

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

DEPARTMENT: Community and Human Development
AGENDA DATE: September 30, 2008
CONTACT PERSON/PHONE: Bill Lilly, 541-4241
DISTRICT(S) AFFECTED: District 8

SUBJECT:

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

City Council is asked to approve funding for closing costs and project delivery costs for the following project using Housing and Urban Development (HUD) HOME Investment Partnership Program funds and to effectuate the authorization of these developments with the related contract documents.

Developer:	MPV Development Inc.
Project Type:	Construction of 19 Multi-Family Units in a 91 unit development
Project Address:	1001 Magoffin (79901)
Project Development Cost:	\$1,500,000 (approved on 8-26-08)
Project Delivery Cost:	\$37,500
Closing Costs:	<u>\$11,750</u>
Total Project Amount:	\$1,549,250
District:	8

Based on the \$1,549,250 total project amount, the amounts of the loan vs. secured grant have changed from the amounts previously approved on August 26, 2008. The new amounts are as follows:

Loan Detail approved 8-26-08:
Loan Amount: \$1,200,000.00
Grant Amount: \$300,000.00

Loan Detail requested 9-30-08:
Loan Amount: \$1,209,400.00
Grant Amount: \$339,850.00

BACKGROUND / DISCUSSION:

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

The project delivery costs and closing costs represent the cost of doing business. Project delivery costs are an allowable chargeback to HUD for the time that City staff will work on these projects. Closing costs include such items as recordation fees, tax certificates, title insurance, appraisal, etc.

PRIOR COUNCIL ACTION:

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

On August 26, 2008, the project development cost (but not closing costs nor project delivery costs) was approved.

AMOUNT AND SOURCE OF FUNDING:

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

These projects will be funded through HOME funds and are available in accounts:
09758-71150036/G7105HM-505204, 09759-71150036/G7106HM-505204, 09760-71150036/G7107HM-505204,
and 09761-71150036/G7108HM/505204.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

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

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

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

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

That City Council approves additional funding for the affordable housing project identified below to account for project delivery costs and closing costs:

Developer:	MPV Development, Inc.
Project Type:	New Construction of 19 Multi-Family Units
Project Address:	1001 Magoffin (79901)
Project Development Cost:	\$1,500,000.00 (approved by resolution on 8-26-08)
Project Delivery Cost:	\$37,500
Closing Costs:	\$11,750
Total Project Amount:	\$1,549,250.00
District:	8

That the City Manager, on behalf of the City, be authorized to sign a HOME Financial Terms Contract by and between the City of El Paso and MPV Development, Inc., in the amount of \$1,549,250.00; and

That the City Manager be authorized to sign a Builder's and Mechanic's Lien Contract and Deed of Trust (With Power of Sale) by and between the City, MPV Development, Inc., and the selected construction contractor, subordination agreement and/or other secondary financing riders; and any related documents and/or revisions thereto necessary to secure and perfect the City's security interest and lien, upon the recommendation of the Director of Community and Human Development and the approval of the City Attorney's Office.

ADOPTED this 30th day of September, 2008.

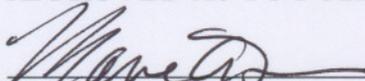
THE CITY OF EL PASO

John F. Cook,
Mayor

ATTEST:

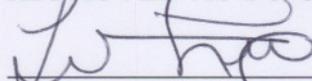
Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:



Marie A. Taylor,
Assistant City Attorney

APPROVED AS TO CONTENT:



William L. Lilly, Director,
Community and Human Development

STATE OF TEXAS }
 }
COUNTY OF EL PASO }

HOME FINANCIAL TERMS CONTRACT
(Rental Housing Project, 5 or More Units)

THIS CONTRACT is entered into this 30th day of September, 2008, by and between THE CITY OF EL PASO, hereinafter referred to as "City" and MPV DEVELOPMENT, INC. hereinafter referred to as "Borrower."

