ORDINANCE _____

AN ORDINANCE RESCINDING ORDINANCE NO. 15775, AND AUTHORIZING THE MAYOR TO SIGN A CONTRACT OF SALE, SPECIAL WARRANTY DEED, RELEASE OF LIEN AND ALL OTHER RELATED DOCUMENTS, CONVEYING TO GEORGE ANTHONY HERRERA THE WEST 30 FEET OF THE EAST 60.30 FEET OF LOTS 1-3, INCLUSIVE, BLOCK 36, MAGOFFIN'S ADDITION, AN ADDITION TO THE CITY OF EL PASO, EL PASO COUNTY, TEXAS (1025 E. EIGHTH AVENUE).

WHEREAS, after obtaining an independent appraisal to establish market value, the City's Purchasing Department on February 11, 2004, advertised for sale to the public the residential property owned by the City and addressed as 1025 E. Eighth Avenue, El Paso, Texas; and

WHEREAS, on March 3, 2004, the Purchasing Department received a high bid for the purchase of the property submitted by Consuelo Acosta;

WHEREAS, on May 4, 2004, the City Council under Ordinance 15775 authorized the sale of residential property located at 1025 E. Eighth Avenue, El Paso, Texas to Consuelo Acosta; and

WHEREAS, following the passage of sixty (60) days, Consuelo Acosta did not close on the purchase of the residential property at 1025 E. Eighth Avenue, El Paso, Texas, as required by the bid documents; and

WHEREAS, the second highest bidder under the bid documents, George Anthony Herrera has submitted the requisite earnest money required under the bid documents and has agreed to purchase the property located at 1025 E. Eighth Avenue, El Paso County, Texas for the bid of $20,625.00; and

WHEREAS, the City Council of the City of El Paso finds that the sale of the property and the execution of the Contract of Sale and Warranty Deed to second highest bidder serves a public purpose and is in the public interest.

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

That the City Council rescinds Ordinance 15775, and authorizes the sale of the following property to the second highest bidder, George Anthony Herrera:

The West 30 feet of the East 60.30 feet of Lots 1 through 3, inclusive, Block 36, Magoffin's Addition, an Addition to the City of El Paso, El Paso County, Texas, according to the map thereof on file in Book 14, Page 19, Plat Records of El Paso County, Texas and being more particularly described by metes and bounds as shown in Exhibit "A"; known and numbered as 1025 E. Eighth Avenue, El Paso, Texas.

and that the Mayor be authorized to sign a Contract of Sale of Real Property and Special Warranty Deed by and between the City of El Paso and George Anthony Herrera, and a Release of Lien related to the City's Lien on the property and any other related documents that may be required to close the sale.

PASSED AND APPROVED this 31st day of August, 2004.

THE CITY OF EL PASO

_____
Joe Wardy
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Lee Ann B. Koehler
Assistant City Attorney

APPROVED AS TO CONTENT:

Nathalie Prise, Interim Director
Community and Human Development

EXHIBIT "A"

PROPERTY DESCRIPTION
1025 East Eighth Avenue

Being the description of 0.055 acres (2,400 square feet) of land known as the West 30.00 feet of the East 60.30 feet of Lots 1, 2 and 3, Block 36, Magoffin Addition, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a City Monument which is 20.00 feet North and 10.00 feet East of the centerline intersection of East Eight Avenue (70.00 feet wide) and Hills Street (70.00 wide);

THENCE, Westerly along the monument line which is 20.00 north and parallel to the centerline of East Eighth Avenue a distance of 75.30 feet to a point;

THENCE, Northerly and parallel Hills Street a distance of 15.00 feet to the TRUE POINT OF BEGINNING of the parcel herein described;

THENCE, Westerly along the north line of East Eighth Avenue a distance of 30.00 feet to a point for corner;

THENCE, Northerly and parallel Hills Street a distance of 80.00 feet to a point for corner on the north line of Lot 3, Block 36;

THENCE, Easterly and parallel East Eighth Avenue along the north line of said Lot 3 a distance of 30.00 feet to a point for corner;

THENCE, Southerly and parallel Hills Street a distance of 80.00 feet to the TRUE POINT OF BEGINNING.

Prepared By:
TURNER COLLIE & BRADEN INC.
EL Paso, Texas
November 23, 1983
TC&B Job No. 5252-002

THE STATE OF TEXAS)
) **CONTRACT OF SALE OF REAL PROPERTY**
COUNTY OF EL PASO)

On this 31st day of August, 2004, THE CITY OF EL PASO (hereinafter referred to as "Seller") hereby sells and agrees to convey to GEORGE ANTHONY HERRERA, (hereinafter referred to as "Purchaser"), and Purchaser agrees to purchase upon the terms and conditions set forth herein, the following described real estate in El Paso County, Texas, being legally described as follows:

> The West 30 feet of the East 60.30 feet of Lots 1 through 3, inclusive, Block 36, Magoffin's Addition, an Addition to the City of El Paso, El Paso County, Texas, according to the map thereof on file in Book 14, Page 19, Plat Records of El Paso County, Texas and being more particularly described by metes and bounds as shown in Exhibit "A"; known and numbered as 1025 E. Eighth Avenue, El Paso, Texas.

together with any interest of the Seller in (i) all improvements, if any, and (ii) all right, title and interest of the Seller in and to any easements, appurtenances and rights-of-way, all of such property herein collectively referred to as the "Property". The consideration hereinafter recited covers not only the above real estate, but also all fixtures and articles of personal property attached to the property and owned by the Seller. This Contract is executed upon the following terms and conditions:

1. Purchase Price. The purchase price for said Property is TWENTY THOUSAND SIX HUNDRED TWENTY FIVE AND NO/100 DOLLARS ($20,625.00) payable at the time of closing.

2. Closing Costs. The Purchaser will pay the following closing costs:

a. All recording fees arising from the recordation of documents necessary to show title to the Property in the Purchaser;

b. Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property;

c. All outstanding taxes for prior years and pro-rated portion thereof to the date of closing, which have been assessed against the property;

d. Escrow fees, if any;

e. and any other incidental closing costs not specifically stated to be paid by Seller herein.

The Purchaser and the Seller shall bear its own attorney's fees.

3. Closing. The closing of this transaction shall take place at Sierra Title Company in El Paso, Texas; such closing shall take place within sixty (60) days of the execution of this Contract.

4. Possession. Physical Possession of the Property shall be surrendered by the Seller to the Purchaser at closing. If there are any parties in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise, at the time of closing, it will be Purchaser's responsibility to secure possession.

5. Entire Agreement. The parties hereto expressly acknowledge and agree that, with regard to the subject matter of this Contract and the transactions contemplated herein (a) there are no oral agreements between the parties hereto; and (b) this Contract, including the defined terms and all exhibits and addendums, if any, attached hereto, (i) embodies the final and complete agreement between the parties; (ii) supersedes all prior and contemporaneous negotiations, offers, proposals, agreements, commitments, promises, acts, conduct, course of dealing, representations, statements, assurances and understandings, whether oral or written, and (iii) may not be varied or contradicted by evidence of any such prior or contemporaneous matter or by evidence of any subsequent oral agreement of the parties hereto.

6. Notice. In accordance with the requirements of the Texas Real Estate License Act, the Purchaser is herewith advised that it should be furnished with or obtain a policy of Title Insurance or have an abstract covering the Real Estate which is the subject to this Contract examined by an attorney of its own selection.

7. Transfer of Title. The Seller agrees to furnish the Purchaser with a Special Warranty Deed. Title may be subject to:

a. Present restrictions of record, if any, existing against said property and set forth in the Title Policy.

b. Existing building and zoning ordinances, if any.

c. Easements and rights-of-way of record and set forth in the Title Policy.

d. Any and all judgments, liens, or other assessments related to the Property, whether shown of record or not.

8. AS IS PURCHASE. 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 AND REFLECTS THE AGREEMENT OF THE PARTIES THAT THERE ARE NO REPRESENTATIONS, DISCLOSURES OR EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE PROPERTY.

9. Binding Effect. This Contract shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and permitted

assigns; provided, however, the Purchaser may not assign this Contract without the express prior written consent of the Seller; said consent will only be granted if the assignment otherwise is in accordance with all laws of the State of Texas.

10. Governing Law. 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.

11. Time. Time is of the essence of this Contract and each and every provision hereof.

12. 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.

