

**CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)**

DEPARTMENT: Community and Human Development
AGENDA DATE: 08/28/07
CONTACT PERSON/PHONE: Bill Lilly, Director (541-4500)
DISTRICT(S) AFFECTED: District No. 2

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07 AUG 20 PM 2:43

SUBJECT:

A resolution authorizing the City Manager to sign a Second Amendment to Forgivable Loan Agreement, a Subordination Agreement, acknowledgment and acceptance of a Deed of Trust, and a Release of Lien, by and between the City of El Paso and Bienvivir Senior Health Services, in relation to the refinancing and operation of a senior adult day health care center and residential Alzheimer unit on the property located at 2300 McKinley Avenue.

(District No. 2) (Community and Human Development, William Lilly, (915) 541-4500)

BACKGROUND / DISCUSSION:

In 1999, Bienvivir Senior Health Services received a forgivable loan in the amount of \$457,500 from the City through the Community Development Block Grant Program, 24th Year (1998-1999), to fund a portion of the cost to design a new facility located at 2300 McKinley to include a senior adult day health care center and residential Alzheimer's unit for the benefit of low and moderate income El Paso residents. In 2001, Bienvivir obtained financing necessary to construct the facility through the issuance of tax-exempt bonds (Senior Care Facilities Revenue Bonds-Bienvivir Senior Health Services Project) and, as contemplated, Bienvivir and the City amended the forgivable loan agreement and the City took a second priority lien against the 2300 McKinley property because Bienvivir was required to give a first priority lien on the property to the trustee for the bondholders.

In June 2007, Bienvivir informed the City that it was in the process of refinancing or "refunding" the 2001 bonds by issuing Series 2007 bonds bearing a lower interest rate and in the sum of approximately \$25,000,000.00. Of the \$7,900,000.00 remaining after refunding of the 2001 bonds, Bienvivir will use approximately \$500,000.00 of those funds for construction of an additional parking lot for the 2300 McKinley facility with the remainder allocated for capital improvements to its 940 N. Carolina facility, service equipment purchases, and underwriting costs. Bienvivir has informed the City that the El Paso Health Care Facilities Development Corporation will issue the Series 2007 bonds and JPMorgan Chase Bank, N.A., will issue its Irrevocable Transferable Letter of Credit to provide credit enhancement and liquidity for the payment or purchase price of the new bonds and will require a first priority lien on the 2300 McKinley property. Bienvivir is requesting that the parties amend the forgivable loan agreement and execute a subordination agreement, by which the City would agree to release its current lien and accept a subordinate deed of trust as a second priority lien against the property at the closing. Bienvivir has obtained an appraisal showing that the fair market value of the McKinley facility is \$18,200,000.00 and it will also pledge its liquid assets, which are approximately \$22,848,000.00 as a security interest to be enforced prior to the foreclosing of any real property. The value of collateral remaining would be approximately \$16,048,000.00, which would more than secure the City's lien. Accordingly, after the new bonds are sold, the City would hold a second lien against the 2300 McKinley property which lien secures the obligations owed to the City and which arise from the parties' agreement entered into in 1999, and first amended in 2001. Currently, the City's loan to Bienvivir has been conditionally forgiven, subject to the City's reversionary interest in all assets acquired with CDBG funds under the agreement for the 5-year reversionary period, which expires on April 27, 2009.

The CD Director approves and recommends that the City Manager be authorized to sign the Second Amendment to Forgivable Loan Agreement, a Subordination Agreement, a Deed of Trust, and Release of Lien, related to the Project with Bienvivir.

PRIOR COUNCIL ACTION:

On August 28, 2001, Council authorized the Mayor, on behalf of the City, to sign a First Amendment to Forgivable Loan Agreement, First Amendment to Escrow Agreement, and a Subordination Agreement, by and between the City and Bienvivir, related to this Project. On September 12, 2001, Council authorized the Mayor to sign a Deed of Trust placing the lien on the 2300 McKinley property.

AMOUNT AND SOURCE OF FUNDING:

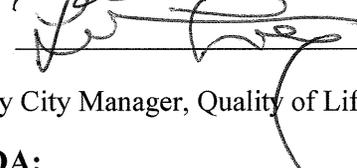
N/A

BOARD / COMMISSION ACTION:

N/A

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

LEGAL: (if required)  **FINANCE:** (if required) _____

DEPARTMENT HEAD:  _____

cc: Deborah G. Hamlyn, Deputy City Manager, Quality of Life

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

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RESOLUTION

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

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That the City Manager be authorized to sign a Second Amendment to Forgivable Loan Agreement, a Subordination Agreement, acknowledgment and acceptance of a Deed of Trust, and Release of Lien, by and between the City of El Paso and Bienvivir Senior Health Services and JPMorgan Chase Bank, N.A., where applicable, in relation to the refinancing and operation of a senior adult day health care center and residential Alzheimer unit on the property located at 2300 McKinley Avenue.

ADOPTED this ____ day of _____, 2007.

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 L. Lilly, Director
Community and Human Development

SECOND AMENDMENT TO FORGIVABLE LOAN AGREEMENT

THIS SECOND AMENDMENT TO FORGIVABLE LOAN AGREEMENT (this "Amendment"), is entered into by and between BIENVIVIR SENIOR HEALTH SERVICES, a Texas nonprofit corporation (the "Grantee") and the CITY OF EL PASO, a municipal corporation (the "City").

Whereas, the Grantee and the City have entered into that certain Forgivable Loan Agreement dated April 27, 1999, a copy of which is attached hereto, denoted as Exhibit "A" and incorporated herein, as amended by a First Amendment to Forgivable Loan Agreement dated August 28, 2001, a copy of which is attached hereto, denoted as Exhibit "B" and incorporated herein, (collectively, the "Loan Agreement"), with respect to a forgivable loan by the City to the Grantee and evidenced by a promissory note in the original principal amount of \$457,500.00, executed by the Grantee as "Maker", in favor of the City as "Payee", dated June 10, 1999 (the "Note").

Whereas, as contemplated by the Loan Agreement, the Grantee has: (i) acquired certain real property located at 2300 McKinley, in El Paso County, El Paso, Texas (the "McKinley Property") for the purpose of constructing thereon a senior adult day health care center and residential Alzheimer's unit (the "Center"); and (ii) utilized the proceeds of the forgivable loan in connection with the design of the Center.

Whereas, in accordance with the terms of the Loan Agreement, as amended, the Grantee executed a Deed of Trust, recorded in Volume 4118, Page 934, of the Real Property Records of El Paso County, Texas (the "2001 Deed of Trust"), against the McKinley Property to secure the Grantee's obligations pursuant to the Loan Agreement and Note, including the Grantee's obligation to use the Center to meet a national objective.

Whereas, the loan to the Grantee has been conditionally forgiven pursuant to the terms of the Loan Agreement and the reversionary period during which the Grantee is obligated to continue to use the McKinley Property to meet a national objective will end on April 27, 2009.

Whereas, the Grantee obtained the financing necessary to construct the Center through the issuance of tax exempt bonds (the "2001 Bonds"), and the Grantee was required to give a first priority lien on the McKinley Property to the trustee for the holders of the 2001 Bonds, the City's lien against the McKinley Property is a second lien and is subordinate to the lien held by the Master Trustee for the bondholders.

Whereas, the Grantee is now in the process of refunding the 2001 Bonds by issuing Series 2007 Bonds (the "2007 Bonds") and, as a condition precedent, the Grantee will be required to give a first priority lien on the McKinley Property to JPMorgan Chase Bank, N.A. (the "Bank"), as liquidity provider and credit enhancer of the 2007 Bonds.

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Whereas, at the time that this Amendment is executed, the Grantee has utilized the proceeds of the forgivable loan to pay for a portion of the cost to design the Center in accordance with the terms and conditions of the Loan Agreement, construction of the Center has been concluded and the City has determined that the Grantee has sufficient equity in the McKinley Property to secure a second priority lien in favor of the City at this time.

Whereas, in order to permit the City to pledge a first priority lien in favor of the Bank, the Grantee and the City have agreed that the City will release the 2001 Deed of Trust, in exchange for a subordinate deed of trust on the McKinley Property.

Now Therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantee and the City hereby agree as follows:

I.

SECTION 4 – GRANTEE OBLIGATIONS – ACQUISITION AND DESIGN

Section 4.A of the Loan Agreement shall be amended by adding the following new subsection:

3. In connection with the issuance of the 2007 Bonds by the Grantee:
 - a. At the Grantee's expense, the Grantee shall execute and record a subordinate Deed of Trust against the McKinley Property, and deliver a file-stamped copy of the same to the City, together with either a Mortgagee Title Policy in the amount of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$457,500.00) which provides the City with sufficient priority status for its lien to secure all funds advanced under the Loan Documents, or an endorsement to an existing Mortgagee Title Policy which shall be acceptable in form to the City.
 - b. The City shall execute and deliver to the Grantee a Release of Lien for the 2001 Deed of Trust.

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II.

SECTION 6 – PROMISSORY NOTE, DEED OF TRUST, ESCROW AGREEMENT

Section 6.B. The following language shall be added to the text of Section 6.B of the Loan Agreement:

Thereafter and in connection with the issuance of the 2007 Bonds by the Grantee, at the Grantee's expense, the Grantee shall execute and record a second priority lien in favor of the City by filing a subordinate Deed of Trust against the McKinley Property, and deliver a file-stamped copy of the same to the City, together

with either a Mortgagee Title Policy in the amount of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$457,500.00) which provides the City with sufficient priority status for its lien to secure all funds advanced under the Loan Documents, or an endorsement to an existing Mortgagee Title Policy which shall be acceptable in form to the City.

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III.
SECTION 21 – GENERAL PROVISIONS

Section 21.I of the Loan Agreement shall be amended by changing the address of the Grantee as follows:

GRANTEE: **BIENVIVIR SENIOR HEALTH SERVICES**
Attention: Rosemary Castillo, Chief Executive Officer
2300 McKinley Drive
El Paso, Texas 79932

Section 21 of the Loan Agreement shall be further amended by adding the following new subsection:

K. The Grantee represents and warrants that it has received the City's Public Facilities Monitoring report dated August 3, 2007, that Grantee is using its best efforts to collect the information requested and to address the concerns raised therein and that, to the best of Grantee's knowledge and belief, Grantee will be able to timely provide to the City all information requested and address the concerns raised in such report.

IV.
REMAINING TERMS AND PROVISIONS

Except as amended or otherwise modified herein, all terms and provisions of the Loan Agreement, as amended and modified, shall remain in full force and effect as written, and the Grantee and the City hereby agree and acknowledge that except as expressly set forth herein, this Amendment will not modify or otherwise alter their respective duties, obligations and liabilities thereunder.

V.
CAPITALIZED AND DEFINED TERMS

Unless otherwise defined herein, all capitalized terms shall have the same meanings as used in the Loan Agreement. All capitalized terms in this Amendment, which are not otherwise defined in the Loan Agreement are hereby incorporated therein.

THIS SECOND AMENDMENT TO FORGIVABLE LOAN AGREEMENT, AND ANY OTHER LOAN OR SECURITY DOCUMENTS PREVIOUSLY OR NOW EXECUTED IN CONNECTION HERewith BETWEEN THE PARTIES HERETO REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

EXECUTED to be effective as of the _____ day of August, 2007.

CITY OF EL PASO

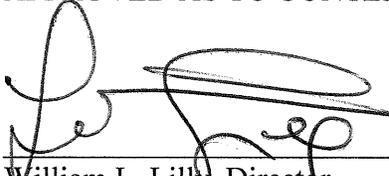
By: _____
Joyce A. Wilson, City Manager

APPROVED AS TO FORM:



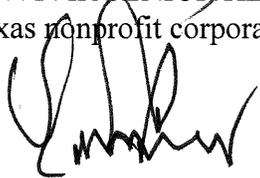
Marie Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



William L. Lilly, Director
Community and Human Development
Department

GRANTEE: BIENVIVIR SENIOR HEALTH SERVICES,
a Texas nonprofit corporation



By: Lee Conner, Chair

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STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2007, by **JOYCE A. WILSON**, City Manager of the **CITY OF EL PASO**, a home-rule municipal corporation, behalf of said corporation.

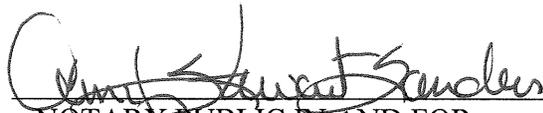
Notary's Official Seal:

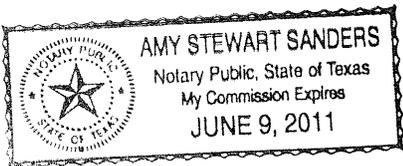
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 17th day of August, 2007, by **LEE CONNER**, as Chair of the Board of Directors of **BIENVIVIR SENIOR HEALTH SERVICES**, a Texas nonprofit corporation, on behalf of said corporation.

Notary's Official Seal:


NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS



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EXHIBIT "A"

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FORGIVABLE LOAN AGREEMENT

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BIENVIVIR SENIOR HEALTH SERVICES

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This Agreement, between the City of El Paso, a municipal corporation, hereinafter referred to as "City" and **BIENVIVIR SENIOR HEALTH SERVICES**, a tax-exempt, non-profit corporation, hereinafter referred to as "Grantee," shall be effective upon its execution and shall terminate exactly five (5) years later.