WHEREAS, the City of El Paso has received a formula grant from the U. S. Department of Housing and Urban Development ("HUD") under the HOME Investment Partnerships Program, hereinafter referred to as "HOME", as enacted under Title II of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625, approved November 28, 1990);

WHEREAS, the El Paso City Council meeting in regular session on August 26, 2008 adopted a Resolution establishing a Fiscal Year 09 HOME project for the City, which allows the use of funds by Borrower under the project designated;

WHEREAS, the City's Director of Community and Human Development has recommended approval of a secured grant/loan to Borrower, subject to the terms specified hereinbelow, and the El Paso City Council, meeting in regular session on September 30, 2008, by sufficient vote approved such secured grant/loan to Borrower and additional funding to account for estimated project delivery costs and closing costs, subject to the terms specified hereinbelow;

WHEREAS, the HOME funds having been approved for use in Borrower's new construction project, subject to the conditions and terms herein, and Borrower agrees to comply with all applicable HOME Program requirements;

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth and for value received by Borrower from City, the parties hereto do mutually agree to be bound by all terms and conditions of this Contract, and all documents incorporated by reference herein, as follows:

WITNESSETH:

I. DESCRIPTION OF PROPERTY AND PROJECT

The subject matter property is legally described as:

PARCEL 1: All of Lots 1 through 6 and a portion of Lot 7, and all of Lots 17-19, Block 1, Franklin Heights Addition, El Paso, El Paso County, Texas

PARCEL 2: All of Lots 7 through 20, Block 214, Campbell Addition, El Paso, Texas, El Paso, El Paso County, Texas.

The City hereby agrees to lend/grant Borrower funds not to exceed the total amount of \$1,549,250.00 subject to the terms hereinafter specified, to be drawn from HOME funds.

A. Borrower further agrees to take all necessary action to perfect and protect City's lien position as specified in Section III. of this Contract for the life of the Deed of Trust (With Power of Sale), attached as Exhibit "A" or in a form substantively similar thereto and incorporated by reference herein. City's lien being evidenced by said Deed of Trust (With Power of Sale) so attached as Exhibit "A," and Covenants and Restrictions Running with the Land. Borrower expressly acknowledges that it will be the Borrower's obligation to procure any additional private funding (in excess of the above-referenced amount) for completion of the development and construction of project.

B. City hereby agrees to provide HOME financing in the amount of \$81,539.47 per unit of the eligible acquisition and construction cost according to all terms and conditions as herein specified, including, but not limited to, the following terms and conditions: The City hereby agrees to provide HOME funds allocated to this project as a Secured Grant of \$339,850.00 using HOME Investment Partnership funds, as evidenced by a Secured Grant Note of even date herewith, attached as Exhibit "B" and incorporated by reference herein. Provided Borrower complies with the terms of this Contract, this Secured Grant shall be forgiven after the expiration of the maximum forty (40) year affordability period or when the Loan Note has been fully paid, but in no event shall the Secured Grant be forgiven until Borrower has maintained a minimum affordability period of twenty (20) years and Borrower remains in compliance with all terms and conditions as herein specified. The City hereby further agrees to provide the remainder of the financing required to fund the eligible acquisition and construction cost to be financed through public financing in a loan at zero percent (0%) interest. Such loan shall be in the amount of \$1,209,400.00 at zero percent (0%) for forty (40) years with the first of such (480) monthly installments of \$2,521.18, and the remaining (479) consecutive monthly installments of \$2,519.58, as evidenced by Loan Note attached hereto as Exhibit "C", beginning on the first day of the month as specified in the Loan Note. The City will provide such public financing, as specified above, upon the following additional terms and conditions:

(1) HOME financing shall be approved and funds shall be advanced to Borrower, subject to the terms described herein, to include but not limited to those contained in Sections III. and IV. below, and any other terms and conditions specified herein.

(2)(a) Disbursement of public funds shall be made within ten (10) business days upon Receipt by City of Borrower's written request for such, the documentation as required in B(1) above has been provided and upon the approval of the Director of the Department of Community and Human Development of the City. Borrower shall not request disbursement of HOME funds until they are needed to pay eligible costs and each disbursement request shall be limited to the amount needed. Such disbursement may be withheld by the Director if, in the reasonable exercise of Director's discretion, the Borrower has failed to fulfill the requirements of this Contract. Disbursements shall be made in accordance with Borrower's Preliminary Project Budget, attached hereto as Exhibit "D", which may be updated upon prior approval, provided however, the updated Budget for the nineteen HOME-assisted units may not exceed \$1,549,250.00.

(b) Loan payments on the note in the face amount of \$2,521.18 for the initial payment and \$2,519.58 for the remaining payments shall be due on the first day of the month with the first payment due on the first day of the month as specified in the Loan Note. Interest on the loan shall accrue at the rate of zero percent (0%) per annum from the date of disbursement. Borrower shall make monthly payments and such payments shall be calculated over four hundred eighty (480) monthly installments.