13. Survival of Provisions. All representations, warranties, covenants and agreements of the Seller made in this document shall survive the execution and delivery hereof 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.

14. Ambiguities Not to be Construed Against Party Who Drafted Contracts. The rule of construction that ambiguities in a document will be construed again the party who drafted it will not be applied in interpreting this Contract.

15. Waiver of Consumer Rights. Buyer waives its rights under the Texas Deceptive Trade Practices-Consumer Protection Act, Section 17.45 et seq. of the Texas Business and Commerce Code, a law that gives consumers special rights and protections. After consultation with an attorney of its own selection, Purchaser voluntarily consents to this waiver.

SELLER: THE CITY OF EL PASO

_____
Joe Wardy
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Lee Ann B. Koehler
Assistant City Attorney

APPROVED AS TO CONTENT:

Nathalie Prise, Interim Director
Community & Human Development

PURCHASER: GEORGE ANTHONY HERRERA

_____
George Anthony Herrera

Acknowledgment

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2004, by JOE WARDY, as the Mayor of THE CITY OF EL PASO, TEXAS, a Texas home-ruled municipal corporation on behalf of said corporation as GRANTOR.

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

Acknowledgment

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2004, by GEORGE ANTHONY HERRERA.

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

EXHIBIT "A"

PROPERTY DESCRIPTION
1025 East Eighth Avenue

Being the description of 0.055 acres (2,400 square feet) of land known as the West 30.00 feet of the East 60.30 feet of Lots 1, 2 and 3, Block 36, Magoffin Addition, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a City Monument which is 20.00 feet North and 10.00 feet East of the centerline intersection of East Eight Avenue (70.00 feet wide) and Hills Street (70.00 wide);

THENCE, Westerly along the monument line which is 20.00 north and parallel to the centerline of East Eighth Avenue a distance of 75.30 feet to a point;

THENCE, Northerly and parallel Hills Street a distance of 15.00 feet to the TRUE POINT OF BEGINNING of the parcel herein described;

THENCE, Westerly along the north line of East Eighth Avenue a distance of 30.00 feet to a point for corner;

THENCE, Northerly and parallel Hills Street a distance of 80.00 feet to a point for corner on the north line of Lot 3, Block 36;

THENCE, Easterly and parallel East Eighth Avenue along the north line of said Lot 3 a distance of 30.00 feet to a point for corner;

THENCE, Southerly and parallel Hills Street a distance of 80.00 feet to the TRUE POINT OF BEGINNING.

Prepared By:
TURNER COLLIE & BRADEN INC.
EL Paso, Texas
November 23, 1983
TC&B Job No. 5252-002

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

SPECIAL WARRANTY DEED

DATE:

GRANTOR: THE CITY OF EL PASO, TEXAS
#2 Civic Center Plaza
El Paso County
El Paso, Texas 79901-1196

GRANTEE: GEORGE ANTHONY HERRERA
P.O. Box 3077
South Pasadena, CA 91031

CONSIDERATION: TEN DOLLARS AND OTHER VALUABLE CONSIDERATION.

PROPERTY (INCLUDING ANY IMPROVEMENTS):

The West 30 feet of the East 60.30 feet of Lots 1 through 3, inclusive, Block 36, Magoffin's Addition, an Addition to the City of El Paso, El Paso County, Texas, according to the map thereof on file in Book 14, Page 19, Plat Records of El Paso County, Texas and being more particularly described by metes and bounds as shown in Exhibit "A"; known and numbered as 1025 E. Eighth Avenue, El Paso, Texas.

RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE:

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. Standby fees, taxes and assessments by any taxing authority for prior years, or subsequent taxes and assessments due to change in land usage or ownership;

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

5. Rights of parties in possession;

6. Rights of adjoining owners in yard, party rock walls and/or fences where situated on a common boundary line; and

7. 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.

GRANT AND CONVEYANCE:

GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance, and warranty, GRANTS, SELLS, and CONVEYS to GRANTEE the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to GRANTEE, GRANTEE'S administrators, successors and assigns forever. GRANTOR binds GRANTOR and GRANTOR'S successors and assigns to warrant and forever defend all and singular the property to GRANTEE and 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 GRANTOR but not otherwise.

