also known as 3699 PRAIRIE ROSE, El Paso, El Paso County, Texas

together with any interest in (i) all improvements and fixtures, and (ii) all right, title and interest of the City in and to all easements, appurtenances, and right-of-ways, and all interests in, on or to, any land, highway or street, in, on, across, in front of, abutting, or adjoining any such real property, all of such property, hereinafter referred to as the "Property." In addition, the following conditions will be applicable to the City's sale of the Property:

1.1 **Radioactive Materials**. Any conveyance of this Property will be subject to a restrictive covenant in the Deed to the effect that the Buyer, its successors or assigns, will not, in violation of any applicable laws, discard, place, or store upon such land, any radioactive material or other materials which would contaminate or otherwise damage the ground water supply or resources of the City.

1.2 **Surveys**. The Buyer accepts responsibility for conducting its own archeological and environmental surveys of the Property. Mitigation of any conditions on the Property, including archeological sites or, without limitations, adverse environmental conditions, shall be at the expense of the Buyer who shall take the Property subject to all existing conditions. The Buyer accepts responsibility for its determination of the nature and extent of any archeological sites, or without limitations, any adverse environmental conditions by its complete inspection of the Property.

1.3 **Easements**. Easements for water and wastewater lines, if not located in public streets, shall be provided at no cost to the City or its Public Service Board.

1.4 **Groundwater**. All ground water, water rights, or rights to surface water shall be reserved to the City and will be subject to all easements, restrictions, reservations, rights of way, dedications and other encumbrances of record or apparent upon the property. The Buyer shall not have the right to drill a well and produce there from any quantity of groundwater.

1.5 **Affordability Covenants**. Conveyance of the Property shall be made by special warranty deed and shall contain covenants and restrictions running with the land to enforce the affordability covenants required under this Contract. The special warranty deed to Buyer from the City shall contain and be subject to affordability covenants and deed restrictions encumbering the Property which will provide that from the date of recordation of the conveyance deed to Buyer the Property must remain the Buyer's principal residence for a ten (10) year period (the "affordability period") pursuant to 24 CFR 92.254(a)(4) (the "Affordability Covenants"). Buyer represents that Buyer is a qualified Low Moderate and Middle-Income Household (LMMH)having a household income that falls at or below 120% of the area median income (AMI), as established annually by the U.S. Department of Housing and Urban Development, and does not have an ownership interest in any other residential dwelling at the time of the conveyance.

(a) The Affordability Covenants shall stipulate that in the event of a voluntary or involuntary sale or transfer of the Property, or if the Property ceases to be the Buyer's principal residence during the affordability period, the City of El Paso, Texas shall be entitled to and be owed by the Buyer or its successor-in-title, as the owner of record, an amount equal to the $33,576.00 less any proportionate reduction at a rate of one-fifth (1/5th) each year after a 60-month occupancy period by Buyer and amortized loan repayment, or the applicable amount of shared net proceeds based on the formula contained in 24 CFR §92.254(a)(5) (ii)(A)(3) as applicable, being the recapture of the HUD funds invested in the Property by the City to make the Property affordable.

(b) Violation or breach of the Affordability Covenants shall give the City the right to institute any proceeding at law or in equity to recover any sum due to the City. If the City institutes an action to recover any such sum, Buyer or successor-in-title agrees to pay all costs of collection, including court costs and reasonable attorney's fees.

2. **Amount of Payment of Purchase Price**. The purchase price for the property shall be EIGHTY FOUR THOUSAND AND 00/100THS DOLLARS ($84,000.00), plus any additional closing costs as identified in Paragraph 5.2.

2.1 **Payment of Purchase Price**. The purchase price will be payable at the Closing as follows:

(a) Cash portion of purchase price payable by Buyer at closing: $1,570.00

(b) Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium): $82,430.00.

(c) Purchase price (Sum of A and B): $84,000.00.

2.2 The portion of the purchase price not payable in cash will be paid as follows:

(a) Third party financing: One or more third party mortgage loans in the total amount of $ 52,676.00 (excluding any loan funding fee or mortgage insurance premium). If the Property does not satisfy the lenders' underwriting requirements for the loan(s), this contract will terminate and the earnest money will be refunded to the Buyer.

(b) City financing: A promissory note(s) from Buyer to Seller of $33,576.00, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the parties' NSP Written Agreement of even date herewith, incorporated by reference herein. The Buyer will furnish the City with a mortgagee policy of title insurance. City financing will be made subordinate to the primary lender financing obtained under 2.2 (a) above.