(c) Borrower shall have not more than forty (40) years from the due date of the first payment in which to repay in full all principal and interest due and owing on such loans, in accordance with the terms and conditions of the respective Loan Notes.

(d) The purpose of this loan/secured grant is to provide Borrower with funds to construct NINETEEN (19) rental units on Borrower's property located at 1001 Magoffin, as more fully described in the Deed of Trust (With Power of Sale), attached hereto as Exhibit "A", and incorporated by reference herein. Borrower agrees that within twenty-four (24) months from the date of this Contract the for nineteen (19) rental units will be completed and occupied by tenant households with incomes that do not exceed fifty percent (50%) of the area median income and paying no more than the LOW HOME rent. There is no other use of said funds authorized by City, and the use of the City's funds by Borrower for any other purpose shall constitute a breach of contract by Borrower for which City may pursue any and all remedies, whether at law or equity, which are available to City.

(3) No HOME funds will be advanced and no reimbursable costs can be incurred until the City has conducted an environmental review of the property sites as required under 24 CFR Part 58. Notwithstanding any provision in this Contract, the parties hereto agree and acknowledge that the commitment of HOME funds is contingent upon satisfactory completion of environmental review and receipt by the City of a release of funds from HUD under 24 CFR Part 58.

C. Borrower may prepay without penalty at any time all or part of the current balance of the Notes. Such prepayment, if any is made, will be applied first to any interest due and then to the reduction of principal. In the event a prepayment is made, the rate of interest on such prepayment shall be the interest rate then in effect under the terms of this Contract. Prepayment will not release Borrower from fulfilling the HOME covenants described in Section IV of this Contract.

II. REPRESENTATIONS AND WARRANTIES

A. Borrower represents that the information furnished to City upon which City relied to make this loan/secured grant is correct and true. Borrower hereby represents that each of said Borrower's representatives have the authority and capacity to commit to a financial obligation on behalf of Borrower. Specifically, but not by way of limitation, this authority includes signing a loan agreement, notes, and any security instrument related thereto in incurring financial obligations to construct the aforementioned building located at 1001 Magoffin, El Paso, El Paso

County, Texas as more fully described in Exhibit "A" attached hereto and incorporated by reference herein. The City acknowledges that on the date of this Contract, fee title to the real property on which the nineteen units will be constructed is in the name of Centro De Salud Familiar La Fe, Inc. ("La Fe"). Prior to the funding of the Secured Grant Note and the Loan Note, Borrower represents that it will either: (i) obtain fee title to the real property by a deed of conveyance from La Fe; or (ii) enter into a ground lease with La Fe in which the Borrower shall be the Ground Lessee, and which lease shall have a term of not less than forty (40) years. Borrower further represents that it will own any and all buildings referenced above, subject to any and all restrictions, easements, covenants, and other matters of record.

B. Borrower agrees and understands that approval of this loan has been made by consideration of and in reliance upon various data furnished by Borrower, and agrees that should any of said data prove to be false or materially misleading in any way, the City shall have the right to unilaterally terminate this Contract for unremedied breach thereof and demand repayment in full the entire principal amount of the secured grant, as evidenced by Exhibit "B", and all principal advanced and all accrued interest under the terms of the loan, as evidenced by Exhibit "C", plus all costs of collection.

C. This Contract is entered into in the City and County of El Paso, Texas and shall be governed and construed under the laws of the State of Texas. Venue shall be in El Paso County, Texas, for all purposes.

III. CONDITIONS PRECEDENT

Borrower agrees to fully comply with the following terms and conditions, as a condition precedent to Borrower's receipt of any and all public financing described herein:

A. Borrower will execute all documents necessary to impose the Covenants and Restrictions Running with the Land required by the HOME program described in the Code of Federal Regulations; a copy of the Property Agreement Concerning Covenants and Restrictions Running with the Land is attached hereto as Exhibit "F" and incorporated herein by reference. The restrictions shall run with the Property and shall inure to the benefit of the City. If the City succeeds in enforcing or enjoining the violation of any Restriction, the City shall be reimbursed for its court costs and reasonable attorneys' fees incurred in such action.

B. Borrower agrees to grant to City the following collateral as security for the City loan and secured grant as agreed thereto:

(1) A *second* lien on the following described real property or second lien on the ground leasehold interest of Borrower and on Borrower's interest as the ground lessee in the improvements to be constructed thereon:

PARCEL 1: All of Lots 1 through 6 and a portion of Lot 7, and all of Lots 17-19, Block 1, Franklin Heights Addition, El Paso, El Paso County, Texas

PARCEL 2: All of Lots 7 through 20, Block 214, Campbell Addition, El Paso, Texas, El Paso, El Paso County, Texas.