WHEREAS, a grant has been made through the Community Development Block Grant (CDBG) program, to be administered by the City and made available to eligible subrecipients; and

WHEREAS, Grantee has agreed to comply with all applicable requirements for a contingently forgivable loan;

NOW, THEREFORE, the parties mutually agree as follows:

Section 1. PROGRAM SCOPE

A. Grantee is to acquire with private funds (meaning funds acquired from a source other than the CDBG program) the property identified herein and design a new facility on the property, which will include a senior adult day health care center and a residential Alzheimer's unit for the benefit of low and moderate income residents of El Paso, in accordance with the Project Scope and Budget attached hereto and incorporated herein as Exhibit "A" for all purposes.

B. Grantee agrees to keep the facility open and operating during all such hours as are normal for a facility of this type and as further detailed in Exhibit "A". Grantee also agrees that the facility will be made fully accessible to disabled persons and agrees to comply with City Ordinance No. 9779 concerning the disabled dated August 8, 1989. This obligation to operate

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the facility shall continue for the term of this Agreement and for the full five (5) year reversionary period thereafter.

Section 2. REQUIRED INFORMATION

Prior to the execution hereof, Grantee shall provide City the following:

A. A current executed copy of its Articles of Incorporation, and any amendments thereto, as on file with the Texas Secretary of State;

B. A copy of correspondence by the Comptroller of Public Accounts for the State of Texas which verifies that Grantee is a duly licensed, non-profit corporation registered to conduct business in the State of Texas;

C. A copy of the Internal Revenue Service's approval of Grantee's tax exempt status;

D. A copy of the current by-laws of Grantee, certified to be correct by the President and attested by the Secretary of Grantee;

E. A roster of all officers, boards, and committee-members of Grantee (including their addresses), certified to be correct by the President and attested to by the Secretary of Grantee;

F. A statement certified by the Board of Directors (i) that Grantee is financially solvent, and (other than current accounts payable) that no claims, past due taxes, liens, judgments, or law suits now exist against Grantee or its assets; and (ii) that Grantee shall immediately notify City in writing if there are any changes during the life of this Agreement, in any of the items covered by this Section 2. Any violation of this provision, or misrepresentation hereunder, shall constitute a breach of this Agreement. City shall have no further obligation to pay or perform under this Agreement except for services which have already been performed.

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Section 3. GENERAL PURPOSES AND REQUIREMENTS

A. Under this Agreement, City proposes to make a loan of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$457,500.00) or the actual cost of design and related expenses as described in the Project Scope and Budget attached hereto, whichever amount is less. Provided Grantee faithfully performs in full its obligations hereunder, City shall conditionally forgive this loan amount five (5) years from the date of this Agreement, subject to City's reversionary interest in all assets acquired under this Agreement for an additional five (5) years. If for any reason, Grantee ceases to exist or fails to meet a national objective (assisting low and moderate income persons) during the total ten (10) year period, all assets securing Grantee's obligations hereunder shall be surrendered to City and Grantee agrees to execute all documentation necessary to achieve such transfer(s).

B. Grantee understands that under HUD regulation 24 CFR §570.503(b)(8)(i), upon any termination hereof, including a simple expiration of this Agreement, Grantee must continue for an additional five (5) years to use the site acquired and facility designed hereunder for one of the "national objectives" set forth in 24 CFR §570.208, or shall make payment to City as set forth in 24 CFR §570.503(b)(8)(ii). All forgiveness herein shall remain conditional until Grantee fully performs all obligations hereunder, including proper use or disposition of the site following termination or expiration of this Agreement.

Section 4. GRANTEE OBLIGATIONS - ACQUISITION AND DESIGN

A. Grantee shall purchase the property referred to in Exhibit "A" utilizing private funds of the Grantee. In purchasing, Grantee shall:

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1. Determine that the property is free and clear of all liens and encumbrances, or alternatively, provide City with sufficient priority status for a lien on the property to secure all funds advanced hereunder.

2. Within sixty (60) days of the closing of the property provide the City with:

a. A Deed of Trust on the acquired property, which will secure all funds advanced hereunder and which will replace the Deed of Trust executed by Grantee to the City at loan closing as per Section 6 of this Agreement; and

b. A Mortgage Title Policy, at Grantee's expense, in the amount of \$457,500.00 that reflects the acquired property to be free and clear of all liens and encumbrances or alternatively, provides the City with sufficient priority status for its lien to secure all funds advanced hereunder. Upon receipt of the replacement Deed of Trust referred to above, City agrees to execute and deliver to Grantee a Release of Lien applicable to the property pledged by Grantee at loan closing pursuant to Section 6.

B. Grantee further agrees that it shall submit for review all plans, specifications, and work schedules, the construction contract, and all related documents (all hereafter called "Plans"). These items must be submitted to City's Director of Community and Human Development (hereinafter called "Director"). Grantee agrees that the Director, in her sole discretion, reasonably exercised, shall have the final authority to determine whether the Plans are in accordance with the requirements of this Agreement. Grantee understands Director's review of the Plans is solely for the benefit of City and HUD and neither Director, HUD, nor City shall be responsible for any mistakes or deficiencies. Grantee is and remains fully responsible for compliance with professional architectural, professional engineering, and other applicable standards and that Grantee shall bear complete and sole liability for determining whether or not

the plans will result in the construction of a safe, structurally sound, durable, functional, and attractive building suitable for the uses intended.

C. Grantee agrees that the selection of a design consultant, who must be a Registered Professional Architect, will be selected by a committee set up by Grantee, which considers a minimum of three design consultants. City will review and approve the design contract.

E. Grantee agrees that the site to be acquired, and any design, and subsequent construction work on the site acquired, and the Loan advanced herein, shall be used primarily and continuously for the purposes described in this Agreement in Sections 1 and 3 above and in accordance with the Plans and Specifications discussed above.

F. Grantee agrees to use a competitive bid process in compliance with all federal funding requirements to select Grantee's construction contractor. Grantee will include supplemental conditions for government requirements or other applicable attachments of equivalent form and appropriate bonds and insurance which are applicable to federal funding requirements and which are reasonably acceptable to the City.

G. Grantee agrees that any Program Income hereunder shall be used by Grantee in the furtherance of objectives as set forth in Section 1, provided such expenditures shall be subject to the continuing approval of City. Grantee is directed to 24 CFR §570.500 for a definition of Program Income and for additional requirements with regard thereto.

Section 5. DRAWDOWNS (LOAN DISBURSEMENTS)

Loan disbursements shall be made only upon receipt by City of Grantee's written request for such disbursement, and only upon approval of the Director. Such requests must be accompanied by documentation of the architect(s) hired by Grantee, which reflects the percentage of completion of the work under the contract, and approved by Grantee as to accuracy

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and as being performed in accordance with this Agreement and design and professional services contracts. Approval of disbursements may be withheld by the Director if, in the reasonable exercise of the Director's discretion, there is a determination that the request or its backup material is inaccurate or inadequate, or if Grantee is in any way in default hereunder. Representatives of City may at all reasonable times examine the work in process. Payments (to the extent funds are available) shall be made after each design phase has been accepted and approved in writing by Grantee and City.

Section 6. PROMISSORY NOTE, DEED OF TRUST, ESCROW AGREEMENT

Grantee agrees to execute and deliver to City the following:

A. A Promissory Note at loan closing, in an amount of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$457,500.00), which is incorporated by reference and made a part hereof, for all purposes as Exhibit "B". In the case of a default hereunder, Grantee will be required to make all scheduled payments under said Note.

B. A Deed of Trust at loan closing, which is incorporated by reference and made a part hereof, and attached as Exhibit "C" securing all funds advanced under this Agreement. Grantee will provide the foregoing so that City has a valid and enforceable lien (of sufficient lien priority to secure all funds advanced hereunder) on said property identified in the Deed of Trust in an amount of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$457,500.00). Said lien shall also secure City's right to Grantee's performance of all its obligations hereunder. At closing, Grantee, at Grantee's expense, shall provide City with a Mortgagee Title Policy in the amount of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$457,500.00) that reflects the property described in the Deed of Trust to be free and clear of all liens and encumbrances which

will provide City with sufficient priority status for its lien to secure all funds advanced hereunder; alternatively, Grantee, at Grantee's expense, shall provide an endorsement to an existing Mortgage Title Policy which shall be acceptable in form to the City.

C. An Escrow Agreement at loan closing, which evidences that the sum of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$457,500.00) has been placed in escrow to guarantee to the City that construction on the facility designed hereunder shall commence within eighteen (18) months from the effective date of this Agreement. (For purposes of this Agreement, construction will be deemed to have commenced when the Grantee has issued a Notice to Proceed to the selected construction contractor and the contractor has begun work.) The terms of the Escrow Agreement shall be acceptable to and approved by the City. If construction on the facility does not commence as required by the terms of this Agreement and the Escrow Agreement, the Grantee shall forfeit from the escrowed funds the entire amount of funds which have been advanced from the City to Grantee hereunder.

Section 7. COMPLETION OF ACQUISITION, DESIGN AND DEMOLITION

Time shall be of the essence in all aspects of this Agreement. Every reasonable attempt shall be made by Grantee to acquire the land not later than December 31, 1999. In any event, the acquisition and design are to be completed no later than fifteen (15) months from the effective date of this Agreement. Grantee shall have commenced construction, as defined herein, on the facility on the property acquired and identified in Exhibit "A" within eighteen (18) months from the effective date of this Agreement.

Section 8. EVENTS OF DEFAULT OR BREACH

A Default shall consist of:

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1. Any use of loan funds for any purpose other than as authorized in this Agreement;
2. A breach of any covenant, agreement, or warranty of the Grantee made in this Agreement or in any contract entered into between Grantee and any third party relating to this project;
3. The occurrence of any default under this loan agreement or its performance, specifically including the failure of Grantee to commence construction on the facility designed hereunder within eighteen (18) months from the effective date of this Agreement.
4. The existence of any collusion or bad faith by or with the acquiescence of Grantee;
5. The filing of any petition by or against Grantee under the Federal Bankruptcy Act or any similar law, state or federal, or Grantee's failure to continue operations as a going concern, or Grantee's insolvency, or any manifestation or statement by Grantee that it does not intend to continue performance of its obligations hereunder.

Section 9. CITY'S REMEDIES UPON DEFAULT

Upon the occurrence of any event of default, City may, in addition to all remedies conferred upon it by law, by the Note, by this Agreement, or otherwise, pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other. City may notify Borrower in general terms, in writing, of the actions it intends to take, but is not required to do so. City may change its course of action at any time as determined by a majority of the City Council.

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A. Upon a determination of a default, City may notify Grantee of the:

1. nature of the default;
2. actions reasonably required to be taken to cure the default; and
3. a reasonable time during which Grantee must take all the required actions to cure the default, which shall in no event exceed ninety (90) days.

B. In the event of a default not corrected by the Grantee after notice as specified in Subsection A immediately above, or in the case of any other default hereunder which the City declares as an immediate default, City may:

1. Declare the loan and note to be due and payable and the Grantee shall promptly repay to City an amount equal to the total amount of the loan hereunder (as evidenced by Grantee's note);
2. Withhold further disbursement of the proceeds of the loan; and/or
3. Exercise or pursue any other remedy of cause of action permitted under this Agreement or the loan, or conferred upon City by operation of law, specifically including its remedy of repayment of funds under the Escrow Agreement provided by Grantee.

Section 10. ACCESS TO RECORDS, RECORDS, AND RECORDS RETENTION

A. Grantee shall prepare and maintain proper files, books, and records in accordance with all applicable HUD requirements (including OMB Circular A-122, 24 CFR §570.502(b), 24 CFR §570.504, 24 CFR §570.506, and 24 CFR Part 33) pertaining to costs incurred, audits, program income, administration, persons assisted, and all other relevant matters.

B. HUD, City and/or their designees shall have reasonable access to, and a right to make copies of, and a right to audit, all of Grantee's files, books, and records which they deem pertinent to the performance of this Agreement, all as determined solely in the reasonable

exercise of City's or HUD's discretion. These rights shall continue for four (4) years after termination of this Agreement.

C. Grantee agrees to conduct, through an independent auditor, a complete audit of its activities hereunder in any fiscal year (September 1-August 31) during which the total amount of Federal awards expended by Grantee reach or exceed \$300,000. Said audit will comply with the requirements of OMB Circular A-133. If Grantee expends less than \$300,000 of Federal awards in a year, no audit of Grantee's activities hereunder shall be required by City, and the funds received under this Agreement shall not be utilized for this purpose.

D. The records set forth in Section 10A above shall be maintained for four (4) years after the termination of this Agreement.

E. An annual report shall be submitted to the Director regarding the status of funds loaned and program income generated under this Agreement, the number of people assisted, the type of assistance rendered, and any other matters reasonably requested by City. More specifically, the annual reports shall conform to the requirements as identified in Exhibit "A".

F. Monitoring: City reserves the right on its behalf and on behalf of the Department of Housing and Urban Development to perform, or have their designees perform, a periodic on-site monitoring of Grantee's compliance with the provisions hereof. Said monitoring shall be conducted in a reasonable time, place and manner by City. Grantee will provide assistance and information needed by City in monitoring and evaluating the performance of the above-mentioned areas of accountability. It is understood that City or its designee will perform periodic fiscal and program monitoring reviews, including a review of the audit.

Monitoring reviews will include a written report to the Grantee documenting findings and concerns that will require a response to City. An acceptable response must be received by the

07/11/00
City within 45 days from the Grantee's receipt of the monitoring report or audit review letter, or future payments will be withheld. Failure to take all actions necessary to resolve and close monitoring or audit findings within 75 days from receipt of the monitoring report or audit review letter shall be considered a breach of contract and cause for termination of the Agreement by City Council and said Agreement will be considered terminated for cause due to Grantee's non-compliance. Such termination shall not be considered appealable. The Director shall have the sole discretion to extend the 75 day period for reasons said Director may judge to be extenuating circumstances.