2.3 **Earnest Money**. The City acknowledges the receipt of earnest money paid to the City in by the Buyer in the amount of ONE HUNDRED AND 00/100 DOLLARS ($100.00), which will credited to the purchase price at the time of closing.

3. **Conditions to the Buyer's Obligations**. The obligations of the Buyer hereunder are to consummate the transaction contemplated herein are subject to the satisfaction of each of the following conditions, any of which may be waived, in whole or in part, in writing by the Buyer, at or prior to Closing.

3.1 **Inspection**. Subject to the provisions of Paragraph 6.1 hereinafter, the Buyer shall complete its inspection of the Property on or before **one hundred and twenty (120)** working days after the execution of this Contract by the Buyer (the "Inspection Period"). For the purposes hereof, the Buyer may complete or cause to be completed inspections of the Property by inspectors of the Buyer's choice. Inspections may include, but shall not be limited to: (i) physical property inspections; (ii) environmental assessment or engineering study including the performance of tests such as soils tests, water tests or air sampling. The City shall permit the Buyer and the Buyer's inspectors access to the Property at all reasonable times. In the case of any invasive testing (taking samples, etc.), the Buyer shall provide to the City evidence that the consultant making such inspection carries liability insurance and is properly licensed. During the Inspection Period, the Buyer may determine in its sole and absolute discretion whether the Property is suitable for the Buyer's needs. In the event that the Buyer in its sole and absolute discretion determines that the Property is not suitable for its needs, the Buyer may terminate this Contract by delivering a written termination notice to the Seller within the Inspection Period. During the Inspection Period, the City covenants and agrees to make available to the Buyer the Property. Such inspection shall be conducted by the Buyer, and permitted by the City, on business days during normal business hours. To the extent allowed by Texas State law, the Buyer shall be liable for all damage or injury to any person or Property resulting from any such inspection occasioned by the acts of the Buyer, its employees, agents or representatives.

3.2 **Title Insurance**. Within twenty (20) days after receipt of written notification of the City's acceptance of the Buyer's offer, the Buyer shall provide the City with all information necessary to close the sale with the intent that, without good cause existing or further delay, it is anticipated that the City and the Buyer will close within one hundred and twenty (120) days from the date of the approval of the City Council of an ordinance authorizing the sale of the Property. The Buyer at its expense will order a title commitment ("Commitment") from Sierra Title Company accompanied by copies of all recorded documents affecting the Property for the issuance of an Owner's Policy of Title Insurance with respect to the Property, in an amount to be decided by the Buyer ("Owner's Policy").

3.3 **Title Objections**. The Buyer will give the City written notice after it receives the Commitment that the condition of the title set forth in the Commitment is or is not satisfactory. In the event the Buyer states that the condition is not satisfactory, the Buyer will specifically set forth

in such notice the defect or exception to title that is deemed objectionable. The City may promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of the Buyer. Otherwise, this condition will be deemed acceptable and any objection by the Buyer will be deemed waived.

3.4 **Property Condition.**

(a) The City is not required to furnish Seller's Disclosure Notice under Section 5.008, Texas Property Code.

(b) Seller's Disclosure of Lead-based Paint and Lead-based Paint Hazards is required by federal law for a residential dwelling constructed prior to 1978 and the Addendum for the disclosure, if so required, is attached to this contract.

(c) Buyer accepts the Property in its present condition. The City will complete all agreed repairs and treatments prior to the Closing date. All required permits will be obtained, and repairs and treatments must be performed by persons who are licenses or otherwise authorized by law to provide such repairs and treatments. Any transferable warranties received by the City with respect to the repairs and treatments will be transferred to Buyer. The Closing date will be extended up to twenty days, if necessary, to complete repairs and treatments.

4. **Representations of City**. The City hereby represents, to the extent allowed by law, to the Buyer that to the best of its knowledge, as follows:

4.1 **Parties in Possession**. At the time of closing, other than the Buyer, there are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise.

4.2 **Mechanic's Lien**. (i) No action has been taken, suffered or permitted by or on behalf of the City, the effect of which would be to establish or cause the inception or priority of any mechanic's or materialmen's lien, statutory, constitutional or otherwise, or other lien, charge or encumbrance upon the Property or any part thereof or interest therein; and (ii) no liens or lien claims, choate or inchoate, arising from the City's actions or otherwise, exist or can exist for the benefit of mechanics or materialmen in regard to the Property; and (iii) except as expressly disclosed in the documents relating to this transaction, the City has not entered into any contracts or agreements relating to the use or ownership of the Property or by which any person or entity agreed to provide labor, services or materials in regard to the Property or the business of the City.

