

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

DEPARTMENT: Community and Human Development

AGENDA DATE: September 23, 2008

CONTACT PERSON/PHONE: Bill Lilly, Director, 541-4643

DISTRICT(S) AFFECTED: 4

SUBJECT:

Item is to request approval of a resolution authorizing the City Manager to execute, a contract of sale, on behalf of the City of El Paso for the purchase of property, located in the Summerlin Subdivision in the City of El Paso, to be used for the First-Time Home Buyer New Construction (Self-Help) Program. The subject property consists of 30 individual residential lots that have been completely developed and are ready to be built upon. Lots are level, rectangular in shape with all utilities available. The purchase price is \$885,000, plus estimated closing costs of \$30,000. Funding to acquire the properties will come from U.S. Department of Housing and Urban Development (HUD) HOME Investment Partnerships Program (HOME) funds.

BACKGROUND / DISCUSSION:

The City of El Paso is the recipient of U.S. Department of Housing and Urban Development (HUD) HOME Investment Partnerships Program (HOME) funds. HOME funds can be used for a wide range of activities that build, buy and /or rehabilitate affordable housing for rent or homeownership for low-moderate income persons. The City of El Paso's First-Time Home Buyer New Construction program has been designed specifically to assist low-moderate First-Time Home Buyer to acquire a newly constructed home in the City of El Paso. Lots acquired through this transaction will be used to construct homes for First-Time Home Buyers. The subject lots range in size from 5,140 square feet to 6,000 square feet. The properties were recently appraised for \$891,000.

PRIOR COUNCIL ACTION:

On August 26, 2008 City Council approved a funding commitment for the Summerlin Subdivision development land acquisition and affordable housing development project.

AMOUNT AND SOURCE OF FUNDING:

The acquisition will be funded through HOME funds and are available in accounts: 09758-71150036/G7105HM; 09758-71150036/G7106HM; 09758-71150036/G7107HM

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

CITY CLERK DEPT.
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*****REQUIRED AUTHORIZATION*****

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

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____ **DATE:** _____

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RESOLUTION

Whereas, the City of El Paso is the recipient of United States Department of Housing and Urban Development HOME Investment Partnerships Program (HOME) funds; and

Whereas, HOME funds can be used for a wide range of activities that build, buy and/or rehabilitate affordable housing for rent or homeownership or provide direct rental assistance to low-moderate income persons; and

Whereas, City staff has developed a First-Time Home Buyer New Construction Program (Summerlin) that will involve the acquisition of thirty (30) lots and funding for the construction of 30 homes for First-Time Home Buyers; and

Whereas, the City Council finds that the development of affordable housing for low-moderate income persons constitutes an important municipal public purpose to the City and the expenditure of United States Department of Housing and Urban Development HOME Investment Partnerships Program (HOME) funds is authorized as appropriate,

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

That the City Manager be authorized to sign a Contract of Sale between the **City of El Paso** and **KARMA-JKS Properties, Inc.** for **EIGHT HUNDRED EIGHTY-FIVE THOUSAND and 00/100 DOLLARS (\$885,000.00)** for the purchase of the following parcels to be used for the First-Time Home Buyer New Construction (Self-Help) Program:

CITY CLERK DEPT. OF COMMUNITY AND HUMAN DEVELOPMENT

Lots 2, 4, 5, 7, 9, 11, 13, 14, Block 9, Summerlin Subdivision, El Paso, El Paso County, Texas;

Lots 1, 3, 4, 6, 7, 8, 9, 11, 14, Block 10, Summerlin Subdivision, El Paso, El Paso County, Texas;

Lots 1, 3, 5, 7, 9, 10, 11, 13, 14, Block 11, Summerlin Subdivision, El Paso, El Paso County, Texas; and

Lots 2, 4, 6, 9, Block 12, Summerlin Subdivision, El Paso, El Paso County, Texas.

Adopted this _____ day of _____, 2008

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



William Lilly, Director
Community and Human Development

CITY CLERK DEPT.

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

CONTRACT OF SALE

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This Agreement is entered into as of the ____ day of _____, 2008 by and between the **CITY OF EL PASO**, hereinafter referred to as the "City," and **KARMA-JKS Properties, Inc.**, hereinafter referred to as "Seller."

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

1. Description of Property. The Seller hereby agrees to sell and convey and the City hereby agrees to acquire free and clear of any liens or encumbrances, the following real property located in El Paso County, Texas:

Lots 2, 4, 5, 7, 9, 11, 13, 14, Block 9, Summerlin Subdivision, El Paso, El Paso County, Texas;

Lots 1, 3, 4, 6, 7, 8, 9, 11, 14, Block 10, Summerlin Subdivision, El Paso, El Paso County, Texas;

Lots 1, 3, 5, 7, 9, 10, 11, 13, 14, Block 11, Summerlin Subdivision, El Paso, El Paso County, Texas; and

Lots 2, 4, 6, 9, Block 12, Summerlin Subdivision, El Paso, El Paso County, Texas,

together with any interest of the Seller in (i) all improvements, if any, and (ii) all right, title and interest of the Seller in and to any easements, appurtenances, and rights-of-way, and all interests in, on or to, any land, highway or street, in, on, across, in front of, abutting, or adjoining any such real property, all of such property, hereinafter collectively referred to as the "Property."