Section 11. COMPLIANCE WITH LAW

Grantee shall comply with all applicable federal, state, and local laws including City ordinances, codes, regulations, and guidelines. Failure to do so in any manner which impairs the quality of Grantee's performance hereunder, or affects the administration of the funds provided hereunder, or exposes City to penalties or to censure by HUD, shall constitute a default. Included in the applicable regulations are 24 CFR Part 570, Subpart K, and Section 112 of 1989 HUD Reform Act.

Section 12. HISTORIC PRESERVATION

Grantee will take into account the effect of the project on any district, site, building, structure, or object listed in or found by the Secretary of the Interior pursuant to 36 CFR Part 800, to be eligible for inclusion in the National Register of the U.S. Department of the Interior. Grantee, and any contractor of Grantee, certifies and assures the City that in the performance of this Agreement, it will make every effort to eliminate or minimize any adverse effect on an historic property.

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Section 13. HATCH ACT

Neither the Community Development Program nor the funds provided therefor, nor the personnel employed thereby or otherwise covered by this Act shall be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Codes.

Section 14. CONFLICT OF INTEREST

Grantee covenants that, during the Agreement period, neither the Grantee and/or any of its officers, boards or committee-members, or employees will have or acquire any interest which conflicts in any manner or degree with the performance of the services to be performed under this Agreement. Grantee agrees that none of its paid personnel shall be employees of City or have any contractual relationship with City unless such relationship is disclosed fully and in advance and the Director approves the same as not in conflict with this Agreement. Furthermore, Grantee agrees to be bound by and cause its employees and associates to be bound by the provisions of 24 CFR §570.611, which in some instances can apply to former City employees. Any violation of this Section, deliberate or careless, shall constitute a breach hereof.

Section 15. DISCRIMINATION PROHIBITED

No person in the United States shall, on the grounds of race, creed, color, national origin, (including immigration status where an alien holds proper work authorization) sex, age, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape, or form in employment or under projects or activities funded in whole or in part with funds made available to the Grantee pursuant to this Agreement according to 24 CFR §570.602. Furthermore, Grantee shall comply with all the

Equal Opportunity requirements of Title 24 of the Code of Federal Regulations, including, but not limited to, 24 CFR §130.15, 24 CFR §570.602, and 24 CFR Part 8.

Section 16. REVERSION OF ASSETS

Upon the expiration or termination of this Agreement, the Grantee shall promptly transfer to City any CDBG funds (including Program Income) on hand at the time of expiration or termination, any accounts receivable attributable to the use of CDBG funds, any personal property purchased with CDBG funds, and any claims against third parties based upon CDBG funds.

Section 17. INSURANCE AND RELATED MATTERS

A. CITY EXPRESSLY AND ESPECIALLY DRAWS THIS SECTION TO GRANTEE'S ATTENTION BECAUSE, PARTICULARLY IF ADEQUATE INSURANCE IS NOT CARRIED BY GRANTEE, GRANTEE CAN BE HELD LIABLE HEREUNDER FOR LARGE SUMS OF MONEY. IT IS THE EXPRESSED INTENTION HEREOF THAT THE INDEMNITY PROVISIONS REQUIRE GRANTEE TO INDEMNIFY AND PROTECT CITY FROM CITY'S OWN NEGLIGENCE, WHETHER IT IS THE SOLE OR CONCURRING CAUSE OF ANY DEATHS, INJURY, TORTS OR PROPERTY DAMAGES COVERED HEREBY.

B. GRANTEE UNDERSTANDS AND AGREES IT SHALL EXCULPATE, DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY AND ITS OFFICIALS, AGENTS, AND EMPLOYEES FROM ANY AND ALL SUITS, ACTIONS, DEMANDS, LIABILITIES, AND CLAIMS OF ANY CHARACTER, TYPE, OR DESCRIPTION BROUGHT OR MADE FOR OR ON ACCOUNT OF ANY INJURIES OR DEATH, OR OTHER ACTIONABLE TORTS, SUSTAINED BY ANY PERSON(S) AND DAMAGE OR DESTRUCTION OF ANY

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PROPERTY ARISING OUT OF, OCCASIONED BY, OR RELATING TO, THIS AGREEMENT OR THE ACTIVITIES CARRIED OUT HEREUNDER; WHETHER OR NOT BASED IN WHOLE OR IN PART ON CITY'S NEGLIGENCE OR ALLEGED NEGLIGENCE. THIS INDEMNITY SHALL COVER CITY'S ATTORNEY FEES, COURT COSTS, WITNESS EXPENSES, AND ALL OTHER RELATED COSTS INCLUDING JUDGMENTS, AWARDS, AND SETTLEMENTS.

C. Grantee agrees to maintain for the life of this Agreement, liability insurance in the minimum amounts of two hundred fifty thousand dollars (\$250,000.00) for each person and five hundred thousand dollars (\$500,000.00) for each single occurrence covering bodily injury or death and one hundred thousand dollars (\$100,000.00) for each single occurrence of damage to or destruction of property. Such insurance shall name City as an additional insured with regard to all suits, actions, demands, claims, and liabilities arising out of, occasioned by, or relating to this Agreement or the activities carried out hereunder. Grantee's insurance shall also contain a specific provision that it may not be canceled or lapse without 30-days' prior written notice to City. Prior to the signing hereof, Grantee agrees to provide City with a Certificate of Insurance reasonably acceptable to City. City reserves the right to periodically review the insurance required hereunder and to adjust the amounts in accordance with statutory changes. City shall have no obligation to pay or perform under this Agreement until a Certificate of Insurance is delivered to City.

D. Notwithstanding any suspension or termination hereof, Grantee shall not be relieved of any liability to City for damages or indemnification due to City by virtue of any breach of this Agreement by Grantee or by virtue of this Section. City may withhold payments to

Grantee until such time as the exact amount of damages due to City from Grantee is agreed upon or is otherwise determined.

Section 18. GRANTEE'S OWNERSHIP, ETC.

Grantee shall immediately notify City in writing in the event of any material change in Grantee's ownership, organization, control, management, non-profit or tax status, or insurance status.

Section 19. INDEPENDENT CONTRACTOR

City and Grantee agree that Grantee is an Independent Contractor, and that no term or provision hereof or act of Grantee in the performance of this Agreement shall be construed as making Grantee an agent of City.

Section 20. ASSIGNMENT AND SUBCONTRACTING

Grantee may not assign or otherwise transfer this Agreement either as to obligations or benefits, except for routine subcontracting.

Section 21. GENERAL PROVISIONS

A. Grantee hereby agrees to provide any and all documentation necessary to fulfill any and all grants, (Federal, State, or City) requirements pertaining hereto.

B. Grantee represents that the information furnished to City, upon which City relied to make this grant, is correct and true.

C. Grantee represents and warrants that the persons executing this Agreement and all instruments related hereto has the authority to commit the corporation to the obligations, financial and otherwise, pursuant to this Agreement.

D. Grantee warrants that it is entitled to do business in the State of Texas as a non-profit corporation.

E. This Agreement is entered into in the City and County of El Paso, Texas, and shall be governed and construed under the laws of Texas. Venue shall be in El Paso County, Texas.

F. Failure by either party on one or more occasions to exercise one or more of its rights hereunder shall not be construed as a waiver of such right or rights and the rights granted hereunder are in addition to those available under law and equity.

G. All agreements, covenants, or provisions contained herein are severable, and in the event any of them shall be held to be invalid by any competent court, this shall be interpreted as though such invalid agreement, covenant, or provision were not contained herein.

H. The captions of the various Sections of this Agreement are for convenience of reference only and shall not alter the terms and conditions of this Agreement.

I. All notices, communications, and reports under this Agreement shall be either hand delivered or mailed, postage prepaid in the United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

CITY: The City of El Paso
Attention: Director, Community & Human Development
Two Civic Center Plaza, 9th Floor
El Paso, Texas 79901-1196

GRANTEE: **BIENVIVIR SENIOR HEALTH SERVICES**
Attention: Rosemary Castillo, Executive Director
940 North Carolina Drive
El Paso, Texas 79915

J. This Agreement reflects the final, complete, and exclusive understandings of the parties hereto, and may not be waived, altered, or modified except by written agreement of the parties.

SIGNED this 27 day of April, 1999

THE CITY OF EL PASO



Mayor PRO-TEM

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ATTEST:



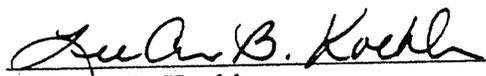
City Clerk

GRANTEE: BIENVIVIR SENIOR HEALTH SERVICES

By: 

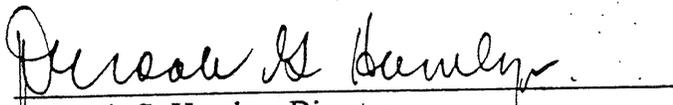
Mrs Barbara Green
(printed name/title)

APPROVED AS TO FORM:



Lee Ann B. Koehler
Assistant City Attorney

APPROVED AS TO CONTENT:



Deborah G. Hamlyn, Director
Community & Human Development

(Acknowledgments on following page)

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Acknowledgment

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 19____, by _____, _____ of THE CITY OF EL PASO, a home-rule municipal corporation, on behalf of said corporation.

Notary's Commission Expires:

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 21st day of April, 1999, by Barbara Green, as PRESIDENT of BIENVIVIR SENIOR HEALTH SERVICES, a tax-exempt, non-profit corporation, on behalf of said corporation.

Notary's Commission Expires:

Amy Stewart Sanders
Notary Public, State of Texas
Notary's name (printed)
Amy Stewart Sanders

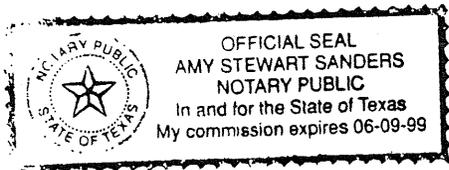


EXHIBIT "A" CITY CLERK DEPT.

FACILITY DESIGN SCOPE

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TITLE: Bienvivir's Senior Health Services Center Facility Design Project, a Twenty-fourth (24th) Year (1998-1999) Community Development Program.

LOCATION: Portion of Rosemont Lots: Lots 6, 11, 12, 13, 14 and 24 (approximately 8.55 acres).
To be determined by Survey.
El Paso, Texas 79930

GENERAL DESCRIPTION: Bienvivir Senior Health Services Facility Design Project was funded to design a new facility including a senior adult day health care center and a residential Alzheimer's unit. This facility will allow Bienvivir to serve approximately 400 elderly (persons 60 years of age and older) residing in the Central and Northeast El Paso areas, not currently served by the Bienvivir Senior Health Services Center. In addition, persons with Alzheimer's and other forms of Dementia will benefit from a specialized residential service not currently available to them.

The scope of the work will include the design for this new facility. The facility will contain a kitchen, clinic and maintenance/facility operations on the ground level; the senior adult day health care center, support services for the day care and administration on the second floor; and an Alzheimer's residential unit on the third floor.

The facility will be completed in three phases. In Phase I Bienvivir will pledge real property and improvements located at 940 N. Carolina and will pursue the acquisition, utilizing their own funds and not Community Development Block Grant (CDBG) funds, the property referenced above as "LOCATION" at an estimated cost of \$526,326. Phase II will be the facility design funded with CDBG funds in the amount of \$457,500. Phase III will be the actual construction of the facility with funds obtained by Bienvivir from Cain Brothers and other sources identified by Bienvivir. The estimated construction cost is \$12,339,086.

The design of this facility shall include but not be limited to:

- 1). A three-story building of approximately 65,000 square feet to be built on the property to be acquired.
- 2). Parking spaces as required by the City of El Paso Zoning Ordinance.

- 3). Compliance with all accessibility and ADA codes and regulations.
- 4). A senior adult day health care center with the capacity to accommodate 180 to 220 persons at a time.
- 5). A residential unit to accommodate 40 persons afflicted with Alzheimer's Disease.

SERVICES REQUIRED:

(X) Design

PRODUCTS REQUIRED:

(X) Architect/Engineer Contract	(X) Cost Estimates
(X) Specifications	(X) Architect Notices to Proceed
(X) Plans	(X) Annual Program Reports

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GENERAL REQUIREMENTS AND CRITERIA:

1. Services at this facility must directly benefit the elderly (persons who are 60 years of age and older) and/or persons who have been medically diagnosed to be afflicted by Alzheimer's Disease or advanced stages of Dementia.
2. The senior adult day health care services must provide services for a minimum of 30 hours per week and the residential unit must be operational 24-hours per day.
3. Upon completion of this facility, Bienvivir Senior Health Services will submit annual reports for the period of this agreement *qualifying and quantifying* facility utilization for the direct benefit of persons who are elderly and/or persons afflicted by Alzheimer's Disease or advanced stages of Dementia.
4. The annual reports will be submitted to the Department of Community and Human Development (CD) no later than January 31 of each service year mandated in this Forgivable Loan Agreement (FLA). For the adult health care services, a roster (Attachment 1) listing the date, names of all persons utilizing the facility, their addresses, their ages and the purpose of their visit satisfies this report requirement. For the residential Alzheimer's Unit, a report (Attachment 2) listing the name of the resident, unless confidential privileged under applicable law, and the number of days of residency at the Unit is satisfactory. Bienvivir must have and make available to the City all files of the residents at this facility which shall include the medical diagnosis of each client. These requirements ensure that services provided at this facility are benefiting persons who are elderly (60 years of age or older) and/or persons afflicted with Alzheimer's Disease or advanced stages of Dementia. This target population is presumed to be low and moderate income persons.
5. Acquisition of the proposed property for this facility must be completed within the time frame specified for the commencement of construction on the facility provided herein.
6. This property referenced above and identified as "LOCATION" of the project, will be

utilized as collateral to secure this Agreement once it is acquired. Prior to acquisition of this property, the real property and improvements located at 940 N. Carolina will be utilized to secure this Forgivable Loan Agreement.