4.3 **Litigation**. There is no pending or contemplated litigation before or by any court of law pertaining to the Property or which involve incidents occurring on the Property including, but not limited to, claims of damage to persons or Property.

4.4 **Bills Paid**. At closing, there will be no unpaid bills or claims in connection with any repair or operation of the Property as a result of the City's ownership.

4.5 **Compliance Law**. All laws, ordinances, rules and regulations of any Government or any agency, body or subdivision thereof, bearing in the City's development of the Property, have been complied with.

4.6 **Taxes**. While the City owned the Property, the Property was exempt from ad valorem taxes.

4.7 **Pre-Closing Claims**. City agrees that the Buyer's acceptance of title to the Property under the conveyance documents should not create any liability on the Buyer's part to third parties that have claims of any kind against the City in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the City.

4.8 **Condition of Property Prior to Closing**. Prior to Closing, the City shall not create or permit to be created any easement or other condition affecting the Property without the prior written consent of the Buyer.

4.9 **"AS IS, WHERE IS".** THIS CONTRACT IS AN ARMS-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION. THE BUYER ACCEPTS THE AS IS, WHERE IS, AND WITH ALL FAULTS, AND EXCEPT AS THE WARRANTY OF TITLE, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF THE CITY AND THE BUYER TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING: (A) THE CONDITION OF THE PROPERTY AND THE CONDITION; (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE BUYER MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; AND (D) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, THE BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE CITY. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE CITY HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE CITY IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE FOR THE PROPERTY REFLECTS THAT ALL OF THE PROPERTY IS SOLD BY THE CITY AND PURCHASED BY THE BUYER SUBJECT TO THE FOREGOING.

4.10 **ENVIRONMENTAL MATTERS**. AFTER CLOSING, BETWEEEN THE CITY AND THE BUYER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF THE BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS

OCCURRED, **THE BUYER SHALL INDEMNIFY, HOLD HARMLESS, AND RELEASE THE CITY FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. THE BUYER SHALL INDEMNIFY, HOLD HARMLESS AND RELEASE THE CITY FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THE CITY'S OWN NEGLIGLENCE OR THE NEGLIGENCE OF THE CITY'S REPRESENTATIVES. THE BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE CITY FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON THE CITY IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.**

IN PARTICULAR, THE BUYER ACKNOWLEDGES THAT THERE MAY BE ASBESTOS ON THE PROPERTY AND THAT IT MUST COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS IN ADDRESSING ANY ASBESTOS.

4.11 **Survival**. All agreements of the City made in this document and related financing documents shall survive the execution and delivery hereof of the Deed and the Closing hereunder, until such time as all of the obligations of the signatories hereto shall have lapsed in accordance with their respective terms or shall have been discharged in full.

5. **Closing**. The closing of this transaction ("Closing") shall take place at the offices of Sierra Title Company, 120 Shadow Mountain, El Paso, Texas 79912 on or before the later of (i) one hundred twenty (120) days from the Effective Date; or (ii) one hundred twenty(120) days after the execution of this Contract by the City, subject to delays due to the City's efforts to cure any title objection under Section 3.2.

5.1 **Possession**. Possession of the Property will be transferred to the Buyer upon Closing.

5.2 **Closing Costs**.

(a) All recording fees arising from the recordation of documents necessary to show good title to the Property in the Buyer shall be paid by the Buyer.

(b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the Buyer.

5.3 **City's Obligations**. At Closing, the City shall deliver to the Buyer a duly executed and acknowledged Special Warranty Deed in the form substantially similar to that attached hereto as Exhibit "A", conveying the Property and any related easements, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for (i) ad valorem taxes for the year of Closing, if any, which shall be prorated to the date of Closing, and assumed by the

Buyer upon closing, (ii) the standard printed exceptions contained in the usual form of the Owner's Policy, and (iii) any other exceptions set forth in the Title Policy which the Buyer has approved pursuant to Paragraph 4 above.

5.4 **Other Obligations**. Each party shall do all other acts, or deliver any other instruments or documents required or helpful to be done or delivered, in order to consummate this transaction.