(2) City agrees to subordinate its lien against the Property or ground leasehold interest and improvements, so long as the City's lien maintains secondary lien status.

C. Borrower agrees to take any and all necessary action to perfect such lien(s) and to protect City's *second* lien position in the property described above. Any loans made under future advance clauses of any previous loans, without the City's written consent hereunder, shall constitute a breach of this Contract.

D. Borrower agrees to provide sufficient documentation to satisfy all HOME loan and grant requirements.

E. Borrower shall furnish to City acceptable evidence of liability and casualty insurance on said real estate and improvements thereon which shall be sufficient to guarantee payment of all of the Borrower's indebtedness on the aforementioned property. This insurance coverage shall name the City as an additional insured.

F. Borrower agrees to obtain all necessary permits, licenses and special privileges that may be required by City prior to conducting the construction work on the property subject to this Contract. In the event Borrower must pay any fees for obtaining any of the above items, Borrower agrees to pay such to City. Borrower shall also comply with any County, State or Federal requirements that apply to its construction activities. This is specifically to include but not limited to the Low HOME "rent limitations" outlined in Exhibit "E" and affordability requirements as noted herein, and as may be amended from time to time.

If Borrower breaches any term or condition of this Section III., entitled "Conditions Precedent," the entire principal amount of the secured grant, as evidenced by Exhibit "B", and the entire outstanding principal advanced and all accrued interest under the terms of the loan, as evidenced by Exhibit "C", shall immediately be declared due and payable, and City shall be entitled to exercise all rights and remedies reserved to it under Section V. of this Contract entitled "Events of Default."

IV. COVENANTS

The following covenants in Subparagraphs A-X of this Section IV. shall apply as long as any amounts are outstanding under the Secured Grant and Loan Notes, unless a longer period is specified:

A. Borrower agrees that HOME funds shall be used only for eligible acquisition and construction costs. Borrower hereby acknowledges and agrees that the HOME funds may not be used for any other purpose.

B. "Eligible construction cost(s)" as the term is used herein shall include the actual acquisition and construction cost, required appraisals, title searches, insurance, attorney's fees,

architectural fees, escrow charges, tax recordation costs and credit reports, all in the amounts associated directly with the construction of the structure, as well as relocation payments made by the property owners, in accordance with the City's Tenant Assistance Policy, to tenants who are displaced or temporarily relocated as a result of HOME projects.

C. Borrower also agrees to comply fully with all requirements of the Tenant Assistance Policies as developed by the City. A copy of the City's Tenant Assistance Policy has been provided to Borrower during the application process. Borrower further agrees to comply with §92.353 of Title 24 of the Code of Federal Regulations ("CFR") regarding displacement, relocation and acquisition.

D. Borrower agrees that it will not discriminate against current or prospective tenants on the basis of the receipt of, or eligibility for, housing assistance under any federal, state or local housing assistance programs, or on the basis that such tenants have a minor child or minor children who reside with them. Borrower agrees to comply with 24 CFR §92.252, specifically to include, but not limited to subsection (d) "Non discrimination against rental assistance subsidy holders".

E. Borrower hereby further agrees that for a maximum period of **forty (40)** years from the date of project completion (which may be reduced to a minimum period of twenty (20) years upon full prepayment of the Loan Note and following a twenty (20) year period from the date of project completion), the newly constructed property will comply with Subpart E - Project Requirements of Part 92 of Title 24 of the Code of Federal Regulations, HOME Investment Partnership Program. Borrower further agrees to comply with 24 CFR §92.250 regarding Maximum Per Unit Subsidy; 24 CFR §92.251 regarding Property Standards; 24 CFR §92.252 regarding Qualification as Affordable Housing; Rental Housing, 24 CFR §92.203 regarding Tenant Income, 24 CFR §92.355 regarding lead based paint requirements, and applicable subsections and amendments thereto regarding:

- a) rent limitations;
- b) rent schedules;
- c) increases in tenant income;
- d) adjustments of qualifying rent

For the entire nineteen (19) units that are HOME assisted at 1001 Magoffin, Borrower agrees to rent all nineteen (19) units at the Low HOME rent for tenants whose income is no more than 50% of the City's median income for their household size. The City will provide Borrower with the HUD-approved median income limits for the City on an annual basis whenever the limits are revised by HUD. The City will also provide the Borrower with updated rent limits whenever the HOME rents are revised by HUD. Borrower will be allowed to make adjustments to the project rents, as approved by the City, in order to comply with rent limit revisions by HUD.