GRANTOR has executed and delivered this Deed, and 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 GRANTOR AND 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 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; AND (D) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, GRANTEE IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY GRANTOR. 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 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. 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 GRANTOR AND PURCHASED BY GRANTEE SUBJECT TO THE FOREGOING.

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

GRANTOR: THE CITY OF EL PASO, TEXAS

_____
Joe Wardy
Mayor

ATTEST:

_____
Richarda Duffa Momsen
City Clerk

APPROVED AS TO FORM:

Lee Ann B. Koehler
Assistant City Attorney

APPROVED AS TO CONTENT:

Nathalie Prise, Interim Director
Community and Human Development

Acknowledgment

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2004, by JOE WARDY, as the Mayor of THE CITY OF EL PASO, TEXAS, a Texas home-ruled municipal corporation on behalf of said corporation as GRANTOR.

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

AFTER RECORDING RETURN TO:

PREPARED IN THE LAW OFFICE OF:
City Attorney's Office
City of El Paso, Texas
#2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901-1196

RELEASE OF LIEN

Date:	
Note:	REAL ESTATE LIEN NOTE
Date:	February 27, 1984
Original Amount:	TWENTY THREE THOUSAND AND NO/100 DOLLARS ($23,000.00)
Makers:	Antonio C. Gomez and Maria Elena Gomez
Payee:	El Paso Public Development Corporation
Date of Maturity:	as provided in said Note
Holder of Note and Lien:	City of El Paso

Holder's Mailing Address (including County):

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

Note and Lien are described in the following documents recorded in:

Vendor's Lien retained in favor of GRANTORS, in deed dated 2/27/84, recorded in Book 1432, Page 530 Real Property Records of El Paso County, Texas, from EL PASO PUBLIC DEVELOPMENT CORPORATION, to ANTONIO C. GOMEZ AND WIFE, MARIA ELENA GOMEZ, securing the payment of one note of even date therewith in the principal sum of $23,000.00, signed by the Grantee and payable to the order of said beneficiary as therein fully shown, containing the usual attorney's fee and maturity clause and being additionally secured by Deed of Trust from makers of the note to Larry Baskind, Trustee for said payee, recorded in Book 1432, page 536, Real Property Records of El Paso County, Texas to all of which and its record, reference is here made for full particulars.

Beneficial Interest in above lien assigned to THE CITY OF EL PASO by instrument dated 3-16-90, filed 4-6-90, recorded in Book 2165, Page 234, Real Property Records of El Paso County, Texas

Property (including any improvements) Subject to Lien:

The West 30 feet of the East 60.30 feet of Lots 1 through 3, inclusive, Block 36, MAGOFFIN'S ADDITION, an Addition to the City of El Paso, El Paso County, Texas, according to the Map thereof on File in Book 14, Page 19, Plat Records of El Paso County, Texas, and being more particularly described by Metes and Bounds as shown in Exhibit "A" attached hereto and made a part hereof for all purpose intended.

Holder of the notes acknowledges full satisfaction and compliance with repayment terms and releases the property from the lien.

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

APPROVED this 31st day of August, 2004.

THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

Richarda Duffy Momsen, Trustee

APPROVED AS TO FORM:

Lee Ann B. Koehler
Assistant City Attorney

APPROVED AS TO CONTENT:

Nathalie Prise, Interim Director
Community and Human Development

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2004, by JOE WARDY, as Mayor of the City of El Paso, a municipal corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

Notary's Commission Expires:
_____

_____
Notary's name (printed)

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2004, by RICHARDA DUFFY MOMSEN, as City Clerk and Trustee of the City of El Paso, a municipal corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

Notary's Commission Expires:
_____

_____
Notary's name (printed)

AFTER RECORDING RETURN TO:
_____
_____
_____

PREPARED IN THE LAW OFFICE OF:
City Attorney's Office
#2 Civic Center Plaza
El Paso, TX 79901-1196

EXHIBIT "A"

PROPERTY DESCRIPTION
1025 East Eighth Avenue

Being the description of 0.055 acres (2,400 square feet) of land known as the West 30.00 feet of the East 60.30 feet of Lots 1, 2 and 3, Block 36, Magoffin Addition, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

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Prepared By:
TURNER COLLIE & BRADEN INC.
EL Paso, Texas
November 23, 1983
TC&B Job No. 5252-002