6. **Default/Termination.**

6.1 **Breach by City**. In the event that the City shall fail to fully and timely perform any of its obligations under this Contract, or shall fail to consummate the sale of the Property for any reason, except the Buyer's default, or the termination of this Contract in accordance with its terms, the City agrees to absorb the costs the City may have incurred in preparation for the sale of the Property. In addition, the City will return the earnest money provided by the Buyer.

6.2 **Breach by the Buyer**. In the event that the Buyer shall fail to fully and timely perform any of its obligations under this Contract, or shall fail to consummate the sale of the Property for any reason, except the City's default, or the termination of this Contract in accordance with its terms, the Buyer agrees to forfeit the earnest money it has provided to the City.

7. **Miscellaneous**.

7.1 **Notice**. Any notice, demand, direction, request, or other instrument authorized or required by this Contract to be given to or filed with either party, shall be deemed to have been sufficiently given or filed for all purposes, if and when personally delivered or sent by certified mail, postage prepaid, return receipt requested, to the address specified below or at such other address as may be designated in writing by the parties:

City: City Manager
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

Copy to: Neighborhood Stabilization Program
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196
Attn: Arturo Gloria, Senior Grant Planner

Buyer: Roberto Sergio and Loruama Hernandez
2325 Tierra Sol Road
El Paso, Texas 79938

8. **Entire Agreement / Governing Law**. This Contract constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, regarding the subject matter of this Contract, and may be amended or supplemented only by an

instrument in writing, executed by the party against whom enforcement is sought. This Contract shall be governed in all respects, including validity, interpretation and effect, by and shall be enforceable in accordance with the laws of the State of Texas.

8.1 **Time**. Time is of the essence in this Contract and each and every provision hereof.

8.2 **Severability**. If any provision of this Contract shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portion shall not in any way be affected or impaired.

8.3 **Survival of Provisions**. The terms contained in this Contract, including without limitation, representations, warranties, covenants and agreements of the parties, shall survive the Closing and shall not be merged therein. In case any one or more of the provisions contained in this contract for any reason is held invalid, this invalidity will not affect any other provision of this Contract, which will be construed as if the invalid or unenforceable provision had never existed.

8.4 **Binding Effect**. This Contract shall be binding upon the parties hereto and their respective successors and assigns.

8.5 **Compliance**. In accordance with the requirements of Section 2B of the Texas Real Estate License Act, the Buyer is hereby advised that it should be furnished with or obtain a policy of title insurance or have an abstract covering the Property examined by an attorney of its own selection.

8.6 **Effective Date**. As used herein, "Effective Date" shall mean the date of the approval of City Council of an Ordinance authorizing the sale of the Property.

The above instrument, together with all conditions thereto is hereby executed by the City this _____ day of _____, 20_____.

CITY OF EL PASO
A Municipal Corporation

By _____
Joyce A. Wilson, City Manager

APPROVED AS TO CONTENT:

William L. Lilly, Director
Community & Human Development

APPROVED AS TO FORM:

Marie A. Taylor
Assistant City Attorney

[SIGNATURES AND ACKNOWLEDGMENTS CONTINUE ON FOLLOWING PAGE]

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 20___, by Joyce Wilson, City Manager of the City of El Paso.

My Commission Expires:

_____

_____
Notary Public, State of Texas

The above instrument, together with all conditions thereto, is hereby executed by Robert Sergio and Loruama Hernandez as Buyer, this _____ day of _____, 20____.

BUYER:

Roberto Sergio

Loruama Hernandez

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 2nd day of July, 2012, by **Roberto Sergio and Loruama Hernandez** as Buyer.

My Commission Expires:

June 15, 2013

Priscilla Arellano
Notary Public, State of Texas

PRISCILLA ARELLANO
Notary Public, State of Texas
My Commission Expires
JUNE 15, 2013

Exhibit "A"

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL 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.

SPECIAL WARRANTY DEED WITH VENDOR'S LIEN

DATE: _____, 20_____

GRANTOR: THE CITY OF EL PASO, TEXAS, a Texas municipal corporation

GRANTOR'S MAILING ADDRESS (including county):

#2 Civic Center Plaza
El Paso, Texas 79901-1196
El Paso County, Texas

GRANTEE:

GRANTEE'S MAILING ADDRESS (including county):

El Paso, Texas 799
El Paso County, Texas

CONSIDERATION: Valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed and note(s) of even date that are in the aggregate principal amount of $, and is executed by Grantee(s), payable to the order of THE CITY OF EL PASO, TEXAS. The debt evidenced by the note(s) is in partial payment of the purchase price of the Property; the note is secured by a vendor's lien retained in favor of THE CITY OF EL PASO in this Deed and by a Deed of Trust of even date from Grantee(s) to the CITY CLERK OF THE CITY OF EL PASO, Trustee.