For purposes of this Contract, "project completion" means that all necessary title transfer requirements to the Borrower have been performed; construction has been completed; the project complies with the requirements of 24 CFR Part 92 (including the property standards under 24 CFR §92.251); the final drawdown has been disbursed for the project; the Borrower has submitted all necessary demographic and financial information to the City for all units; and the project completion information (which includes the demographic and financial information) has been entered into the Integrated Disbursement and Information System (IDIS) established by HUD. Once the requisite information is provided, the City agrees to use its best efforts to enter that information into IDIS within 30 days of receipt.

Borrower agrees to comply with 24 CFR §92.216 regarding Income Targeting:

1. Initial Occupancy - 100% of the HOME assisted rental units in this project must be occupied by tenants with annual incomes at fifty percent (50%) or less of median income.
2. Annual reexamination.
3. It is the further intention of this Contract that all applicable HOME requirements and conditions be fulfilled in order to assist low and very low income persons in obtaining suitable housing.

Borrower agrees to comply with 24 CFR §92.253 regarding Tenant and Participant Protections regarding the leases, prohibited lease terms, and adoption of written tenant selection policies and criteria that conform to HUD requirements.

4. In a project containing HOME-assisted and other units, the City may designate fixed or floating HOME units at the time of project commitment. The City hereby designates the HOME assisted rental housing units in this project as FLOATING HOME units. As floating units, the units may change to maintain conformity with the requirements of 24 CFR §92.252 during the affordability period so that the total number of housing units meeting the requirements of 24 CFR §92.252 remains the same, and each substituted unit is comparable in terms of size, features, and number of bedrooms to the originally designated HOME-assisted unit.

F. In order to assure compliance with the Project Requirements of the HOME Program (as defined Title 24 of the Code of Federal Regulations, Part 92, Subparts E and F), Borrower agrees to submit annually the following documentation to City for review and approval:

1. A copy of the tenant application and a description of the tenant qualification process to include Tenant Selection Procedures that Borrower will utilize to verify tenant incomes.
2. A copy of the lease agreement form that will be utilized for the subject residential property at **1001 Magoffin, El Paso, Texas**. Borrower agrees to attach to its standard lease agreement form, the Mandatory Lease Addendum, a copy of which is attached hereto as Exhibit "G", and must be completed for every tenant household at lease-up and upon request.

3. Borrower hereby agrees to verify all income, assets, household characteristics, and any other circumstances that affect tenant eligibility in accordance with 24 CFR Part 5 and as more specifically described in the Property Agreement Concerning Covenants and Restrictions Running with the Land, attached hereto as Exhibit "F" and incorporated by reference. Further, Borrower shall assist the City in acquiring tenants' consent and release authorization for purposes of determining or auditing tenant income eligibility or for verifying related information from depository or private source of income, or any Federal, State, or local agency ("source documentation").

G. Borrower agrees that it will not discriminate against any class of individuals protected against discrimination under federal law in soliciting and accepting tenants for the newly constructed structure. Borrower further agrees to participate with City in making all good faith efforts necessary to attract as tenants any and all classes of individuals protected against discrimination under federal law as required by the City, pursuant to 24 CFR §92.351 (Affirmative Marketing Policy and Procedures).

H. Furthermore, Borrower agrees for a maximum period of forty (40) years commencing on the date of project completion of the newly constructed property ("the affordability period") that the property shall remain affordable to low and very low income individuals and/or families pursuant to deed restrictions without regard to term of any loan or mortgage or transfer of ownership pursuant to 24 CFR §92.252, as evidenced by the Property Agreement Concerning Covenants and Restrictions Running with the Land, attached as Exhibit "F". A definition of low and very low income individuals and/or families is attached as Exhibit "E" and incorporated by reference herein. Following twenty (20) years from the date of project completion, provided Borrower has fully prepaid the Loan Note and remains in compliance with the terms and conditions of this Contract, the affordability period will be reduced to a minimum affordability period of twenty (20) years from the date of project completion.

I. Borrower agrees that within ninety (90) days after the date the City of El Paso, Housing Programs Division, signs the Owner's Acceptance Form for the newly constructed property, as described herein, Borrower will furnish to City data on the demographic characteristics of tenants occupying the newly constructed structure initially after construction. Such data must be of a quality acceptable to the Director of the Department of Community and Human Development.