7. At the time of closing for this Agreement, Bienvivir Senior Health Services shall deposit in an escrow account, established in a form and manner approved by the City, a sum of \$457,500 to guarantee that construction will commence no later than 18 months from the effective date of this agreement. Written proof that these funds are in escrow must be provided to the City. If construction does not commence as scheduled, Bienvivir Senior Health Services, Inc. will forfeit the escrow funds, which will be paid to the City. Commencing construction is defined as the date the Notice To Proceed (NTP) is issued to the Construction Contractor and the Construction Contractor begins work.
8. The project budget is \$457,500 (see below) and will be used for the project design only. (All loan closing costs shall be the responsibility of Bienvivir Senior Health Services, Inc.)
9. The design must be adequate to provide all of the necessary amenities proposed for this project, including but not limited to:
 - a. Adequate area to accommodate approximately 220 persons daily in the day health care center;
 - b. Adequate residential unit to accommodate 40 persons residing on site;
 - c. Kitchen area and health clinic;
 - d. Administrative offices and support operations.
10. Federal Procurement Procedures shall be complied with in selecting an architect for the design services.
11. The design shall comply with City of El Paso Engineering Department engineering Drawing Preparation Guidelines.
12. The design must comply with all applicable city codes, ordinances, and disabled accessibility requirements.
13. The design shall be coordinated through the Project Architect, Community Development, the City Accessibility Coordinator, and all other affected agencies and public representatives.

PROJECT SCHEDULE:

1. After acquisition, conduct an appraisal of the Portion of Rosemont Lots 6, 11, 12, 13, 14 and 24 (approximately 8.55 acres) at the expense of Bienvivir Senior Health Services. This appraisal is required to be submitted to the City as soon as possible following acquisition so that the Rosemont property may replace the Carolina property as collateral to secure this Agreement. The appraisal will reflect the value of the property after construction.
2. Design - The design phase begins within three weeks after Bienvivir receives the fully signed FLA. This phase begins with solicitation of services for an Architect/Engineer. The design phase will end with the preparation and acceptance of the final plans and

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specifications. The entire design phase should be completed in approximately eight and one-half months. The Architect/Engineer has the following time requirements during this phase:

- a. Preliminary Design: 120 days
- b. Pre-Final Design: 90 days
- c. Final Design: 45 days

PROJECT BUDGET:

1. Disbursement of funds will be on a cost reimbursement basis for design services upon completion and approval of the design phase identified above.
2. The project budget is \$457,500 for project design only, no other expenses of any kind will be paid under this Agreement.

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EXHIBIT "B"

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FIRST AMENDMENT TO FORGIVABLE LOAN AGREEMENT

THIS FIRST AMENDMENT TO FORGIVABLE LOAN AGREEMENT (this "*Amendment*"), is entered into by and between BIENVIVIR SENIOR HEALTH SERVICES, a Texas non-profit corporation (the "*Grantee*") and the CITY OF EL PASO, a municipal corporation (the "*City*").

Whereas, Grantee and the City have entered into that certain Forgivable Loan Agreement dated April 27, 1999 (the "*Loan Agreement*"), a copy of which is attached hereto, denoted as Exhibit "A" and incorporated herein, with respect to a forgivable loan by the City to the Grantee evidenced by a promissory note in the original principal amount of \$457,500.00, executed by Grantee as "*Maker*", in favor of the City as "*Payee*", dated June 10, 1999 (the "*Note*").

Whereas, the Loan Agreement contemplates a project wherein the Grantee will: (i) acquire certain real property located at 2300 McKinley, in El Paso County, El Paso, Texas (the "*McKinley Property*") for the purpose of constructing thereon a senior adult day health care center and residential Alzheimer's unit (the "*Center*"); and (ii) utilize the proceeds of the forgivable loan in connection with the design of the Center.

Whereas, in accordance with the terms of the Loan Agreement, the Grantee executed a Deed of Trust, recorded in Volume 2606, Page 1105, of the Real Property Records of El Paso County, Texas (the "*1999 Deed of Trust*"), on that certain real property located at 940 N. Carolina Drive, El Paso County, El Paso, Texas 79915 (the "*Carolina Property*") to secure Grantee's obligations pursuant to the Loan Agreement and the Note, including Grantee's obligation to use the Center to meet a national objective.

Whereas, at the time that the Loan Agreement was executed, it was anticipated that Grantee would give the City a second priority lien on the McKinley Property at such time as Grantee acquired sufficient equity in the McKinley Property to secure such lien, and that the City's lien against the Carolina Property would be released at that time.

Whereas, the Grantee intends to obtain the financing necessary to construct the Center through the issuance of tax exempt bonds (the "*Bonds*"), and the Grantee will be required to give a first priority lien on both the Carolina Property and the McKinley Property to the trustee for the holders of the Bonds.

Whereas, at the time that this Amendment is executed, the Grantee has utilized the proceeds of the forgivable loan to pay for a portion of the cost to design the Center in accordance with the terms and conditions of the Loan Agreement, construction of the Center has begun and is proceeding, and the City has determined that the Grantee will have sufficient equity in the McKinley Property to secure a second priority lien in favor of the City at the time that the Center has been constructed.

Whereas, in order to permit the City to pledge a first priority lien in favor of the trustee for the bondholders, the Grantee and the City have agreed that the City will release the 1999 Deed of Trust, in exchange for a subordinate deed of trust on the McKinley Property.

Whereas, pursuant to the Loan Agreement, Grantee and the City executed that certain Escrow Agreement dated May 26, 1999, joined by the Escrow Agent named therein (the "*Escrow Agreement*") to secure the Grantee's obligation to timely commence construction on the Center, and the Grantee and the City have also agreed to amend the terms of the Escrow Agreement to secure Grantee's obligation to complete construction of the Center. (The Loan Agreement, the Note, the Deed of Trust and the Escrow Agreement are collectively referred to herein as the "*Loan Documents*").

Now Therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantee and the City hereby agree as follows:

I.

SECTION 4 - GRANTEE OBLIGATIONS — ACQUISITION AND DESIGN

Section 4.A of the Loan Agreement shall be amended by adding the following new subsection:

3. In connection with the issuance of the Bonds by the Grantee:

a. At the Grantee's expense, the Grantee shall execute and record a subordinate Deed of Trust against the McKinley Property, and deliver a file-stamped copy of the same to the City, together with either a Mortgagee Title Policy in the amount of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$457,500.00) which provides the City with sufficient priority status for its lien to secure all funds advanced under the Loan Documents, or an endorsement to an existing Mortgagee Title Policy which shall be acceptable in form to the City.

b. The City shall execute and deliver to the Grantee a Release of Lien for the 1999 Deed of Trust.

II.

SECTION 6 — PROMISSORY NOTE, DEED OF TRUST, ESCROW AGREEMENT

Section 6.B. The following language shall be added to the text of Section 6.B of the Loan Agreement:

Thereafter and in connection with the issuance of the Bonds by the Grantee, at the Grantee's expense, the Grantee shall execute and record a second priority

lien in favor of the City by filing a subordinate Deed of Trust against the McKinley Property, and deliver a file-stamped copy of the same to the City, together with either a Mortgagee Title Policy in the amount of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$457,500.00) which provides the City with sufficient priority status for its lien to secure all funds advanced under the Loan Documents, or an endorsement to an existing Mortgagee Title Policy which shall be acceptable in form to the City.

Section 6.C. The following language shall be added to the text of Section 6.C of the Loan Agreement:

The escrowed funds shall remain in escrow until: (i) construction of the Center is substantially completed as described and defined in section 9.8.1 of the agreement entitled Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, which is between Grantee and C.F. Jordan, L.P., a Texas Limited Partnership and which is dated October 26, 2000, a copy of which is attached hereto, denoted as Exhibit "B" and incorporated herein; and (ii) a Certificate of Occupancy has been issued by the City of El Paso Building Services. If construction of the Center is not completed by June 1, 2003, the Grantee shall forfeit the escrowed funds.

III.

SECTION 8 – EVENTS OF DEFAULT OR BREACH

Section 8. The following language shall be added to the text of Section 8 of the Loan Agreement:

6. The failure of the Grantee to cause the Center to be constructed. As used herein, the term "constructed" shall mean the time when: (i) construction of the Center is substantially completed as described and defined in section 9.8.1, a copy of which is attached hereto, denoted as Exhibit "B" and incorporated herein, of the agreement entitled Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, dated October 26, 2000 and entered into between Grantee and C.F. Jordan, L.P., a Texas Limited Partnership; and (ii) a Certificate of Occupancy has been issued by the City of El Paso Building Services. In any event, construction of the Center shall be substantially completed no later than June 1, 2003.

IV.

EXHIBIT "A" – FACILITY DESIGN SCOPE

Exhibit "A". Paragraph 6 of the section entitled General Requirements and Criteria in Exhibit "A" to the Loan Agreement shall be amended by adding the following text:

Pursuant to the First Amendment to Forgivable Loan Agreement, the property referenced above and identified as "LOCATION" of the project will be utilized as collateral to secure this Agreement after the lien on the real property and improvements located at 940 N. Carolina is released. Bienvivir Senior Health Services agrees to create in favor of City a second priority lien against the real property and improvements located at 2300 McKinley as collateral to secure this Agreement, and the City agrees to accept such lien as collateral.

Exhibit "A". Paragraph 7 of the section entitled General Requirements and Criteria in Exhibit "A" to the Loan Agreement shall be amended by adding the following text:

Such escrowed funds shall also guarantee that the Grantee will conclude construction of the Center. If construction is not concluded by June 1, 2003, Bienvivir Senior Health Services will forfeit the escrow funds which will be paid to the City. Construction shall be concluded when: (i) construction of the Center is substantially completed as described and defined in section 9.8.1, a copy of which is attached hereto, denoted as Exhibit "B" and incorporated herein, of the agreement entitled Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, dated October 26, 2000 and entered into between Grantee and C.F. Jordan, L.P., a Texas Limited Partnership; and (ii) a Certificate of Occupancy has been issued by the City of El Paso Building Services.

V.

ACKNOWLEDGMENT OF APPRAISAL

The City and the Grantee hereby acknowledge and agree that the City has received the appraisal described in paragraph 1 of the section entitled Project Schedule in Exhibit "A" to the Loan Agreement and that the appraisal is acceptable to the City.

VI.

REMAINING TERMS AND PROVISIONS

Except as amended or otherwise modified herein, all terms and provisions of the Loan Agreement, as amended and modified, shall remain in full force and effect as written, and the Grantee and the City hereby agree and acknowledge that except as expressly set forth herein, this Amendment will not modify or otherwise alter their respective duties, obligations and liabilities thereunder.

VII.
CAPITALIZED AND DEFINED TERMS

Unless otherwise defined herein, all capitalized terms shall have the same meanings as used in the Loan Agreement. All capitalized terms in this Amendment, which are not otherwise defined in the Loan Agreement are hereby incorporated therein.

THIS FIRST AMENDMENT TO FORGIVABLE LOAN AGREEMENT, AND ANY OTHER LOAN OR SECURITY DOCUMENTS PREVIOUSLY OR NOW EXECUTED IN CONNECTION HERewith BETWEEN THE PARTIES HERETO REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

EXECUTED to be effective as of the 28th day of August, 2001.

CITY OF EL PASO

By: _____

Raymond C. Caballero, Mayor

ATTEST:



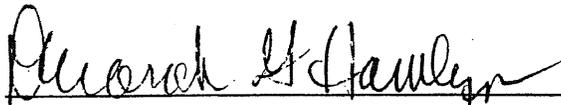
City Clerk

APPROVED AS TO FORM:



Lee Ann B. Koehler
Assistant City Attorney

APPROVED AS TO CONTENT:



Deborah G. Hamlyn, Director
Community and Human Development

FORGIVABLE LOAN AGREEMENT

BIENVIVIR SENIOR HEALTH SERVICES

This Agreement, between the City of El Paso, a municipal corporation, hereinafter referred to as "City" and BIENVIVIR SENIOR HEALTH SERVICES, a tax-exempt, non-profit corporation, hereinafter referred to as "Grantee," shall be effective upon its execution and shall terminate exactly five (5) years later.

WHEREAS, a grant has been made through the Community Development Block Grant (CDBG) program, to be administered by the City and made available to eligible subrecipients; and

WHEREAS, Grantee has agreed to comply with all applicable requirements for a contingently forgivable loan;

NOW, THEREFORE, the parties mutually agree as follows:

Section 1. PROGRAM SCOPE

A. Grantee is to acquire with private funds (meaning funds acquired from a source other than the CDBG program) the property identified herein and design a new facility on the property, which will include a senior adult day health care center and a residential Alzheimer's unit for the benefit of low and moderate income residents of El Paso, in accordance with the Project Scope and Budget attached hereto and incorporated herein as Exhibit "A" for all purposes.

B. Grantee agrees to keep the facility open and operating during all such hours as are normal for a facility of this type and as further detailed in Exhibit "A". Grantee also agrees that the facility will be made fully accessible to disabled persons and agrees to comply with City Ordinance No. 9779 concerning the disabled dated August 8, 1989. This obligation to operate

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the facility shall continue for the term of this Agreement and for the full five (5) year reversionary period thereafter.

Section 2. REQUIRED INFORMATION

Prior to the execution hereof, Grantee shall provide City the following:

A. A current executed copy of its Articles of Incorporation, and any amendments thereto, as on file with the Texas Secretary of State;

B. A copy of correspondence by the Comptroller of Public Accounts for the State of Texas which verifies that Grantee is a duly licensed, non-profit corporation registered to conduct business in the State of Texas;

C. A copy of the Internal Revenue Service's approval of Grantee's tax exempt status;

D. A copy of the current by-laws of Grantee, certified to be correct by the President and attested by the Secretary of Grantee;

E. A roster of all officers, boards, and committee-members of Grantee (including their addresses), certified to be correct by the President and attested to by the Secretary of Grantee;

F. A statement certified by the Board of Directors (i) that Grantee is financially solvent, and (other than current accounts payable) that no claims, past due taxes, liens, judgments, or law suits now exist against Grantee or its assets; and (ii) that Grantee shall immediately notify City in writing if there are any changes during the life of this Agreement, in any of the items covered by this Section 2. Any violation of this provision, or misrepresentation hereunder, shall constitute a breach of this Agreement. City shall have no further obligation to pay or perform under this Agreement except for services which have already been performed.

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Section 3. GENERAL PURPOSES AND REQUIREMENTS

A. Under this Agreement, City proposes to make a loan of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$457,500.00) or the actual cost of design and related expenses as described in the Project Scope and Budget attached hereto, whichever amount is less. Provided Grantee faithfully performs in full its obligations hereunder, City shall conditionally forgive this loan amount five (5) years from the date of this Agreement, subject to City's reversionary interest in all assets acquired under this Agreement for an additional five (5) years. If for any reason, Grantee ceases to exist or fails to meet a national objective (assisting low and moderate income persons) during the total ten (10) year period, all assets securing Grantee's obligations hereunder shall be surrendered to City and Grantee agrees to execute all documentation necessary to achieve such transfer(s).

B. Grantee understands that under HUD regulation 24 CFR §570.503(b)(8)(i), upon any termination hereof, including a simple expiration of this Agreement, Grantee must continue for an additional five (5) years to use the site acquired and facility designed hereunder for one of the "national objectives" set forth in 24 CFR §570.208, or shall make payment to City as set forth in 24 CFR §570.503(b)(8)(ii). All forgiveness herein shall remain conditional until Grantee fully performs all obligations hereunder, including proper use or disposition of the site following termination or expiration of this Agreement.

Section 4. GRANTEE OBLIGATIONS - ACQUISITION AND DESIGN

A. Grantee shall purchase the property referred to in Exhibit "A" utilizing private funds of the Grantee. In purchasing, Grantee shall:

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1. Determine that the property is free and clear of all liens and encumbrances, or alternatively, provide City with sufficient priority status for a lien on the property to secure all funds advanced hereunder.

2. Within sixty (60) days of the closing of the property provide the City with:

a. A Deed of Trust on the acquired property, which will secure all funds advanced hereunder and which will replace the Deed of Trust executed by Grantee to the City at loan closing as per Section 6 of this Agreement; and

b. A Mortgage Title Policy, at Grantee's expense, in the amount of \$457,500.00 that reflects the acquired property to be free and clear of all liens and encumbrances or alternatively, provides the City with sufficient priority status for its lien to secure all funds advanced hereunder. Upon receipt of the replacement Deed of Trust referred to above, City agrees to execute and deliver to Grantee a Release of Lien applicable to the property pledged by Grantee at loan closing pursuant to Section 6.

B. Grantee further agrees that it shall submit for review all plans, specifications, and work schedules, the construction contract, and all related documents (all hereafter called "Plans"). These items must be submitted to City's Director of Community and Human Development (hereinafter called "Director"). Grantee agrees that the Director, in her sole discretion, reasonably exercised, shall have the final authority to determine whether the Plans are in accordance with the requirements of this Agreement. Grantee understands Director's review of the Plans is solely for the benefit of City and HUD and neither Director, HUD, nor City shall be responsible for any mistakes or deficiencies. Grantee is and remains fully responsible for compliance with professional architectural, professional engineering, and other applicable standards and that Grantee shall bear complete and sole liability for determining whether or not

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the plans will result in the construction of a safe, structurally sound, durable, functional, and attractive building suitable for the uses intended.

C. Grantee agrees that the selection of a design consultant, who must be a Registered Professional Architect, will be selected by a committee set up by Grantee, which considers a minimum of three design consultants. City will review and approve the design contract.

E. Grantee agrees that the site to be acquired, and any design, and subsequent construction work on the site acquired, and the Loan advanced herein, shall be used primarily and continuously for the purposes described in this Agreement in Sections 1 and 3 above and in accordance with the Plans and Specifications discussed above.

F. Grantee agrees to use a competitive bid process in compliance with all federal funding requirements to select Grantee's construction contractor. Grantee will include supplemental conditions for government requirements or other applicable attachments of equivalent form and appropriate bonds and insurance which are applicable to federal funding requirements and which are reasonably acceptable to the City.

G. Grantee agrees that any Program Income hereunder shall be used by Grantee in the furtherance of objectives as set forth in Section 1, provided such expenditures shall be subject to the continuing approval of City. Grantee is directed to 24 CFR §570.500 for a definition of Program Income and for additional requirements with regard thereto.

Section 5. DRAWDOWNS (LOAN DISBURSEMENTS)

Loan disbursements shall be made only upon receipt by City of Grantee's written request for such disbursement, and only upon approval of the Director. Such requests must be accompanied by documentation of the architect(s) hired by Grantee, which reflects the percentage of completion of the work under the contract, and approved by Grantee as to accuracy

and as being performed in accordance with this Agreement and design and professional services contracts. Approval of disbursements may be withheld by the Director if, in the reasonable exercise of the Director's discretion, there is a determination that the request or its backup material is inaccurate or inadequate, or if Grantee is in any way in default hereunder. Representatives of City may at all reasonable times examine the work in process. Payments (to the extent funds are available) shall be made after each design phase has been accepted and approved in writing by Grantee and City.

Section 6. PROMISSORY NOTE, DEED OF TRUST, ESCROW AGREEMENT

Grantee agrees to execute and deliver to City the following:

A. A Promissory Note at loan closing, in an amount of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$457,500.00), which is incorporated by reference and made a part hereof, for all purposes as Exhibit "B". In the case of a default hereunder, Grantee will be required to make all scheduled payments under said Note.

B. A Deed of Trust at loan closing, which is incorporated by reference and made a part hereof, and attached as Exhibit "C" securing all funds advanced under this Agreement. Grantee will provide the foregoing so that City has a valid and enforceable lien (of sufficient lien priority to secure all funds advanced hereunder) on said property identified in the Deed of Trust in an amount of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$457,500.00). Said lien shall also secure City's right to Grantee's performance of all its obligations hereunder. At closing, Grantee, at Grantee's expense, shall provide City with a Mortgagee Title Policy in the amount of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$457,500.00) that reflects the property described in the Deed of Trust to be free and clear of all liens and encumbrances which

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will provide City with sufficient priority status for its lien to secure all funds advanced hereunder; alternatively, Grantee, at Grantee's expense, shall provide an endorsement to an existing Mortgage Title Policy which shall be acceptable in form to the City.

C. An Escrow Agreement at loan closing, which evidences that the sum of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$457,500.00) has been placed in escrow to guarantee to the City that construction on the facility designed hereunder shall commence within eighteen (18) months from the effective date of this Agreement. (For purposes of this Agreement, construction will be deemed to have commenced when the Grantee has issued a Notice to Proceed to the selected construction contractor and the contractor has begun work.) The terms of the Escrow Agreement shall be acceptable to and approved by the City. If construction on the facility does not commence as required by the terms of this Agreement and the Escrow Agreement, the Grantee shall forfeit from the escrowed funds the entire amount of funds which have been advanced from the City to Grantee hereunder.

Section 7. COMPLETION OF ACQUISITION, DESIGN AND DEMOLITION

Time shall be of the essence in all aspects of this Agreement. Every reasonable attempt shall be made by Grantee to acquire the land not later than December 31, 1999. In any event, the acquisition and design are to be completed no later than fifteen (15) months from the effective date of this Agreement. Grantee shall have commenced construction, as defined herein, on the facility on the property acquired and identified in Exhibit "A" within eighteen (18) months from the effective date of this Agreement.

Section 8. EVENTS OF DEFAULT OR BREACH

A Default shall consist of:

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1. Any use of loan funds for any purpose other than as authorized in this Agreement;
2. A breach of any covenant, agreement, or warranty of the Grantee made in this Agreement or in any contract entered into between Grantee and any third party relating to this project;
3. The occurrence of any default under this loan agreement or its performance, specifically including the failure of Grantee to commence construction on the facility designed hereunder within eighteen (18) months from the effective date of this Agreement.
4. The existence of any collusion or bad faith by or with the acquiescence of Grantee;
5. The filing of any petition by or against Grantee under the Federal Bankruptcy Act or any similar law, state or federal, or Grantee's failure to continue operations as a going concern, or Grantee's insolvency, or any manifestation or statement by Grantee that it does not intend to continue performance of its obligations hereunder.

Section 9. CITY'S REMEDIES UPON DEFAULT

Upon the occurrence of any event of default, City may, in addition to all remedies conferred upon it by law, by the Note, by this Agreement, or otherwise, pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other. City may notify Borrower in general terms, in writing, of the actions it intends to take, but is not required to do so. City may change its course of action at any time as determined by a majority of the City Council.

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A. Upon a determination of a default, City may notify Grantee of the:

1. nature of the default;
2. actions reasonably required to be taken to cure the default; and
3. a reasonable time during which Grantee must take all the required actions

to cure the default, which shall in no event exceed ninety (90) days.

B. In the event of a default not corrected by the Grantee after notice as specified in Subsection A immediately above, or in the case of any other default hereunder which the City declares as an immediate default, City may:

1. Declare the loan and note to be due and payable and the Grantee shall promptly repay to City an amount equal to the total amount of the loan hereunder (as evidenced by Grantee's note);
2. Withhold further disbursement of the proceeds of the loan; and/or
3. Exercise or pursue any other remedy of cause of action permitted under this Agreement or the loan, or conferred upon City by operation of law, specifically including its remedy of repayment of funds under the Escrow Agreement provided by Grantee.

Section 10. ACCESS TO RECORDS, RECORDS, AND RECORDS RETENTION

A. Grantee shall prepare and maintain proper files, books, and records in accordance with all applicable HUD requirements (including OMB Circular A-122, 24 CFR §570.502(b), 24 CFR §570.504, 24 CFR §570.506, and 24 CFR Part 33) pertaining to costs incurred, audits, program income, administration, persons assisted, and all other relevant matters.

B. HUD, City and/or their designees shall have reasonable access to, and a right to make copies of, and a right to audit, all of Grantee's files, books, and records which they deem pertinent to the performance of this Agreement, all as determined solely in the reasonable

exercise of City's or HUD's discretion. These rights shall continue for four (4) years after termination of this Agreement.

C. Grantee agrees to conduct, through an independent auditor, a complete audit of its activities hereunder in any fiscal year (September 1-August 31) during which the total amount of Federal awards expended by Grantee reach or exceed \$300,000. Said audit will comply with the requirements of OMB Circular A-133. If Grantee expends less than \$300,000 of Federal awards in a year, no audit of Grantee's activities hereunder shall be required by City, and the funds received under this Agreement shall not be utilized for this purpose.

D. The records set forth in Section 10A above shall be maintained for four (4) years after the termination of this Agreement.

E. An annual report shall be submitted to the Director regarding the status of funds loaned and program income generated under this Agreement, the number of people assisted, the type of assistance rendered, and any other matters reasonably requested by City. More specifically, the annual reports shall conform to the requirements as identified in Exhibit "A".

F. Monitoring: City reserves the right on its behalf and on behalf of the Department of Housing and Urban Development to perform, or have their designees perform, a periodic on-site monitoring of Grantee's compliance with the provisions hereof. Said monitoring shall be conducted in a reasonable time, place and manner by City. Grantee will provide assistance and information needed by City in monitoring and evaluating the performance of the above-mentioned areas of accountability. It is understood that City or its designee will perform periodic fiscal and program monitoring reviews, including a review of the audit.

Monitoring reviews will include a written report to the Grantee documenting findings and concerns that will require a response to City. An acceptable response must be received by the

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City within 45 days from the Grantee's receipt of the monitoring report or audit review letter, or future payments will be withheld. Failure to take all actions necessary to resolve and close monitoring or audit findings within 75 days from receipt of the monitoring report or audit review letter shall be considered a breach of contract and cause for termination of the Agreement by City Council and said Agreement will be considered terminated for cause due to Grantee's non-compliance. Such termination shall not be considered appealable. The Director shall have the sole discretion to extend the 75 day period for reasons said Director may judge to be extenuating circumstances.

Section 11. COMPLIANCE WITH LAW

Grantee shall comply with all applicable federal, state, and local laws including City ordinances, codes, regulations, and guidelines. Failure to do so in any manner which impairs the quality of Grantee's performance hereunder, or affects the administration of the funds provided hereunder, or exposes City to penalties or to censure by HUD, shall constitute a default. Included in the applicable regulations are 24 CFR Part 570, Subpart K, and Section 112 of 1989 HUD Reform Act.