2. Amount of Payment of Purchase Price. The purchase price for the Property shall be a total of **EIGHT HUNDRED EIGHTY-FIVE THOUSAND and 00/100 DOLLARS (\$885,000.00).**

2.1 Payment of Purchase Price. The full amount of the purchase price will be payable in cash at the closing.

3. Conditions to City's Obligations. The obligations of the Seller hereunder to consummate the transaction contemplated herein are subject to the satisfaction of each of the

following conditions, any of which may be waived, in whole or in part, in writing by the City, at or prior to Closing.

3.1 Inspection. Subject to the provisions of Paragraph 6.1 hereinafter, the City shall complete its inspection of the Property on or before fifteen (15) City working days after the execution of this Agreement by the City (the "Inspection Period"). For the purposes hereof, the City may complete or cause to be completed inspections of the Property by inspectors of the City's choice. Inspections may include, but shall not be limited to: (i) physical property inspections; (ii) environmental assessment or engineering study including the performance of tests such as soils tests, water tests or air sampling. The Seller shall permit the City and the City's inspectors access to the Property at all reasonable times. In the case of any invasive testing (taking samples, etc.), the City shall provide to the Seller evidence that the consultant making such inspection carries liability insurance and is properly licensed. During the Inspection Period, the City may determine in its sole and absolute discretion whether the Property is suitable for the City's needs. In the event that the City in its sole and absolute discretion determines that the Property is not suitable for its needs, the City may terminate this Contract by delivering a written termination notice to the Seller within the Inspection Period and One Hundred and no/100 Dollars, which is independent contract consideration for this right to cancel. During the Inspection Period, the Seller covenants and agrees to make available to the City the Property. Such inspection shall be conducted by the City, and permitted by the Seller, on business days during normal business hours. All information provided by the Seller to the City or obtained by the City relating to the Property in the course of its review shall be treated as confidential information by the City, to the extent allowed by federal and state law, and in the event the City terminates this Contract, the City shall provide the Seller with all reports, studies, documents and other information obtained by the City relating to the Property. To the extent allowed by Texas State law, the City shall be liable for all damage or injury to any person or Property resulting from any such inspection occasioned by the acts of the City, its employees, agents or representatives.

3.2 Title Insurance. Within twenty (20) City working days after the date of execution of this contract, the City at its expense will order a title commitment ("Commitment"), accompanied by copies of all recorded documents affecting the property for the issuance of an Owner's Policy of Title Insurance with respect to the Property, in an amount to be decided by the City ("Owner's Policy").

3.3 Title Objections. The City will give the Seller written notice on or before the expiration of ten (10) City working days after it receives the Commitment that the condition of the title set forth in the Commitment is or is not satisfactory. In the event the City states that the condition is not satisfactory, the City will specifically set forth in such notice the defect or exception to title that is deemed objectionable. The Seller may at its option promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of the City. Otherwise, this condition will be deemed acceptable and any objection by the City will be deemed waived.

4. Representations and Warranties of Seller. The Seller hereby represents, to the best of its knowledge, covenants, and warrants to the City, as follows:

4.1 Parties in Possession. There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise.

4.2 Legal and Authorized Transactions. No person or persons own an interest in the fee title in the Property other than the Seller and that the joinder of no other third party shall be required to consummate this transaction.

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

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

4.5 Bills Paid. At closing, there will be no unpaid bills or claims in connection with any repair or operation of the Property.

4.6 Compliance With Law. The Property is in compliance with all applicable laws, ordinances, rules and regulations of any Government or any agency, body or subdivision, including any environmental issues related to the Seller's activities thereof.

4.7 Taxes. No state or municipal taxes are due with respect to the Property and no liens for such taxes are in effect against the Property, except as set forth on the Title Commitment. The Seller agrees to pay the prorated taxes due on the Property for the year 2008 through the date of Closing.

4.8 Pre-Closing Claims.

A. The Seller agrees that the City's acceptance of title to the Property under the conveyance documents should not create any liability on the City's part to third parties that have claims of any kind against the Seller in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the Seller. The City will not assume or agree to discharge any liabilities pertaining to the Property that occurred or accrued prior to the date of Closing. The Seller agrees to indemnify and hold the City harmless from and against any claims, injuries, liabilities, losses, damages, or expenses, including attorneys' fees and court costs, pertaining to claims

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arising out of the Property, and accruing prior to and arising from events that occurred prior to the date of Closing.

B. The Seller agrees to indemnify and hold the City harmless from and against any and all claims, injuries, liabilities, losses, damages, or expenses, including attorneys fees and court costs, pertaining to claims arising out of the Property, accruing prior to and arising from events that occurred prior to the date of Closing, and arising from any of the following: (i) testing or inspection obligations required by federal or state environmental agencies, including without limitation any required after the date of Closing; (ii) pending environmental investigations or cases by the Texas Commission on Environmental Quality known to the Seller; or (iii) the acts or omissions of the Seller on the Property. The Seller and the City each agree to promptly inform other party of any correspondence, directive, inquiry, demand, request, or similar communication from any federal or state environmental agency relating to the Property, to reasonably cooperate with the other party on the response to and handling of such communication and any related proceeding, and allow the reasonable participation of the other party in connection with the same.