J. Borrower further agrees to comply with subpart H - "Other Federal Requirements" of Title 24 of the Code of Federal Regulations, Part 92, as applicable and the federal requirements set forth in Title 24 of the Code of Federal Regulations, Part 5, subpart A.

K. Borrower agrees to comply with the Federal Fair Housing Act and other Federal Rules, regulations and policies applicable to the performance of this Contract. Further, Borrower agrees to assist in the City's compliance with the requirements of 24 CFR §92.202 Site and Neighborhood Standards.

L. Borrower hereby agrees that in all solicitations for employment applications, Borrower shall hold itself out as an equal opportunity employer. Borrower shall fully comply with all federal and state laws, regulations, and executive orders regarding equal employment and shall further comply with Davis-Bacon Act compensation requirements, if applicable, to Borrower, pursuant to 24 CFR §92.354. It is agreed that the work to be performed under this Contract is subject to employment and contracting requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135 and all applicable rules and orders of the Department issued thereunder. Section 3 requires that, to the greatest extent feasible, and consistent with existing federal, state and local laws and regulations, opportunities for training and employment, contracting and other economic opportunities generated by the expenditure of this assistance be given to low and very low income persons and to business concerns that provide economic opportunities for these persons. The requirements of Section 3 apply to contractors and subcontractors performing work on Section 3 covered projects for which the amount of assistance exceeds \$200,000; and the contract or subcontract exceeds \$100,000. Every Section 3 covered contract and subcontract must include the City's Exhibit "H" attached hereto, entitled "Section 3-Area Business and Workforce Agreement", incorporated by reference herein, and also comply with all terms and conditions of Exhibit "I", attached hereto and incorporated by reference herein, entitled "Affirmative Action."

M. Borrower shall maintain such records and accounts, including program records; financial records; program administrative records; equal opportunity and fair housing records; affirmative marketing records; records demonstrating compliance with the income determination and requirements of 24 CFR §92.203; record keeping requirements of 24 CFR §92.508; records demonstrating compliance with the labor requirements of 24 CFR §92.354; records demonstrating compliance with the lead-based paint requirements of 24 CFR §92.355; records supporting exceptions to the conflict of interest prohibition pursuant to 24 CFR §92.356; debarment and suspension certifications required by 24 CFR Parts 94 and 91; and any other records as are deemed necessary by the City to assure a proper accounting and monitoring of all HOME funds.

Pursuant to 24 CFR §92.508, Borrower shall keep and maintain adequate records to demonstrate compliance with HOME requirements:

1. Borrower shall maintain project records to verify at a minimum: the source and application of HOME funds, including supporting documentation; the minimum per-unit subsidy amount and maximum per-unit subsidy amount for the project; rent and utility allowance calculations; compliance with on-going property maintenance standards and lead based paint requirements; occupancy requirements are being met; and compliance with rent increase procedures.

2. Borrower shall maintain tenant records to verify at a minimum that: the project is satisfying the affordability and income targeting requirements for the required period; tenants are income eligible; the project is in compliance with tenant and participant protections of 24 CFR §92.253. Such documentation must be kept for each household, and will include: the tenant's

application, initial income verification documents, subsequent income recertification documents and the tenant's lease and lease addendum.

3. For general rental housing projects, records must be retained for five years after the project completion date; except that records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five-year period, until five years after the affordability period terminates.

Borrower further agrees to allow City to conduct project monitoring and evaluation activities as determined necessary by City and HUD. Borrower agrees that it will make its premises and records available for such inspection and monitoring.

N. Borrower agrees to execute any and all notes, security agreements, financing statements, builder's and mechanic's liens and deeds of trust (With Power of Sale) and any other documents or amendments consistent with this Contract and reasonably necessary for perfection of City's lien in the form submitted by Counsel for the City.

O. Borrower agrees to close on the Loan advanced herein within thirty (30) consecutive calendar days from the date of approval by the City Council.

P. Upon reasonable request, City shall have the right at all times to inspect Borrower's business premises, and its books and records relating to employment. Borrower agrees that it will make its premises and records available for such inspection by City. Borrower further agrees that City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of Borrower for the purpose of making an audit, examination, excerpts, and transcriptions.

Q. Borrower is prohibited from assigning this Contract in whole or in part in any manner, unless Borrower has first obtained prior written consent from the City, which will not be unreasonably withheld. Borrower hereby understands and agrees that if the newly constructed property, as described herein, is sold or transferred in whole or in part within maximum **forty** year covenant/affordability period (or minimum twenty year period as further described hereinabove), without the written approval of the City, the City, at its option, may declare the entire balance of outstanding principal advanced and all accrued interest on the Loan Note, Exhibit "C", and the entire principal amount of the Secured Grant Note, Exhibit "B", immediately due and payable upon thirty (30) days written notice.

R. Borrower hereby agrees that it shall not impair, whether by means of affirmative action or inaction, the lien status of the City in the collateral as described herein, used as security for the City loan and grant.

S. This Contract may be executed in any number of counterparts; all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

T. BORROWER HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY SUITS, ACTIONS, DEMANDS, LIABILITIES, TYPE OR DESCRIPTION, BROUGHT OR MADE, AND CLAIMS OF ANY CHARACTER, FOR OR ON ACCOUNT OF ANY INJURIES OR DEATH, OR ACTIONABLE TORTS, SUSTAINED BY ANY PERSON(S), AND DAMAGE OR DESTRUCTION OF ANY PROPERTY ARISING OUT OF, OCCASIONED BY, OR RELATING TO THE PERFORMANCE OF THE CONTRACT, OR THE ACTIVITIES CARRIED OUT HEREUNDER, WHETHER OR NOT BASED IN WHOLE OR IN PART ON THE CITY'S NEGLIGENCE. THIS INDEMNITY SHALL COVER CITY'S ATTORNEY'S FEES, COURT COSTS, WITNESS EXPENSES, AND ALL OTHER RELATED COSTS INCLUDING JUDGMENTS, AWARDS AND SETTLEMENTS.

U. No member, officer, or employee of City, or its designees or agents, no member of the governing body of City and no other public official of City who exercises any functions or responsibilities, or who has been in a position to participate in a decision-making process or gains inside information with regard to the activities governed by this Contract during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the HOME Program under this Contract. Borrower further agrees to comply with all provisions contained in 24 CFR §92.356 "Conflict of Interest". Unless expressly permitted by the City, no developer, officer, employee, agent or consultant of the Borrower, may occupy a HOME-assisted affordable housing unit in the project.

V. Borrower certifies that it is not debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, Borrower shall establish procedures to ensure that it does not make any award to any contractors at any tier in violation of the nonprocurement debarment and suspension standard. Borrower will verify and document that none of its contractors are debarred, suspended or otherwise excluded from participation through the effective use of the List of Parties Excluded from Federal Procurement or Nonprocurement programs ("List"). Borrower may request assistance from the City to access the List and document results.

W. Borrower and City agree that the anticipated construction will involve nineteen (19) HOME-assisted units. No HOME-assisted units constructed under this Contract will be exempt from the requirements and conditions noted herein.

X. If applicable, Borrower must meet conditions and limitations for use of HOME funds involving faith-based activities, as specified in 24 CFR §92.257.

If Borrower breaches any term or condition of this Section entitled "Covenants", the entire principal amount of the secured grant as evidenced by Exhibit "B", and the entire outstanding principal advanced and all accrued interest under the terms of the loan, as evidenced by Exhibit "C", may immediately be declared due and payable following Borrower's failure to cure the breach after written notice and a thirty (30) day opportunity to cure period, and City shall be entitled to exercise all rights and remedies reserved to it under Section V. of this Contract, entitled "Events of Default."

V. EVENTS OF DEFAULT

A. Following Borrower's failure to cure the breach after written notice and a thirty (30) day opportunity to cure period, City has the right to accelerate the payment of the secured grant and loan, as evidenced by Exhibits "B" and "C", respectively, upon breach of this Contract by Borrower, and City further has the right to declare that the entire principal amount of the secured grant, and the entire outstanding principal advanced and all accrued interest under the terms of the loan is immediately due and payable by Borrower to City at the time of the contract breach. City's right to accelerate the secured grant and loan shall apply to all events as specifically designated in Sections III. and IV. of this Contract, and to the following events, but shall not be limited to these events:

- (1) material errors in the representations and warranties given to City by Borrower;
- (2) Borrower's failure to perform any of the covenants or conditions precedent as stated in this Contract;
- (3) any new or unstayed judgment or unsatisfied lien against Borrower in an amount which, in the City's judgment, may impair its security or perfection of its security status regarding the collateral subject to this Contract following written notice and a thirty (30) day opportunity to cure period;
- (4) failure to pay principal on time;
- (5) Borrower's timely payment of principal, interest or any other amount due by check for which insufficient funds exist;
- (6) Borrower's failure to comply with the timelines required for completion of the construction of the units.
- (7) Borrower's failure to comply with the Covenants and Restrictions Running with the Land.

B. City hereby expressly reserves any and all other rights and remedies available to it in the event of Borrower's breach. It is hereby understood and agreed that in the event City agrees to a settlement of any breach of contract by Borrower, this shall not preclude the City from exercising its rights for any further or additional breaches of this Contract. This shall also apply to any instances in which the City allows a period of time to pass so that Borrower has an opportunity to remedy any breach of this Contract.

VI. BORROWER'S LIABILITY

Borrower understands and agrees that if Borrower fails to comply with any term or condition, as specified in Section III. entitled "Conditions Precedent" or Section IV. entitled

"Covenants", any other term or condition of this Contract, or any other term or condition of any document incorporated by reference herein, such that City is entitled to withhold payment of publicly-financed funds under the terms and conditions of this Contract. Borrower will bear sole liability for all obligations in any way related to the acquisition and construction of the property described herein and City shall be entitled to all rights and remedies reserved herein.

VIII. NOTICES

Any communications or notices regarding this Contract shall be effective only if sent postage prepaid, certified mail, return receipt requested to the following addresses, unless either party notifies the other in writing of a change of address:

CITY: City of El Paso
Attn: Director, Dept. of Community and Human Development
2 Civic Center Plaza
El Paso, TX 79901-1196

BORROWER: MPV Development, Inc.
Attn: Robert Gonzales
608 St. Vrain
El Paso, Texas 79901

IX. DURATION OF AGREEMENT

This agreement shall be effective on the date first above written and shall remain in effect for the entire affordability period required by Title 24 of the Code of Federal Regulations, Part 92 following project completion and for five years thereafter or until full repayment of the Loan Note under the terms of the note, whichever date is later.

X. COLLATERAL DOCUMENTS

The following Exhibits "A" -"I" are attached and incorporated by reference for all purposes.

Exhibit "A": Deed of Trust (with Power of Sale) or a form substantially similar
Exhibit "B": Secured Grant Note
Exhibit "C": Loan Note
Exhibit "D": Preliminary Budget
Exhibit "E": HOME rent limitations
Exhibit "F": Property Agreement Concerning Covenants and Restrictions Running with the Land
Exhibit "G": Lease Addendum
Exhibit "H": Section 3- Area Business and Workforce Agreement
Exhibit "I": Affirmative Action Plan

XI. ENTIRE AGREEMENT

This Contract embodies all of the representations, rights, duties and obligations of the parties, and any prior oral or written agreement not embodied herein shall not be binding upon or inure to the benefit of any of the parties. This Contract may only be amended by written instrument signed by duly authorized representatives of the parties. If any term, covenant or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms, covenants and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term, covenant, or provision held to be invalid.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date first above written.

THE CITY OF EL PASO

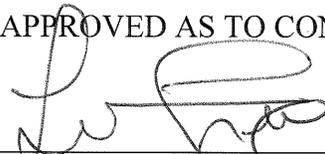
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



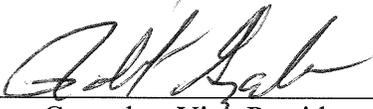
Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



William L. Lilly, Director
Community and Human Development

BORROWER(S): MPV DEVELOPMENT, INC.

By: 

Robert Gonzales, Vice-President and Secretary

(Acknowledgments on Following Page)

CITY CLERK DEPT.
08 SEP 22 PM 3:00

HOME Financial Terms Contract-Rental (5 or More Units)
MPV Development
1001 Magoffin

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 20 __, by JOYCE A. WILSON as City Manager of **THE CITY OF EL PASO**, on behalf of said municipal corporation.

Notary's Commission Expires:

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

(Acknowledgment)

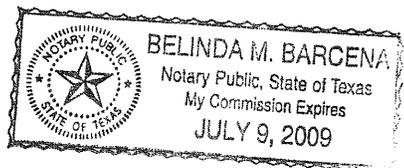
STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 22nd day of September, 2008, by Robert Gonzales, Vice-President and Secretary, of MPV Development, Inc., on behalf of said entity.

Notary's Commission Expires:

Belinda M. Barcena

Notary Public, State of Texas
Notary's name (printed):
Belinda M. Barcena



CITY CLERK DEPT.
08 SEP 22 PM 3:00