Section 12. HISTORIC PRESERVATION

Grantee will take into account the effect of the project on any district, site, building, structure, or object listed in or found by the Secretary of the Interior pursuant to 36 CFR Part 800, to be eligible for inclusion in the National Register of the U.S. Department of the Interior. Grantee, and any contractor of Grantee, certifies and assures the City that in the performance of this Agreement, it will make every effort to eliminate or minimize any adverse effect on an historic property.

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Section 13. HATCH ACT

Neither the Community Development Program nor the funds provided therefor, nor the personnel employed thereby or otherwise covered by this Act shall be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Codes.

Section 14. CONFLICT OF INTEREST

Grantee covenants that, during the Agreement period, neither the Grantee and/or any of its officers, boards or committee-members, or employees will have or acquire any interest which conflicts in any manner or degree with the performance of the services to be performed under this Agreement. Grantee agrees that none of its paid personnel shall be employees of City or have any contractual relationship with City unless such relationship is disclosed fully and in advance and the Director approves the same as not in conflict with this Agreement. Furthermore, Grantee agrees to be bound by and cause its employees and associates to be bound by the provisions of 24 CFR §570.611, which in some instances can apply to former City employees. Any violation of this Section, deliberate or careless, shall constitute a breach hereof.

Section 15. DISCRIMINATION PROHIBITED

No person in the United States shall, on the grounds of race, creed, color, national origin, (including immigration status where an alien holds proper work authorization) sex, age, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape, or form in employment or under projects or activities funded in whole or in part with funds made available to the Grantee pursuant to this Agreement according to 24 CFR §570.602. Furthermore, Grantee shall comply with all the

Equal Opportunity requirements of Title 24 of the Code of Federal Regulations, including, but not limited to, 24 CFR §130.15, 24 CFR §570.602, and 24 CFR Part 8.

Section 16. REVERSION OF ASSETS

Upon the expiration or termination of this Agreement, the Grantee shall promptly transfer to City any CDBG funds (including Program Income) on hand at the time of expiration, or termination, any accounts receivable attributable to the use of CDBG funds, any personal property purchased with CDBG funds, and any claims against third parties based upon CDBG funds.

Section 17. INSURANCE AND RELATED MATTERS

A. CITY EXPRESSLY AND ESPECIALLY DRAWS THIS SECTION TO GRANTEE'S ATTENTION BECAUSE, PARTICULARLY IF ADEQUATE INSURANCE IS NOT CARRIED BY GRANTEE, GRANTEE CAN BE HELD LIABLE HEREUNDER FOR LARGE SUMS OF MONEY. IT IS THE EXPRESSED INTENTION HEREOF THAT THE INDEMNITY PROVISIONS REQUIRE GRANTEE TO INDEMNIFY AND PROTECT CITY FROM CITY'S OWN NEGLIGENCE, WHETHER IT IS THE SOLE OR CONCURRING CAUSE OF ANY DEATHS, INJURY, TORTS OR PROPERTY DAMAGES COVERED HEREBY.

B. GRANTEE UNDERSTANDS AND AGREES IT SHALL EXCULPATE, DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY AND ITS OFFICIALS, AGENTS, AND EMPLOYEES FROM ANY AND ALL SUITS, ACTIONS, DEMANDS, LIABILITIES, AND CLAIMS OF ANY CHARACTER, TYPE, OR DESCRIPTION BROUGHT OR MADE FOR OR ON ACCOUNT OF ANY INJURIES OR DEATH, OR OTHER ACTIONABLE TORTS, SUSTAINED BY ANY PERSON(S) AND DAMAGE OR DESTRUCTION OF ANY

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PROPERTY ARISING OUT OF, OCCASIONED BY, OR RELATING TO THIS AGREEMENT OR THE ACTIVITIES CARRIED OUT HEREUNDER; WHETHER OR NOT BASED IN WHOLE OR IN PART ON CITY'S NEGLIGENCE OR ALLEGED NEGLIGENCE. THIS INDEMNITY SHALL COVER CITY'S ATTORNEY FEES, COURT COSTS, WITNESS EXPENSES, AND ALL OTHER RELATED COSTS INCLUDING JUDGMENTS, AWARDS, AND SETTLEMENTS.

C. Grantee agrees to maintain for the life of this Agreement, liability insurance in the minimum amounts of two hundred fifty thousand dollars (\$250,000.00) for each person and five hundred thousand dollars (\$500,000.00) for each single occurrence covering bodily injury or death and one hundred thousand dollars (\$100,000.00) for each single occurrence of damage to or destruction of property. Such insurance shall name City as an additional insured with regard to all suits, actions, demands, claims, and liabilities arising out of, occasioned by, or relating to this Agreement or the activities carried out hereunder. Grantee's insurance shall also contain a specific provision that it may not be canceled or lapse without 30-days' prior written notice to City. Prior to the signing hereof, Grantee agrees to provide City with a Certificate of Insurance reasonably acceptable to City. City reserves the right to periodically review the insurance required hereunder and to adjust the amounts in accordance with statutory changes. City shall have no obligation to pay or perform under this Agreement until a Certificate of Insurance is delivered to City.

D. Notwithstanding any suspension or termination hereof, Grantee shall not be relieved of any liability to City for damages or indemnification due to City by virtue of any breach of this Agreement by Grantee or by virtue of this Section. City may withhold payments to

Grantee until such time as the exact amount of damages due to City from Grantee is agreed upon or is otherwise determined.

Section 18. GRANTEE'S OWNERSHIP, ETC.

Grantee shall immediately notify City in writing in the event of any material change in Grantee's ownership, organization, control, management, non-profit or tax status, or insurance status.

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Section 19. INDEPENDENT CONTRACTOR

City and Grantee agree that Grantee is an Independent Contractor, and that no term or provision hereof or act of Grantee in the performance of this Agreement shall be construed as making Grantee an agent of City.

Section 20. ASSIGNMENT AND SUBCONTRACTING

Grantee may not assign or otherwise transfer this Agreement either as to obligations or benefits, except for routine subcontracting.

Section 21. GENERAL PROVISIONS

A. Grantee hereby agrees to provide any and all documentation necessary to fulfill any and all grants, (Federal, State, or City) requirements pertaining hereto.

B. Grantee represents that the information furnished to City, upon which City relied to make this grant, is correct and true.

C. Grantee represents and warrants that the persons executing this Agreement and all instruments related hereto has the authority to commit the corporation to the obligations, financial and otherwise, pursuant to this Agreement.

D. Grantee warrants that it is entitled to do business in the State of Texas as a non-profit corporation.

E. This Agreement is entered into in the City and County of El Paso, Texas, and shall be governed and construed under the laws of Texas. Venue shall be in El Paso County, Texas.

F. Failure by either party on one or more occasions to exercise one or more of its rights hereunder shall not be construed as a waiver of such right or rights and the rights granted hereunder are in addition to those available under law and equity.

G. All agreements, covenants, or provisions contained herein are severable, and in the event any of them shall be held to be invalid by any competent court, this shall be interpreted as though such invalid agreement, covenant, or provision were not contained herein.

H. The captions of the various Sections of this Agreement are for convenience of reference only and shall not alter the terms and conditions of this Agreement.

I. All notices, communications, and reports under this Agreement shall be either hand delivered or mailed, postage prepaid in the United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

CITY: The City of El Paso
Attention: Director, Community & Human Development
Two Civic Center Plaza, 9th Floor
El Paso, Texas 79901-1196

GRANTEE: **BIENVIVIR SENIOR HEALTH SERVICES**
Attention: Rosemary Castillo, Executive Director
940 North Carolina Drive
El Paso, Texas 79915

J. This Agreement reflects the final, complete, and exclusive understandings of the parties hereto, and may not be waived, altered, or modified except by written agreement of the parties.

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SIGNED this 27 day of April, 1999

THE CITY OF EL PASO



Mayor PRO-TEM

ATTEST:



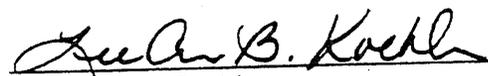
City Clerk

GRANTEE: BIENVIVIR SENIOR HEALTH SERVICES

By: 

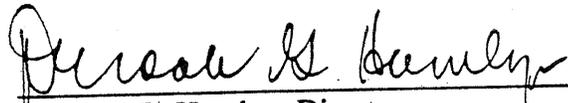
Mrs. Barbara Green
(printed name/title)

APPROVED AS TO FORM:



Lee Ann B. Koehler
Assistant City Attorney

APPROVED AS TO CONTENT:



Deborah G. Hamlyn, Director
Community & Human Development

(Acknowledgments on following page)

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Acknowledgment

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 19____, by _____, _____ of THE CITY OF EL PASO, a home-rule municipal corporation, on behalf of said corporation.

Notary's Commission Expires:

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

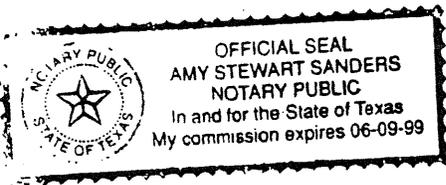
Acknowledgment

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 21st day of April, 1999, by Barbara Green, President as _____ of BIENVIVIR SENIOR HEALTH SERVICES, a tax-exempt, non-profit corporation, on behalf of said corporation.

Notary's Commission Expires:

Amy Stewart Sanders
Notary Public, State of Texas.
Notary's name (printed)
Amy Stewart Sanders



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TITLE: Bienvivir's Senior Health Services Center Facility Design Project,
a Twenty-fourth (24th) Year (1998-1999) Community Development
Program.

LOCATION: Portion of Rosemont Lots: Lots 6, 11, 12, 13, 14 and 24 (approximately
8.55 acres).
To be determined by Survey.
El Paso, Texas 79930

GENERAL DESCRIPTION: Bienvivir Senior Health Services Facility Design Project was
funded to design a new facility including a senior adult day health care center and a residential
Alzheimer's unit. This facility will allow Bienvivir to serve approximately 400 elderly (persons 60
years of age and older) residing in the Central and Northeast El Paso areas, not currently served
by the Bienvivir Senior Health Services Center. In addition, persons with Alzheimer's and other
forms of Dementia will benefit from a specialized residential service not currently available to
them.

The scope of the work will include the design for this new facility. The facility will contain a
kitchen, clinic and maintenance/facility operations on the ground level; the senior adult day health
care center, support services for the day care and administration on the second floor; and an
Alzheimer's residential unit on the third floor.

The facility will be completed in three phases. In Phase I Bienvivir will pledge real property and
improvements located at 940 N. Carolina and will pursue the acquisition, utilizing their own funds
and not Community Development Block Grant (CDBG) funds, the property referenced above as
"LOCATION" at an estimated cost of \$526,326. Phase II will be the facility design funded with
CDBG funds in the amount of \$457,500. Phase III will be the actual construction of the facility
with funds obtained by Bienvivir from Cain Brothers and other sources identified by Bienvivir.
The estimated construction cost is \$12,339,086.

The design of this facility shall include but not be limited to:

- 1). A three-story building of approximately 65,000 square feet to be built on the
property to be acquired.
- 2). Parking spaces as required by the City of El Paso Zoning Ordinance.

- 3). Compliance with all accessibility and ADA codes and regulations.
- 4). A senior adult day health care center with the capacity to accommodate 180 to 220 persons at a time.
- 5). A residential unit to accommodate 40 persons afflicted with Alzheimer's Disease.

SERVICES REQUIRED:

(X) Design

PRODUCTS REQUIRED:

(X) Architect/Engineer Contract	(X) Cost Estimates
(X) Specifications	(X) Architect Notices to Proceed
(X) Plans	(X) Annual Program Reports

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GENERAL REQUIREMENTS AND CRITERIA:

1. Services at this facility must directly benefit the elderly (persons who are 60 years of age and older) and/or persons who have been medically diagnosed to be afflicted by Alzheimer's Disease or advanced stages of Dementia.
2. The senior adult day health care services must provide services for a minimum of 30 hours per week and the residential unit must be operational 24-hours per day.
3. Upon completion of this facility, Bienvivir Senior Health Services will submit annual reports for the period of this agreement *qualifying and quantifying* facility utilization for the direct benefit of persons who are elderly and/or persons afflicted by Alzheimer's Disease or advanced stages of Dementia.
4. The annual reports will be submitted to the Department of Community and Human Development (CD) no later than January 31 of each service year mandated in this Forgivable Loan Agreement (FLA). For the adult health care services, a roster (Attachment 1) listing the date, names of all persons utilizing the facility, their addresses, their ages and the purpose of their visit satisfies this report requirement. For the residential Alzheimer's Unit, a report (Attachment 2) listing the name of the resident, unless confidential privileged under applicable law, and the number of days of residency at the Unit is satisfactory. Bienvivir must have and make available to the City all files of the residents at this facility which shall include the medical diagnosis of each client. These requirements ensure that services provided at this facility are benefiting persons who are elderly (60 years of age or older) and/or persons afflicted with Alzheimer's Disease or advanced stages of Dementia. This target population is presumed to be low and moderate income persons.
5. Acquisition of the proposed property for this facility must be completed within the time frame specified for the commencement of construction on the facility provided herein.
6. This property referenced above and identified as "LOCATION" of the project, will be

utilized as collateral to secure this Agreement once it is acquired. Prior to acquisition of this property, the real property and improvements located at 940 N. Carolina will be utilized to secure this Forgivable Loan Agreement.

7. At the time of closing for this Agreement, Bienvivir Senior Health Services shall deposit in an escrow account, established in a form and manner approved by the City, a sum of \$457,500 to guarantee that construction will commence no later than 18 months from the effective date of this agreement. Written proof that these funds are in escrow must be provided to the City. If construction does not commence as scheduled, Bienvivir Senior Health Services, Inc. will forfeit the escrow funds, which will be paid to the City. Commencing construction is defined as the date the Notice To Proceed (NTP) is issued to the Construction Contractor and the Construction Contractor begins work.
8. The project budget is \$457,500 (see below) and will be used for the project design only. (All loan closing costs shall be the responsibility of Bienvivir Senior Health Services, Inc.)
9. The design must be adequate to provide all of the necessary amenities proposed for this project, including but not limited to:
 - a. Adequate area to accommodate approximately 220 persons daily in the day health care center;
 - b. Adequate residential unit to accommodate 40 persons residing on site;
 - c. Kitchen area and health clinic;
 - d. Administrative offices and support operations.
10. Federal Procurement Procedures shall be complied with in selecting an architect for the design services.
11. The design shall comply with City of El Paso Engineering Department engineering Drawing Preparation Guidelines.
12. The design must comply with all applicable city codes, ordinances, and disabled accessibility requirements.
13. The design shall be coordinated through the Project Architect, Community Development, the City Accessibility Coordinator, and all other affected agencies and public representatives.

PROJECT SCHEDULE:

1. After acquisition, conduct an appraisal of the Portion of Rosemont Lots 6, 11, 12, 13, 14 and 24 (approximately 8.55 acres) at the expense of Bienvivir Senior Health Services. This appraisal is required to be submitted to the City as soon as possible following acquisition so that the Rosemont property may replace the Carolina property as collateral to secure this Agreement. The appraisal will reflect the value of the property after construction.
2. Design - The design phase begins within three weeks after Bienvivir receives the fully signed FLA. This phase begins with solicitation of services for an Architect/Engineer. The design phase will end with the preparation and acceptance of the final plans and

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specifications. The entire design phase should be completed in approximately eight and one-half months. The Architect/Engineer has the following time requirements during this phase:

- a. Preliminary Design: 120 days
- b. Pre-Final Design: 90 days
- c. Final Design: 45 days

PROJECT BUDGET:

1. Disbursement of funds will be on a cost reimbursement basis for design services upon completion and approval of the design phase identified above.
2. The project budget is \$457,500 for project design only, no other expenses of any kind will be paid under this Agreement.

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- CONTRACTOR,
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
 - .7 persistent failure to carry out the Work in accordance with the Contract Documents.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

9.8 SUBSTANTIAL COMPLETION

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

AIA DOCUMENT A201-GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION - 1997 EDITION - AIA - COPYRIGHT 1997 - THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE N.W., WASHINGTON, D.C. 20006-5292. WARNING: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution. This document was electronically produced with permission of the AIA and can be reproduced without violation until the date of expiration as noted below.

User Document: 97VA201.DOC - 10/20/2000. AIA License Number 113415, which expires on 7/7/2001 - Page #29

Exhibit "B"

CITY CLERK DEPT.

07 AUG 20 PM 2:50

SUBORDINATION AGREEMENT

This Subordination Agreement (the "Agreement") is entered into as of the _____ day of _____, 2007 by and among the **CITY OF EL PASO**, a home-rule municipal corporation ("City"), **BIENVIVIR SENIOR HEALTH SERVICES**, a Texas non-profit corporation ("Bienvivir"), and **JPMORGAN CHASE BANK** ("Bank").

RECITALS:

1. Bienvivir received a forgivable loan in the amount of \$457,500 (the "Loan") from the City for a portion of the cost to design the improvements which have been constructed on the real property located at 2300 McKinley Drive, El Paso County, Texas ("McKinley Property"), and which is legally described as follows:

Lots 1 through 6 and Lots 8 and 9, Block 1, ROSEMONT ADDITION REPLAT "A" AMENDING SUBDIVISION, an Addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 76, Page 6, Real Property Records, El Paso County, Texas.

The terms of the Loan are memorialized in a Forgivable Loan Agreement dated April 27, 1999, as amended by a First Amendment to Forgivable Loan Agreement dated August 28, 2001, and a Second Amendment to Forgivable Loan Agreement dated August _____, 2007 (collectively, "Loan Agreement"). At this time, Bienvivir's obligations under the Loan Agreement are secured by a second priority lien against the McKinley Property, as evidenced by a Deed of Trust dated September 12, 2001 in favor of the City and filed of record in Volume 4118, Page 934 of the Real Property Records of El Paso County, Texas ("Original City Deed of Trust"), which lien is subordinate to the lien held by The Bank of New York Trust Company, N.A. as successor in interest to U.S. Trust Company of Texas, N.A., as Trustee under the Original Bonds (as hereinafter defined).

2. In 2001, the City of El Paso Health Facilities Development Corporation ("Issuer") issued tax-exempt Senior Care Facilities Revenue Bonds (Bienvivir Senior Health Services Project), Series 2001 (the "Original Bonds") to finance the construction of the improvements on the McKinley Property. The Original bonds are secured by a Master Trust Indenture, Deed of Trust and Security Agreement (the "Original Indenture") dated as of October 15, 2001, between the Trustee and the Issuer. At the present time, the Issuer is in the process of issuing its Senior Care Facilities Variable Rate Revenue and Refunding Bonds (Bienvivir Senior Health Services Project), Series 2007 Bonds (the "New Bonds") for the purpose of refunding the Original Bonds. In order to refund the Original Bonds, the Issuer will issue the New Bonds bearing a lower interest rate and additional new indebtedness for capital improvements to Bienvivir's facilities, including the McKinley Property. Upon the issuance of the New Bonds, the lien created by the

CITY CLERK DEPT.

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Original Indenture will be released by the Trustee acting on behalf of the holders of the Original Bonds.

3. Bienvivir has requested JPMorgan Chase Bank, N.A. ("Bank") to issue its Irrevocable Transferable Letter of Credit (the "Letter of Credit") to provide credit enhancement and liquidity for the payment or purchase price of the New Bonds and Bienvivir has agreed to reimburse the Bank for draws made upon the Letter of Credit (the "Reimbursement Obligations") pursuant to the provisions of the Reimbursement Agreement (the "Reimbursement Agreement") dated as of _____ 2007 by and between the Bank and Bienvivir. To secure its obligations under the Reimbursement Agreement, Bienvivir desires to grant a first priority lien on the McKinley Property to the Bank (the "Bank's Deed of Trust"). Accordingly, Bienvivir has requested that the City's lien remain in a subordinate position by accepting a lien created by a new Deed of Trust (the "City's New Deed of Trust") and accepting as a prior lien, the lien created by the Bank's Deed of Trust.

4. It is to the mutual benefit of Bienvivir and the City that the Issuer refund the Original Bonds and the City is willing that the lien securing the payment of the Reimbursement Obligations, when recorded, be prior and superior to the lien of the City's New Deed of Trust, because the bond refunding and the credit enhancement and liquidity provided by the Bank will strengthen Bienvivir's financial position to continue to provide needed health care services to indigent elderly persons in the City, which is a public benefit to the citizens of the City of El Paso.

5. The parties hereto enter into this Agreement for the purpose of evidencing their agreements concerning the priority of the liens which are described above against the McKinley Property.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Issuer to issue the New Bonds above referred to and to advance the proceeds thereof, the City, Bienvivir and the Bank hereby agree as follows:

1. **Subordination**. The City hereby expressly subordinates its liens and security interests against the McKinley Property granted by Bienvivir to the City and evidenced by the City's New Deed of Trust, and all rights and privileges associated therewith, to all of the liens, security interests, rights and claims of the Bank as liquidity provider and credit enhancer of the New Bonds in and to the McKinley Property, and to any proceeds from the sale thereof pursuant to the Bank's Deed of Trust. The parties hereto acknowledge and agree that the Bank as the liquidity provider and credit enhancer shall hold the first priority lien against the McKinley Property, and that the City shall hold a second priority lien against the McKinley Property created by the City's New Deed of Trust. The City's New Deed of Trust will be subordinate, secondary, and inferior to the Bank's Deed of Trust and the lien, security interests, rights and claims of the Bank thereunder regardless of the frequency or manner of renewal, extension, change or

CITY CLERK DEPT.

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alteration of the Letter of Credit secured by same. Further, the City acknowledges that the Issuer would not issue the New Bonds without this subordination agreement.

2. **Foreclosure Proceedings.** The City hereby agrees that, in the event that the City is entitled to foreclose against the McKinley Property pursuant to the City's New Deed of Trust, the City will only pursue the nonjudicial foreclosure procedure which is set forth in the New Deed of Trust (and will not pursue any other remedy available at law or in equity) upon prior written notice and an opportunity to cure to the Bank as required in Section 9(c).

3. **Notice of Default.** In the event that the Bank exercises its right to declare a default pursuant to the terms of any agreements to which Bienvivir is a party, including but not limited to the Letter of Credit and the Reimbursement Agreement, the Bank hereby agrees that it will promptly advise the City of such default.

4. **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

5. **Counterparts.** This Agreement may be separately executed in any number of counterparts and by different parties hereto and separate counterparts, each of which when so executed shall be deemed to constitute one and the same Agreement.

6. **Authority.** Each party hereto expressly represents that he or she is empowered and authorized to execute this Agreement in the capacity in which he or she does so and for his or her respective principals.

7. **Further Assurances.** The parties hereto agree to execute and deliver such other additional documents and instruments as may be reasonably necessary or proper in order to fully effect the terms, provisions and intentions expressed in this Agreement.

8. **Notices.** Notice to be given to the City hereunder shall be in writing and shall be mailed by certified or expedited mail or personally delivered or sent via facsimile to the recipient as follows:

To the City: The City of El Paso
 Attention: Director, Community & Human
 Development
 Two Civic Center Plaza, 8th Floor
 El Paso, Texas 79901-1196
 Telephone: (915) 541-4643
 Facsimile: (915) 541-4370

07 AUG 20 PM 2:51

9. **Representations.** The City hereby represents to the Bank and the Issuer as follows:

(a) The Loan, the New Deed of Trust and the Loan Agreement have not been modified, amended, released or terminated in any manner, except as specifically set forth herein, and will not be materially modified or amended so as to affect the value of the McKinley Property in any manner without thirty (30) days prior written notice to the Bank;

(b) The Loan, the New Deed of Trust and the Loan Agreement are in full force and effect and no uncured breaches or defaults exist thereunder, and the City will not seek to enforce any of its rights, remedies or causes of action arising from a breach or default under the Loan, the New Deed of Trust or the Loan Agreement without thirty (30) days prior written notice to the Bank;

(c) The City acknowledges that the Bank is the holder of a superior lien in the McKinley Property, and the City agrees that it will give written notice to the Bank of any default under the Loan, the New Deed of Trust or the Loan Agreement. The Bank shall have sixty (60) days after receipt of any such notice of default within which to cure such default; provided, however, the Bank shall not be obligated to cure any such default. Notice to be given to the Bank hereunder shall be in writing and shall be mailed by certified or expedited mail or personally delivered or sent via facsimile to the recipient as follows:

To the Bank: JPMorgan Chase Bank, N.A.
Attention: Henry Ocanas
201 E. Main Street
El Paso, Texas 79901
Telephone: (915) 546-6780
Facsimile: (915) 546-6745

10. **Subordination of Payment.** Except as expressly provided herein to the contrary, the City does hereby, to the extent and in the manner set forth in Section 2 through 10, inclusive, expressly subordinate and make junior and inferior its rights to receive any payments under the Loan, the New Deed of Trust and the Loan Agreement, to the full and complete repayment of the Bank's Deed of Trust and the Reimbursement Obligations and all obligations secured by the Bank's Deed of Trust.

11. **Entire Agreement.** THIS AGREEMENT EMBODIES THE ENTIRE AGREEMENT AND UNDERSTANDING BETWEEN AND AMONG THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDES ANY PRIOR AGREEMENTS, CONSENTS AND UNDERSTANDINGS RELATING TO SUCH SUBJECT MATTER AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date set forth above.

THE CITY OF EL PASO

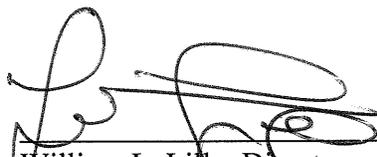
By: _____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



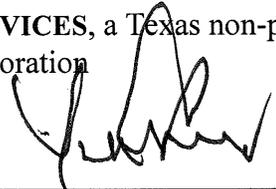
Marie Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



William L. Lilly, Director
Community and Human Development
Department

BIENVIVIR SENIOR HEALTH SERVICES, a Texas non-profit corporation


By: _____
Lee Conner, Chair

JPMORGAN CHASE BANK, N.A.

By: _____
Name: _____
Its: _____

CITY CLERK DEPT.
07 AUG 20 PM 2:51

CITY CLERK DEPT.
07 AUG 20 PM 2:51

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2007, by Joyce A. Wilson, City Manager of the City of El Paso, Texas, a home-rule municipal corporation, on behalf of said corporation.

Notary's Official Seal:

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 17th day of August, 2007, by Lee Conner, Chair of Bienivir Senior Health Services, a Texas non-profit corporation.

Notary's Official Seal:



Amy Stewart Sanders

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2007, by _____, _____ of JPMorgan Chase Bank, N.A.

Notary's Official Seal:

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date set forth above.

THE CITY OF EL PASO

By: _____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

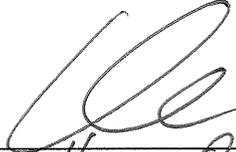
Marie Taylor
Assistant City Attorney

William L. Lilly, Director
Community and Human Development
Department

**BIENVIVIR SENIOR HEALTH
SERVICES**, a Texas non-profit
corporation

By: _____
Lee Conner, Chair

JPMORGAN CHASE BANK, N.A.

By: 
Name: Henry Conner
Its: VP

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07 AUG 20 PM 2:51

CITY CLERK DEPT.
07 AUG 20 PM 2:51

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2007, by Joyce A. Wilson, City Manager of the City of El Paso, Texas, a home-rule municipal corporation, on behalf of said corporation.

Notary's Official Seal:

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2007, by Lee Conner, Chair of Bienvivir Senior Health Services, a Texas non-profit corporation.

Notary's Official Seal:

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

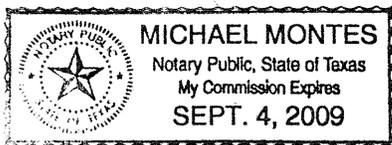
STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 20th day of August, 2007, by Henry Ocañas, Vice-President of JPMorgan Chase Bank, N.A.

Notary's Official Seal:

Michael Montes

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS



00046214

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07 AUG 20 PH 2:51

AFTER RECORDING RETURN TO:

JPMorgan Chase Bank, N.A.
Attn: Henry Ocanas
201 E. Main Street
El Paso, Texas 79901

PREPARED IN THE LAW OFFICE OF:

Ryan, Sanders & Gluth, LLP
310 N. Mesa, Suite 300.
El Paso, Texas 79901
Attention: Amy Stewart Sanders

DEED OF TRUST

CITY CLERK DEPT.
07 AUG 20 PM 2:52

DATE:

Grantor: Bienvivir Senior Health Services

Grantor's Mailing Address (including county):

2300 McKinley Drive
El Paso, Texas 79930
El Paso County, Texas

Trustee: The City Clerk of the City of El Paso

Trustee's Mailing Address (including county):

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

Beneficiary: The City of El Paso, Texas

Beneficiary's Mailing Address (including county):

Director
Department of Community and Human Development
#2 Civic Center Plaza
El Paso, Texas 79901-1196
El Paso County, Texas

Promissory Note

Date: June 10, 1999

Amount: FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND
NO/100THS DOLLARS (\$457,500.00)

Maker: Bienvivir Senior Health Services

Payee: The City of El Paso, Texas

Terms of Payment: See Note, Forgivable Loan Agreement dated April 27, 1999, First Amendment to Forgivable Loan Agreement dated August 28, 2001, Second Amendment to Forgivable Loan Agreement dated _____, 2007 (the "Loan Agreement"), all executed between Grantor and Beneficiary. Any default thereunder shall be a default hereunder. In the event of a default, interest will be payable for the loan at the prime rate (then in effect), as

DEED OF TRUST (2007)
Bienvivir Senior Health Services
2300 McKinley Avenue

CITY CLERK DEPT.
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well as payments of principal in equal monthly installments of Seven Thousand Six Hundred Twenty-Five and No/100ths Dollars (\$7,625.00) per month.

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

Lots 1 through 6 and Lots 8 and 9, Block 1, ROSEMONT ADDITION REPLAT "A" AMENDING SUBDIVISION, an Addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 76, Page 6, Real Property Records, El Paso County, Texas; also known and numbered as 2300 McKinley Avenue, El Paso, Texas.

Prior Lien(s) (including recording information):

Deed of Trust, Assignment of Leases and Rents, Security Agreement and Financing Statement dated as of _____, 2007, from Bienvivir Senior Health Services, a Texas non-profit corporation (the "Trustor"), to JPMorgan Chase Bank, N.A., as beneficiary (the "Bank") securing the payment of liabilities of the Trustor, including all obligations under the Reimbursement Agreement, dated as of August 1, 2007, and related Promissory Note in the original principal amount of \$_____ and interest on the unpaid balance thereof recorded as Document Number _____ in the Real Property Records, El Paso County, Texas.

Grantor and Beneficiary acknowledge and agree that this Deed of Trust, and all of the rights, privileges, liens and security interests in favor of the City created in the Forgivable Loan Agreement dated April 27, 1999, and as amended, are subject and subordinate in all respects to: (i) the liens, terms, covenants and conditions of the Prior Lien described above; and (ii) all distributions or advances heretofore made or which may hereafter be made to Grantor secured by the Prior Lien. This acknowledgment shall not preclude the City from pursuing its rights to sue Grantor for monetary damages for breach of contract in accordance with applicable law; provided however, prior to pursuing its rights, the City shall provide written notice to the Bank of any default under the Loan Agreement or this Deed of Trust and the Bank shall have 60 days after receipt of such notice within which to cure such default. In the event that City obtains a judgment against Grantor, any judgment lien will be subordinate to the Prior Lien.

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

GRANTOR'S OBLIGATIONS

Grantor agrees to:

1. keep the property in good repair and condition;
2. pay all taxes and assessments on the property when due;

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3. preserve lien priority as it is established in this deed of trust;
4. maintain, in a form acceptable to Beneficiary, an insurance policy that:
 - a. covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Beneficiary approves a smaller amount in writing;
 - b. contains an 80% coinsurance clause;
 - c. provides fire and extended coverage, including windstorm coverage;
 - d. protects Beneficiary with a standard mortgagee clause;
 - e. provides flood insurance at any time the property is in a flood hazard area;and
 - f. contains such other coverage as Beneficiary may reasonably require;
5. comply at all times with the requirements of the 80% coinsurance clause;
6. deliver the insurance policy to Beneficiary and deliver renewals to Beneficiary at least ten days before expiration;
7. keep any buildings occupied as required by the insurance policy;
8. pay off all prior notes that Grantor is personally liable to pay regarding this property and abide by all prior lien instruments; and
9. provide written notice to the Bank of any default under the Loan Agreement or this Deed of Trust.

BENEFICIARY'S RIGHTS

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.
2. If the proceeds of the note are used to pay any debt secured by prior liens, Beneficiary is subrogated to all of the rights and liens of the holders of any debt so paid.
3. Subject to the terms of the Prior Lien, Beneficiary may apply any proceeds received under the insurance policy either to reduce the note or to repair or replace damaged or destroyed improvements covered by the policy. However, Beneficiary's rights under this paragraph are subordinate to the Prior Lien and to the rights of JPMorgan Chase Bank, N.A. in and to any proceeds of insurance policies.
4. If Grantor fails to perform any of Grantor's obligations, Beneficiary may perform those obligations and be reimbursed by Grantor on demand at the place where the note is payable for any sums so paid, including attorney's fees, plus interest on those sums from the dates of payment at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this deed of trust.
5. If Grantor defaults on the note or fails to perform any of Grantor's obligations or if default occurs on a prior lien note or other instrument, Beneficiary may, following written notice to JPMorgan Chase Bank, N.A., or its successor and assigns, and an opportunity to cure such default:
 - a. declare the unpaid principal balance and earned interest on the note immediately due;

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- b. request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and
- c. purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited on the note.

TRUSTEE'S DUTIES

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

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

GENERAL PROVISIONS

1. If any of the property is sold under this deed of trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
2. Recitals in any Trustee's deed conveying the property will be presumed to be true.
3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
4. This lien shall remain superior to liens later created, except of any renewal, extension, amendment or change to the Prior Lien, even if the time of payment of all or part of the note is extended or part of the property is released.
5. If any portion of the note cannot be lawfully secured by this deed of trust, payments shall be applied first to discharge that portion.
6. Subject to the terms of the Prior Lien, Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the property. After deducting any expenses incurred, including attorney's fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the note. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting such sums. Notwithstanding the foregoing, Beneficiary's rights under this paragraph are subordinate to the Prior Lien and to the rights of JPMorgan Chase Bank, N.A. in and to any sums payable to or

received by Grantor from condemnation, private sale in lieu of condemnation and from damages caused by public works or construction on or near the property.

7. Subject to the terms of the Prior Lien, Grantor assigns to Beneficiary absolutely, not only as collateral, all present and future rent and other income and receipts from the property. Leases are not assigned. Grantor warrants the validity and enforceability of the assignment. Grantor may as Beneficiary's licensee collect rent and other income and receipts from the property as long as Grantor is not in default under the note or this deed of trust. Grantor will apply all rent and other income and receipts from the property to payment of the note and performance of this deed of trust, but if the rent and other income and receipts from the property exceed the amount due under the note and deed of trust, Beneficiary may terminate Grantor's license to collect and then as Grantor's agent may rent the property if it is vacant and collect all rent and other income and receipts from the property. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the property. Beneficiary may exercise Beneficiary's rights and remedies under this paragraph without taking possession of the property. Beneficiary shall apply all rent and other income and receipts from the property collected under this paragraph first to expenses incurred in exercising Beneficiary's rights and remedies and then to Grantor's obligations under the note and this deed of trust in the order determined by Beneficiary. Beneficiary is not required to act under this paragraph, and acting under this paragraph does not waive any of Beneficiary's other rights or remedies. If Grantor becomes voluntarily or involuntarily bankrupt, Beneficiary's filing a proof of claim in bankruptcy will be tantamount to the appointment of a receiver under Texas law. Notwithstanding the foregoing, Beneficiary's rights under this paragraph are subordinate to the Prior Lien and to the rights of JPMorgan Chase Bank, N.A. in and to all present and future rent and other income and receipts from the property.

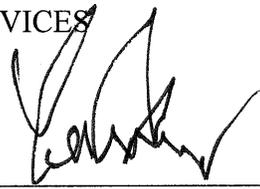
8. When the context requires, singular nouns and pronouns include the plural.

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

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

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

Grantor: BIENVIVIR SENIOR HEALTH
SERVICES

By: 

Lee Conner, Chair

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

(Signatures continue on following page)

DEED OF TRUST (2007)
Bienvivir Senior Health Services
2300 McKinley Avenue

CITY CLERK DEPT.

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ACKNOWLEDGED AND AGREED TO:

THE CITY OF EL PASO

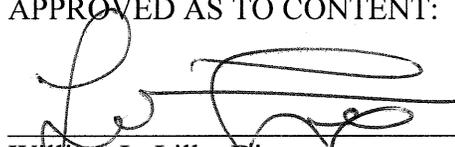
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Marie A. Taylor
Assistant City Attorney



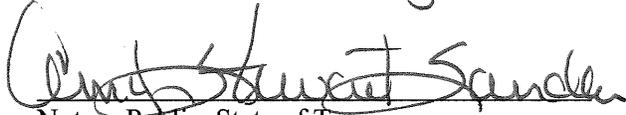
William L. Lilly, Director
Community and Human Development Department

(Acknowledgment)

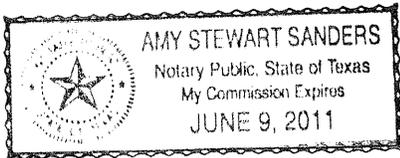
STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 17th day of August, 2007, by Lee Conner, Chair, BIENVIVIR SENIOR HEALTH SERVICES, on behalf of said corporation.

Notary's Commission Expires:



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



DEED OF TRUST (2007)
Bienvivir Senior Health Services
2300 McKinley Avenue

CITY CLERK DEPT.
07 AUG 20 PM 2:52

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2007,
by Joyce A. Wilson as City Manager of THE CITY OF EL PASO, a municipal corporation, on behalf of
said corporation.

Notary's Commission Expires:

Notary Public, State of Texas

Notary's name (printed)

AFTER RECORDING RETURN TO:
City of El Paso
Dept. of Community Development
Two Civic Center Plaza, 8th Flr.
El Paso, Texas 79901-1196

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

RELEASE OF LIEN

CITY CLERK DEPT.
07 AUG 20 PM 2:52

Date:

Note: PROMISSORY NOTE

Date: June 10, 1999

Original Amount: FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$ 457,500.00)

Maker: Bienvivir Senior Health Services

Payee: City of El Paso

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

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

Deed of Trust dated September 12, 2001, and filed November 11, 2001, under Document No. 20010084231, Volume 4118, Page 0934, in the Real Property Records, El Paso County, Texas, from BIENVIVIR SENIOR HEALTH SERVICES to THE CITY OF EL PASO, TEXAS, securing that certain indebtedness in the original principal amount of \$ 457,500.00, to all of which and its record, reference is here made for full particulars.

Property (including any improvements) Subject to Lien:

Lots 1 through 6 and Lots 8 and 9, Block 1, ROSEMONT ADDITION REPLAT "A" AMENDING SUBDIVISION, an Addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 76, Page 6, Real Property Records, El Paso County, Texas; also known and numbered as 2300 McKinley Avenue, El Paso, Texas.

Holder of the note, in consideration for a junior lien against the same real property located at 2300 McKinley, El Paso County, Texas, which lien is pledged by Maker in favor of Holder pursuant to a separate instrument, releases the property from the 2001 lien.

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

EXECUTED this _____ day of _____, 2007.

THE CITY OF EL PASO

Joyce A. Wilson
City Manager

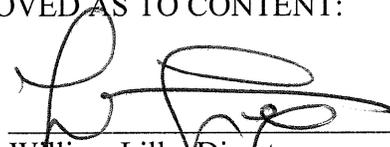
Richarda Duffy Momsen
City Clerk and Trustee

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Marie A. Taylor
Assistant City Attorney



William Lilly, Director
Community and Human Development Department

(Acknowledgment)

CITY CLERK DEPT.
07 AUG 20 PM 2:52

STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2007, by JOYCE A. WILSON, as City Manager 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)

CITY CLERK DEPT.
07 AUG 20 PM 2:52

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2007, 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:
Bienvivir Senior Health Services
2300 McKinley Avenue
El Paso, Texas 79930

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