OR

"the first-lien note is payable to the order of [first lien third party] in the principal amount of [amount] Dollars ($[amount]). The first-lien note is secured by the first and superior vendor's lien against, and superior title to, the Property retained in this deed in favor of [first lien third party] and is also secured by a first-lien deed of trust of even date from Grantee to [name], Trustee. The second lien note(s) is payable to the order of The City of El Paso, Texas in the principal amount of Dollars ($). The second lien note(s) is secured by a

second and inferior vendor's lien against, and superior title to, the Property retained in this deed and is also secured by a second-lien deed of trust of even date from Grantee to City Clerk of the City of El Paso, Trustee. The second and inferior vendor's lien and second-lien deed of trust will remain subordinate and inferior to all liens securing the first-lien note, regardless of the frequency or manner of renewal, extension, or alteration of any part of the first-lien note or the liens securing it."

"[First lien third party], at Grantee's request, has paid in cash to Grantor that portion of the purchase price of the Property that is evidenced by the first-lien note. The first and superior vendor's lien against and superior title to the Property is retained for the benefit of [first lien third party name] and are transferred to [first lien third party name] without recourse on Grantor to secure the first-lien note. The second and inferior vendor's lien against and superior title to the Property are retained for the benefit of the City of El Paso, Texas and are transferred to the City of El Paso without recourse on Grantor to secure the second-lien note(s)."

PROPERTY (INCLUDING ANY IMPROVEMENTS):

RESTRICTIONS, CONDITIONS, AND RESERVATIONS FROM EXCEPTIONS TO CONVEYANCE AND WARRANTY:

1. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements;

2. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities to statutory water rights, including riparian rights;

3. Any and all judgments, liens, or other assessments relating to the property whether shown of record or not;

4. Rights of parties in possession;

5. This conveyance is subject to all easements, rights-of-way, and prescriptive rights for road, ditches and utility lines, whether of record or not, all presently recorded instruments, other than liens and conveyances that affect the property;

6. Standby fees, taxes and assessments by any taxing authority for the calendar year of 2012 and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, and those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous year, prorated to the date hereof, which GRANTEE agrees to assume;

7. Property is subject to a restrictive covenant to the effect that any purchaser, its successors or assigns, will not, for a period of at least seventy-five (75) years, discard, place, or store upon such land, any radioactive material or other materials which would contaminate or otherwise damage the ground water supply or resources of the GRANTOR;

8. Claims by the Tigua Indian Tribe of Ysleta del Sur Pueblo, as evidenced by that certain Affidavit concerning filing of notice of Claim to the Ysleta Grant and Aboriginal Title Areas, executed by Julian Granillo, Governor of the Ysleta del Sur Pueblo Indian Tribe, also known as the Tigua Indian Community, dated April 12, 1993, filed on April 16, 1993 in Volume 2553, Page 1958, of the Real Property Records, El Paso County, Texas; and

9. Any and all restrictions, reservations, covenants, conditions, easements, and other matters, if any, relating to the Property, whether shown of record or not in the hereinabove mentioned County and State, and to all zoning laws, regulations, and ordinances of municipal and/or other governmental authorities, if any, relating to the hereinabove described Property.

10. _____
[*any other exceptions set forth in the Title Policy*]

11. **AFFORDABILITY COVENANT**.

(a) GRANTEE warrants and represents that he or she is a Low Moderate and Middle-Income Household (LMMH) individual who meets the following criteria: (i) have a household income that falls at or below 120% of the area median income, as establish by the U.S. Department of Housing and Urban Development (HUD); and (ii) does not have an ownership interest in any other residential dwelling at the time of the conveyance.

(b) From the date of recordation of this instrument, GRANTEE will maintain the Property as his or her principal residence for a ten (10) year period (the "affordability period") pursuant to 24 C.F.R. §92.254(a)(4). In the event of a voluntary or involuntary sale or transfer of the Property, or if the Property ceases to be maintained as his or her principal residence during the ten (10) year affordability period, the City of El Paso, Texas shall be entitled to and be owed by GRANTEE or its successor-in-title, as the owner of record, an amount equal to $ less any proportionate reduction at a rate of one-fifth (1/5th) each year after a 60-month occupancy period by the subsequent purchaser and amortized loan repayment, or the applicable amount of shared net proceeds based on the formula contained in 24 C.F.R. 92.254(a)(5)(ii)(A)(3) as applicable, being the recapture of the federal HUD funds invested in Property by the City of El Paso to make the Property affordable to GRANTEE. If there are no shared net proceeds, repayment of the subsidy recapture amount is not required.

(c) This Section is intended to create and does create a restrictive covenant and it is the intent of GRANTOR to convey to GRANTEE the GRANTOR's interest subject to this restrictive covenant. Violation or breach of the restrictive covenant herein shall give the City of El Paso, Texas the right to institute any proceeding at law or in equity to recover any sum due to the City of El Paso under the terms of this covenant. If the City of El Paso institutes an action to recover any such sum, GRANTEE and its successors-in-title agree to pay all costs of collection, including court costs and reasonable attorney's fees.

(d) Any sum payable under this Section shall be made payable to the City of El Paso, Texas and remitted to the City of El Paso, Community and Human Development Department, Housing Programs Division, 2 Civic Center Plaza, 8th Floor, El Paso, Texas 79901, within ten (10) business days of settlement of sale, transfer, lease, or conveyance.

(e) Upon expiration of the affordability period and satisfaction of all other requirements under this Section, the City of El Paso will upon request promptly execute and deliver to the owner of record a release instrument duly executed and in recordable form for filing in the Real Property Records, El Paso County, Texas.

GRANT AND CONVEYANCE:

The GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance, and warranty, GRANTS, SELLS, and CONVEYS to the GRANTEE the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to the GRANTEE, the GRANTEE'S administrators, successors and assigns forever. The GRANTOR binds the GRANTOR and the GRANTOR'S successors and assigns to warrant and forever defend all and singular the property to the GRANTEE and the GRANTEE'S administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations From and Exceptions to Conveyance, when the claim is by, through, or under the GRANTOR but not otherwise.

The GRANTOR has executed and delivered this Deed, and the GRANTEE by recording this Deed has accepted this Deed and has purchased the Property, AS IS, WHERE IS, AND WITH ALL FAULTS, AND EXCEPT AS TO THE WARRANTY OF TITLE, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF THE GRANTOR AND THE GRANTEE TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING: (A) THE CONDITION OF THE PROPERTY; (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE GRANTEE MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (D) PRESENT ZONING AND SURFACE CONDITIONS; AND (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. THE GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, THE GRANTEE IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE GRANTOR. THE GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE GRANTOR HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE GRANTOR IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF,

FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE FOR THE PROPERTY REFLECTS THAT ALL OF THE PROPERTY IS SOLD BY THE GRANTOR AND PURCHASED BY THE GRANTEE SUBJECT TO THE FOREGOING.

AFTER CLOSING, BETWEEEN THE GRANTOR AND THE GRANTEE, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF THE GRANTEE, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING AND ONCE CLOSING HAS OCCURRED, THE GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE GRANTOR FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. **THE GRANTEE INDEMNIFIES, HOLDS HARMLESS AND RELEASES THE GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THE GRANTOR'S OWN NEGLIGLENCE OR THE NEGLIGENCE OF THE GRANTOR'S REPRESENTATIVES.** THE GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON THE GRANTOR IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

The vendor's lien against and superior title to the property are retained until each note described is fully paid or satisfied according to its terms, at which time this deed shall become absolute.

OR: "Each vendor's lien against and superior title to the Property as specified herein are retained until their respective notes are fully paid or satisfied according to its terms, at which time this deed shall become absolute. "

When the context of this instrument requires, singular nouns and pronouns will include the plural.

GRANTOR: THE CITY OF EL PASO, TEXAS,
A Municipal Corporation

_____
Joyce Wilson, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS)

)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 20_____, by JOYCE WILSON, as the City Manager of THE CITY OF EL PASO, TEXAS, a Texas home-ruled municipal corporation on behalf of said corporation as GRANTOR.

My Commission Expires:

_____
Notary Public, State of Texas

_____

ACCEPTANCE

and accepts the terms, covenants, obligations and conditions of this deed.

BUYER:

By:_____

By:_____

[Acknowledgment on Following Page]

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 20_____, by .

My Commission Expires:

_____

_____
Notary Public, State of Texas
Notary's name printed:
_____

AFTER RECORDING RETURN TO:

_____
_____
El Paso, Texas 799___

PREPARED IN THE LAW OFFICE OF:

City Attorney's Office
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901-1196