4.9 Authority. The Seller has full right, power and authority to convey the property to the City and to consummate this transaction as provided in this Contract without the joinder of any other person or entity.

4.10 Title. The Seller has good and indefeasible title to a fee simple estate in the Property, subject to no liens, charges, encumbrances or exceptions other than those shown on the Title Commitment.

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

4.12 Notices. The Seller has not received any notice that the Property is in violation of any federal or state environmental laws or regulations, or any ordinance of the City of El Paso.

4.13 Right of First Refusal. The Seller has not granted any person or entity an option to purchase the Property.

4.14 Access. The Property has access to all abutting public streets.

4.15 Misrepresentation. The Seller shall indemnify and hold the City harmless from and against any losses, damages, costs or expenses (including attorneys' fees) incurred by the City as a direct or indirect result of (i) breach of any representation or warranty of the Seller contained in this document, or (ii) any breach or default by the Seller under any of the covenants or agreements contained in this document to be performed by the Seller, all of which shall survive the Closing hereof.

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4.16 Survival. All representations, warranties, covenants and agreements of the Seller made in this document, including without limitation any indemnity obligations, shall survive the execution and delivery hereof and of the Deed as well as the Closing hereunder, until such time as all of the obligations of the signatories hereto shall have lapsed in accordance with their respective terms, if and as applicable, or shall have been discharged in full.

5. Closing. Closing. The closing of this transaction ("Closing") shall take place at the offices of Stewart Title Company, 500 N. Mesa Street, Suite 300, El Paso, Texas 79901 (the "Title Company") on or before forty-five (45) days after the execution of this Agreement by the City.

5.1 Real Property Taxes. The Seller agrees to pay the taxes due on the Property for the year 2008 prorated through the day of closing.

5.2 Closing Costs.

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

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

(c) Escrow fees, if any, shall be paid by the City.

5.3 Seller's Obligations. At Closing, the Seller shall deliver to the City a duly executed and acknowledged Warranty Deed to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for (i) ad valorem taxes for the year of Closing which shall be prorated to the date of Closing, (ii) the standard printed exceptions contained in the usual form of the Owner's Policy, and (iii) any other exceptions set forth in the Title Policy which the City has approved pursuant to Paragraph 3.2 above.

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

6. Termination/Default.

6.1 Permitted Termination. If this Contract is terminated by the City pursuant to a right expressly given it to do so in this Contract, the City will give the Seller One Hundred and no/100 Dollars (\$100.00), which is independent contract consideration for this right to cancel, and neither party shall have any further rights or obligations hereunder.

6.2 Default by the Seller.

(a) The Seller shall be in default hereunder upon the occurrence of any one or more of the following events:

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(1) Any of the Seller's warranties or representations set forth herein are untrue or inaccurate in any material respect;

(2) The Seller shall fail to meet, comply with, or perform any covenant, agreement, or obligation on its part required, within the time limits and in the manner required in this Contract, for any reason.

(b) In the event that the Seller shall fail to fully and timely perform any of its obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except the City's default, or the termination of this Agreement in accordance with its terms, the City may enforce specific performance of this Agreement.

6.3 Default by City. In the event that City shall fail to fully and timely perform any of its obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except the Seller's default, or the termination of this Agreement in accordance with its terms, due to the difficulty of assessing the Seller's actual damages as a result of such breach by City, the Seller shall have a right to receive One Hundred and no/100 Dollars (\$100.00) as independent consideration as well as the reasonable and necessary out-of-pocket expenses of the Seller directly relating to this Agreement, such sum being agreed upon as liquidated damages for the failure of the City to perform the duties, liabilities and obligations imposed upon it by the terms and provisions of this Agreement, and the Seller agrees to accept and take such cash payment as its total, reasonable damages and relief and as the Seller's sole, exclusive remedy hereunder in such event.

7. Miscellaneous.

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

Seller: KARMA-JKS Properties, Inc.
Shirley Batts, President
6236 Quail Avenue
El Paso, TX 79924

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

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

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

8.1 Time. Time is of the essence of this Agreement and each and every provision hereof.

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

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

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

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

8.6 Reservation. The City reserves, and does not waive, its rights of sovereign immunity and similar rights and its rights under the Texas Tort Claims Act, except to the extent necessary to give legal effect to this Contract.

(Signatures begin on next page)

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EXECUTED by the City of El Paso this ____ day of ____, 2008.

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City of El Paso

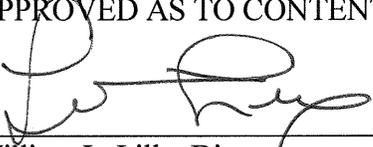
By: _____
Joyce Wilson
City Manager

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



William L. Lilly, Director
Community & Human Development

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of ____, 2008 by
Joyce Wilson, City Manager of the City of El Paso.

Notary Public, State of Texas

My commission expires:
