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

DEPARTMENT: **Community and Human Development**

AGENDA DATE: **November 7, 2006**

CONTACT PERSON/PHONE: **Juan Aragon – 541-4042**

DISTRICT(S) AFFECTED: **8**

SUBJECT: 1324 Myrtle, El Paso, TX 79901/Alfonso S. Perez

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 by Resolution an Investor-Owned Housing Rehabilitation application in the amount of $255,000 for the rehabilitation of a vacant building located at 1324 Myrtle (79901), pursuant to the terms of the City of El Paso Housing Programs handbook, Chapter Five (Investor-Owned Properties) and as recommended by the Director of Community and Human Development; and to authorize the City Manager to sign a Community Development Investor Owned Financial Terms Contract (4 units or less, Loan and Grant) between the owner Alfonso S. Perez and the City; a Builder's and Mechanic's Lien Contract (With Power of Sale) between Alfonso S. Perez, Medsons Construction Ltd. Co. and the City; a loan note; a grant note; and covenants requiring lease of the premises to low income households.

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?

Under this project the City will provide $255,000.00 in Housing Rehabilitation Revolving Loan funds for the rehabilitation of a vacant building located at 1324 Myrtle, in accordance with "Chapter Five – Investor-Owned Properties" of the El Paso Housing Programs Handbook.. After rehabilitation the building will consist of three (3) one-bedroom apartments and one (1) efficiency apartment that will be rented to low-income tenants (60% of median income or below) at maximum allowable monthly rents of $385 and $364 respectively.

The $255,000 will be utilized as follows: $239,000.00 for construction, $9,455.40 for construction contingency, and $6,544.60 for closing costs and various fees (architecture fees, engineering fees, environmental fee, etc.) for a total of $255,000.00.

Although located in the Magoffin Historical District, the building was not determined to be historically significant. However, the renovation of this dilapidated structure will improve the aesthetics of the District, and increase the District's viability by bringing more residents into the area.

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As provided in the Housing Programs Handbook, the City financing will consist of a thirty-year loan for $204,000.00 at zero percent (0%) interest with payments to the City of $566.67 per month for 30 years and a thirty-year Secured Forgivable Loan of $51,000.00 with exempted payments of $141.67 per month. The affordability period for this project will be fifteen years. This means that the apartments will remain affordable to low-income tenants for the fifteen-year period, irrespective of the sale of the property. Should the building be sold or transferred, the outstanding balance of the loan at the time of sale will become due. If there is a sale, Restrictive Covenants will impose the same conditions on the new owners as this transaction does on the current owners.

The Financial Terms Contract for this project will contain a clause which will obligate the owners to close within 30 days of City Council approval and another clause which will be an Event of Default which requires the owners to complete the project within the time stipulated in the Construction Contract. The Loan Note now contains a specific first payment due date, which will become due sixty days after the exact date for completion in the Construction Contract, as opposed to the issuance of a Certificate of Occupancy.

Approval of the project is recommended for the following reasons:

- As mentioned above, the project will contribute to the general improvement of the Magoffin Historical District and will help alleviate substandard living conditions in the area.
- The project continues Community Development (CD) improvements in the area that include:
  -the Magoffin Avenue Improvements Project funded with $1,271,100 in the 22nd (1996-1997) CD Program Year;
  -the Olive Street and Drainage Improvements (from San Antonio to Tays) Project funded in the amount of $651,416 in the 27th (2001-2002) Program Year; '
  -the San Antonio Avenue Street and Drainage Improvements Phase I (from Virginia to Tays) funded in the amount of $1,127,572 in the 29th (2003-2004) and 30th (2004-2005) Program Years;
  -and the 31st Program Year (2005-2006) San Antonio Avenue Street and Drainage Improvements Phase II (from Tays to Cotton) funded in the amount of $1,453,381.
- The project at 1324 Myrtle is one of several City-funded housing rehabilitation projects either pending or completed in the Magoffin Historical District area. It is located adjacent to an apartment house at 1318 Myrtle that was recently renovated by the Opportunity Center for the Homeless with CDBG and HOME funds provided by the City. The Opportunity Center has purchased and intends to renovate the structure on the other side of 1318 Myrtle. The building at 1324 Myrtle is situated across the alley from two other properties that have been renovated with Community Development/HOME funds – the recently completed renovation of 1305 Magoffin and the adjacent building at 1307 Magoffin that was renovated by a non-profit approximately 6 years ago. This entire City block is thus gradually becoming a showcase for renovation possibilities.

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

The most recent projects adopted under the provisions of Chapter 5 (Investor-Owned Properties) include the rehabilitation of a property at 6968 Alameda on May 2, 2006; a property at 3911 Taylor on March 7, 2006; and another property at 2229 Bassett on October 10, 2006.

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?

[Funds for this project are available in account: 09759-G7106HM-505204 Program Account) $255,000.00.]

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

The Director of Community & Human Development recommends favorable approval by City Council.

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

LEGAL: (if required) _____ **FINANCE:** (if required)_____
Matt Watson,
Assistant City Attorney

DEPARTMENT HEAD: _____
Nathalie Prise, Director

(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:** _____

EXR.1092-I-O

RESOLUTION

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

That the following Housing Rehabilitation application and funding be approved in the amounts shown below as recommended by the Director of Community and Human Development and that the City Comptroller be authorized to issue checks in the amounts shown below for the approved application.

Application No.: H06-10-IO/CD/RG-0331	HOME Loan:	$ 204,000.00
	HOME Grant	$ 51,000.00
	Total	$ 255,000.00

Address: 1324 Myrtle (79901)
Interest at zero percent (0%)

AND THAT the City Manager be authorized to sign a Community Development Investor-Owned Financial Terms Contract between the City and owner Alfonso S. Perez and a Builder's and Mechanic's Lien Contract and Deed of Trust (With Power of Sale) between the City, Medsons Construction Ltd. Co. and Alfonso S. Perez, relating to a Community Development Rehabilitation Loan Application No. H06-10-IO/CD/RG-0331. Funding is available in Account: 09759-G7106HM-505204 ($255,000.00.)

ADOPTED this _____ day of _____, 2006.

THE CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Nathalie Prise, Director
Community and Human Development

CHD/Reso/Rehab/1324 Myrtle/Alfonso Perez
Document #: 26201/MWAT

STATE OF TEXAS	)	**COMMUNITY DEVELOPMENT INVESTOR-OWNED FINANCIAL TERMS CONTRACT (ONE TO FOUR UNITS AFTER REHAB)**
	)	
COUNTY OF EL PASO	)	

THIS CONTRACT is made this _____ day of _____, 2006, by and between **CITY OF EL PASO**, hereinafter referred to as "CITY" and **ALFONSO S. PEREZ,** hereinafter referred to as "BORROWER," (jointly and individually) for the purposes and consideration herein below recited. The terms of this Contract shall be as stated below.

WHEREAS, by sufficient vote of the El Paso CITY Council on _____, 2006, CITY authorized a loan to BORROWER, subject to the terms specified hereinbelow.

WHEREAS, this loan is made pursuant to the terms of a Community Development Investor-Owned Loan covering a four unit property with a common address of 1324 Myrtle and through the CITY's Housing Rehabilitation Program, hereinafter referred to as "Program;"

WHEREAS, the Program provides that for projects that will result in four or fewer dwelling units after rehabilitation, Program will provide public financing in the amount of one hundred percent (100%) of the "eligible rehabilitation costs," as defined herein, as a loan to BORROWER payable over a term of thirty (30) years and a grant to BORROWER forgivable over a term of thirty (30) years;

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth and for value received by CITY from BORROWER, 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:

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WITNESSETH

I. DESCRIPTION OF PROPERTY AND PROJECT

The subject matter property is legally described as:

Lots 11 and 12, Block 32, FRANKLIN HEIGHTS, an Addition to the City of El Paso, El Paso County, Texas; known and numbered as 1324 Myrtle, El Paso, Texas.

A. The CITY hereby agrees to lend BORROWER funds not to exceed the amount of TWO HUNDRED FOUR THOUSAND AND NO/100THS DOLLARS ($204,000.00), and a grant to BORROWER funds not to exceed the amount of FIFTY ONE THOUSAND AND NO/100THS DOLLARS ($51,000.00), for a total public financing in an amount not to exceed TWO HUNDRED FIFTY FIVE THOUSAND AND NO/100THS DOLLARS ($255,000.00), subject to the terms hereinafter specified.

B. BORROWER agrees to fully and completely comply with all of the applicable terms and conditions of the Community Development Construction Contract, attached hereto as Exhibit "A" and incorporated by reference herein. BORROWER further agrees to take all necessary action to perfect and protect CITY's lien position as specified in Section III., for the life of the Builder's and Mechanic's Lien Contract and Deed of Trust (with Power of Sale), attached as Exhibit "B," and incorporated by reference herein. CITY's lien being evidenced by that particular Builder's and Mechanic's Lien Contract and Deed of Trust (with Power of Sale), so attached as Exhibit "B."

C. CITY hereby agrees to provide public financing in the amount of one hundred percent (100%) of the "eligible rehabilitation costs," as defined herein, for a total amount not to exceed TWO HUNDRED FOUR THOUSAND AND NO/100THS DOLLARS ($204,000.00), as a loan to BORROWER at zero percent (0%) interest payable over a term of thirty (30) years, and FIFTY ONE THOUSAND AND NO/100THS DOLLARS ($51,000.00), as a grant to BORROWER, such grant amount being forgiven over a thirty (30) year period if BORROWER remains in compliance with all terms and conditions as herein specified. Such loan is evidenced by a Loan Note of even date herewith attached as Exhibit "C" and such grant is evidenced by a Secured Grant Note of even date herewith attached as Exhibit "D", both incorporated by reference herein. The CITY will provide such public financing, as specified above, upon the following additional terms and conditions:

(1) Loan payments shall be due monthly with the first payment due on the first day of the month as specified in the Loan Note, Exhibit "C". Interest on the loan shall accrue at the rate of zero percent (0%) per annum from the date of drawdown.

(2) BORROWER shall have not more than thirty (30) years from the due date of the first payment in which to repay in full all principal and interest due and owing on such loan.

(3) BORROWER shall make payments monthly and such payments shall be calculated over 360 months in monthly installments. The total amount used to compute such payments shall be determined as specified by the terms and conditions of that certain Loan Note of even date herewith, attached as Exhibit "C" hereto, and certain Secured Grant Note of even date herewith, attached as Exhibit "D" hereto, both incorporated herein.

(4) The purpose of this Loan is to provide BORROWER with funds to rehabilitate BORROWER's property located at 1324 Myrtle, El Paso, El Paso County, Texas, as more fully described in a certain Builder's and Mechanic's Lien Contract and Deed of Trust (with Power of Sale) of even date herewith, attached hereto as Exhibit "B," and incorporated by reference herein. 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, as specified herein, and any other remedies available to CITY.

D. BORROWER may prepay at any time all or part of the current balance. 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.

II. REPRESENTATIONS AND WARRANTIES

A. BORROWER represents that the information furnished to CITY upon which CITY relied to make this loan is correct and true. BORROWER hereby represents that it has the authority and capacity to commit to a financial obligation. Specifically, but not by way of limitation, this authority includes signing a loan agreement or any instrument related thereto and incurring a financial obligation to rehabilitate the building located at 1324 Myrtle, El Paso, El Paso County, Texas, as more fully described in Exhibit "B" attached hereto and incorporated by reference herein. BORROWER further represents that it owns any and all buildings referenced above.

B. BORROWER agrees and understands that approval of this loan has been made by consideration of and reliance upon various data furnished by BORROWER, and agrees that should any of said data prove to be false or deliberately misleading in any way, the CITY shall have the right to unilaterally terminate this contract for unremedied breach thereof and demand restitution in full of all principal advanced under the terms of the loan, as evidenced by Exhibit "C," plus interest computed at an interest rate of zero percent (0%) per annum, and the entire principal grant amount, as evidenced by Exhibit "D".

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 agrees to grant to CITY the following collateral as security for the CITY's loan and grant and bank has agreed thereto:

(1) A FIRST lien on the following described real property:

Lots 11 and 12, Block 32, FRANKLIN HEIGHTS, an Addition to the City of El Paso, El Paso County, Texas; known and numbered as 1324 Myrtle, El Paso, Texas.

B. This lien shall be subservient only to the following described liens on the above described property:

NONE

C. BORROWER agrees to take any and all necessary action to perfect such liens and to protect CITY's lien priority position in such security, as 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 shall also 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 the BORROWER's indebtedness. This insurance coverage shall name the CITY as an additional insured.

E. BORROWER agrees to obtain all necessary permits, licenses, and special privileges which may be required by the CITY prior to conducting the rehabilitation work on the property subject to the Contract. In the event BORROWER must pay any fees for obtaining any of the above items to the CITY, BORROWER agrees to pay such to the CITY. BORROWER shall also comply with any county, state or federal requirements which apply to its rehabilitation activities.

F. BORROWER understands, covenants and agrees to fully and completely comply with all terms and conditions of the Community Development Construction Contract, Exhibit "A."

If BORROWER breaches any term or condition of this Section III. entitled "Conditions Precedent," the entire principal and accrued interest on the loan, as evidenced by Exhibit "C", and the entire principal grant amount, as evidenced by Exhibit "D", shall immediately be declared due and payable, and CITY shall be entitled to exercise all rights and remedies reserved to it under Section V., entitled "Events of Default".

IV. COVENANTS

A. BORROWER agrees that the public funds advanced hereunder shall be used only to perform the work, as stated in the work schedule approved for such structure to be rehabilitated and used to bid said work. BORROWER agrees that the public funds advanced hereunder shall be used only as compensation for "eligible rehabilitation costs" incurred in performing such work, as specified directly below. BORROWER hereby acknowledges and agrees that the public funds shall not be used for any other purpose.

B. "Eligible rehabilitation cost(s)" as the term is used herein shall include the actual rehabilitation 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 rehabilitation of the structure, as well as relocation payments made, in accordance with the Program, to tenants who are displaced or temporarily relocated as a result of Program projects. BORROWER hereby agrees to comply with all requirements of the United States Department of Housing and Urban Development (HUD) Housing Assistance Payment Section 8 Program.

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.

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.

E. 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 rehabilitated 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.

F. BORROWER further agrees that within ninety (90) days after the date the CITY of El Paso, Office of Housing Rehabilitation, signs the Owner's Acceptance Form for the rehabilitated property, as described herein, BORROWER will furnish to CITY data on the demographic characteristics of tenants occupying the rehabilitated structure initially after rehabilitation. Such data must be of a quality acceptable to the Director of the Department of Community and Human Development.

G. BORROWER agrees to comply with the Federal Fair Housing Laws and other Federal Rules, regulations and policies applicable to the performance of this Contract.

H. 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 compensation requirements, if applicable to BORROWER.

I. BORROWER agrees to execute any and all notes, security agreements, financing statements, Builder's and Mechanic's Lien Contracts and Deeds of Trust (with Power of Sale) and any other documents necessary for perfection of CITY's lien in the form submitted by Counsel for the CITY.

J. BORROWER agrees to sign all notes, security agreements, financing statements, Builder's and Mechanic's Lien Contracts and Deeds of Trust (with Power of Sale) and close on the loan advanced herein within thirty (30) calendar days from the date this Contract is approved by CITY Council.

K. Upon reasonable request, CITY shall have the right at all times to inspect BORROWER's business premises, and its books and records relating to the requirements of this Contract. BORROWER agrees that it will make its premises and records available for such inspection by CITY.

L. BORROWER is prohibited from assigning this Contract in whole or in part in any manner. BORROWER hereby understands and agrees that if the rehabilitated property, as described herein, is sold or transferred in whole or in part within thirty (30) years of the date of this Contract, as recited in paragraph one (1), page one (1) hereinabove, without the written approval of the CITY, the CITY, at its option, may declare the entire balance of principal and

accrued interest on the Loan Note, Exhibit "C", and the principal amount of the Secured Grant Note, Exhibit "D", immediately due and payable.

M. BORROWER hereby agrees that it shall not impair, whether by means of affirmative action or inaction, the loan status of the CITY, as described herein, in the collateral as described herein, used as security for the CITY loan.

N. Furthermore, BORROWER agrees for a period of fifteen (15) years commencing on the date of initial occupancy, that the property to be rehabilitated located at 1324 Myrtle, El Paso, El Paso County, Texas, as more fully described in Exhibit "B", will be rented to low income individuals and/or families at rents that do not exceed the maximum rents identified in Exhibit "E", which is attached and incorporated by reference herein.

If BORROWER breaches any term or condition of IV. above, entitled "Covenants," the entire principal and interest loan amount, as evidenced by Exhibit "C", and the entire principal grant amount, as evidenced by Exhibit "D", shall immediately be declared due and payable, and CITY shall be entitled to exercise all rights and remedies reserved to it under Section V., entitled "Events of Default".

V. EVENTS OF DEFAULT

A. CITY has the right to accelerate the payment of the loan, as evidenced by Exhibit "C", upon breach of this Contract by BORROWER, and CITY further has the right to declare that the entire principal amount and interest amount of the loan and the principal amount of the Secured Grant Note, as evidenced by Exhibit "D", be immediately due and payable by BORROWER to CITY at the time of the contract breach. CITY's right to so call the loan shall apply to all events as specifically designated in Sections III. and IV., 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 unstayed judgment or unsatisfied lien against BORROWER in an amount which, in the CITY's judgment, may impair its security or jeopardize its security status regarding the collateral subject to this Contract;

(4) failure to pay interest or principal on time;

(5) BORROWER's failure to meet the time deadlines for rehabilitation of the property as specified in the Community Development Construction Contract, Exhibit "A"; or

(6) BORROWER's timely payment of principal or interest by check for which insufficient funds exist.

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, that CITY is entitled to withhold payment of funds under the terms and conditions of this Contract. BORROWER will bear sole liability for all obligations in any way related to the rehabilitation of the property described herein and CITY shall be entitled to all rights and remedies reserved herein.

VII. NOTICES

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

CITY: CITY of El Paso
Attn: Director, Department of
Community and Human Development
2 Civic Center Plaza
El Paso, Texas 79901-1196

BORROWER: Alfonso S. Perez
1326 Zanzibar
El Paso, Texas 79925

VIII. CONFLICT OF INTEREST

No employee, agent, consultant, officer or elected or appointed official of CITY who exercises any functions or responsibilities, or who has been in a position to participate in a decision-making process or gain inside information with regard to the activities governed by this Contract during his tenure or for one 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 Program under this Contract.

IX. INDEMNIFICATION

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 FEES, COURT COSTS, WITNESS EXPENSES, AND ALL OTHER RELATED COSTS INCLUDING JUDGMENTS, AWARDS AND SETTLEMENTS.

X. 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 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.

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

THE CITY OF EL PASO

_____
Joyce Wilson,
CITY Manager

BORROWER(s):

Alfonso S. Perez
_____
Alfonso S. Perez

APPROVED AS TO FORM:

_____
Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:

Nathalie Prise
_____
Nathalie Prise
Community & Human Development

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2006, by Joyce Wilson as City Manager of **THE CITY OF EL PASO**.

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 31st day of OCTOBER, 2006, by Alfonso S. Perez.

Notary's commission expires:

Juan M. Aragon
Notary Public, State of Texas
Notary's Name (Printed):
JUAN M. ARAGON

JUAN M. ARAGON
NOTARY PUBLIC
STATE OF TEXAS
MARCH 08, 2007

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

CITY CLERK DEPT.
06 OCT 29 PM 2:52

BUILDER'S & MECHANIC'S LIEN CONTRACT
AND DEED OF TRUST
(WITH POWER OF SALE)

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

THIS CONTRACT made and entered into on this _____ day of_____, 2006, by and between the City of El Paso, hereinafter called "CITY", AND **Lorenzo Medina d/b/a Medsons Construction LTD Co.**, hereinafter called "CONTRACTOR", and **Alfonso S. Perez**, hereinafter called "OWNER(S)", all of El Paso County, Texas:

WHEREAS, OWNERS and CONTRACTOR made and entered into a Construction Contract of even date herewith for the construction of the property described herein below;

WHEREAS, CITY and OWNERS made and entered into a Investor Owned Financial Terms Contract dated _____, 2006, wherein such Financial Terms Contract OWNERS herein were called "BORROWER", such Financial Terms Contract specifying additional terms and conditions of the CITY'S loan and grant to OWNERS for the construction of the property described herein below;

WHEREAS, OWNERS have executed and delivered to CITY their loan note dated _____, 2006, for the sum of **$204,000.00**, and their secured grant note dated _____, 2006, for the sum of **$51,000.00**, wherein such loan and secured grant notes OWNERS herein were called "MAKERS";

WITNESSETH: That CONTRACTOR, in consideration of CITY'S agreement to pay CONTRACTOR the sum of **$239,000.00** in accordance with the terms, covenants and conditions of the above referenced Construction Contract and the Investor Owned Financial Terms Contract hereby agrees with CITY and OWNER to furnish and pay for all labor and materials needed to construct, build, and complete in a good and workmanlike manner, according to the plans and specifications this day agreed upon by the parties hereto, the following improvements, to-wit:

According to plans and specifications agreed upon by the parties and contained in the Construction Contract of even date herewith and incorporated by reference herein, and subject to all the terms and conditions of the Investor Owned Financial Terms Contract

dated _____, 2006 and incorporated by reference herein; upon the following described real property belonging to OWNERS, to-wit:

Lots 11 and 12, Block 32, FRANKLIN HEIGHTS, an Addition to the City of El Paso, El Paso County, Texas; known and numbered as 1324 Myrtle, El Paso, Texas.

City, Two Civic Center Plaza, Ninth Floor, El Paso, Texas, 79901-1196, at the instance and request of OWNERS, having agreed to advance and pay the above-stated consideration, in cash to CONTRACTOR, upon the completion of the above-described improvements, OWNERS have executed and delivered to said CITY their loan note dated _____, 2006 and incorporated by reference herein, for the sum of **$204,000.00** and their secured grant note dated _____, 2006 and incorporated by reference herein, for the sum of **$51,000.00,** the total of such two (2) sums represented by such loan and secured grant notes in the total amount of **$255,000.00**, hereinafter to be referred to as "INDEBTEDNESS."

To insure the prompt payment of such INDEBTEDNESS, a Builder's and Mechanic's Lien Contract and Deed of Trust Lien (with Power of Sale) is hereby created and granted by OWNERS to and for the benefit of CITY, holder of the INDEBTEDNESS evidenced by such notes upon the hereinbefore described real property, and all improvements, additions, fixtures and appurtenances now thereon or hereafter to be placed thereon. CONTRACTOR assigns and conveys all liens in their favor created herein or arising by operation of law out of this contract and any of the other contracts or related documents recited herein and incorporated by reference herein to the aforesaid CITY, and payee named in said note, its successors and assigns.

To secure and enforce the payment of the INDEBTEDNESS and liens hereinabove created, OWNERS have GRANTED, SOLD AND CONVEYED, and by these presents do GRANT, SELL, and CONVEY unto the CITY CLERK of EL PASO, Trustee of El Paso County, Texas, and his substitutes or successors in this trust, all the hereinabove described real property and all improvements, additions, fixtures and appurtenances now thereon or hereafter to be placed thereon. TO HAVE AND TO HOLD the said property and premises aforesaid, and every part thereof, unto said Trustee or his successors, against every person whomsoever lawfully claiming or to claim the same or any part thereof, in trust, however, UPON THE FOLLOWING TRUSTS, TERMS AND CONDITIONS, TO-WIT:

Should OWNERS pay in full the INDEBTEDNESS herein secured, then this conveyance shall become null and void and of no further force and effect, and the liens hereby created shall be released by the legal owner and holder thereof.

The lien herein created shall remain superior to liens later created even if the time of payment of all or part of the note is extended or future advances of monies are added to those amounts provided for herein.

OWNERS covenant and agree as follows:

1. To pay when due all taxes and assessments now existing or hereafter levied or assessed under the laws of the State of Texas upon said property and to keep the improvements on said property in good repair and condition and not to permit or commit any waste thereof and to keep said buildings so as not to impair the insurance carried thereon.

2. To insure and keep insured, after completion and delivery of such improvements to OWNERS, all improvements now or hereafter created upon said property, against loss or damage by fire and windstorm to the extent of the original amount of the INDEBTEDNESS hereby secured, in such form and with such Insurance Company as may be approved by CITY and to deliver to CITY the policies of such insurance having attached thereto such mortgage indemnity clause as the CITY shall direct; any sums which may become due under any such policy, or policies, may be applied at the option of the CITY to reduce said INDEBTEDNESS, or the City may permit OWNERS to use said proceeds to repair or replace all improvements damaged or destroyed and covered by said policy.

3. In the event OWNERS shall fail to keep the improvements on the property hereby conveyed in good repair and condition, or to pay promptly when due all taxes and assessments, or to keep the buildings and improvements insured, or to deliver the policy or policies of insurance or the renewal thereof to the CITY, then the CITY may at its option, but without being required to do so, make such repairs, purchase any tax title thereon, or insure and keep insured the improvements thereon and any sums which may be so used and paid out by the CITY and all sums paid for insurance premiums shall bear interest from the dates of such payments at ten percent (10%) per annum and shall be paid by OWNERS to CITY upon demand, at the place at which the above described note is payable, and shall be deemed a part of the debt hereby secured and recoverable as such in all respects.

4. That in the event of a default in payment of an installment, principal or interest of the note hereby secured, any breach of the covenants herein contained to be performed by OWNERS, or any breach by OWNERS of the applicable terms or conditions of the Investor Owned Financial Terms Contract, incorporated by reference herein, and the Construction Contract, incorporated by reference herein, the CITY may elect to declare the entire principal INDEBTEDNESS hereby secured, with all interest accrued thereon and all other sums hereby secured, immediately due and payable. The OWNERS hereby expressly waive presentment and demand for payment. In the event of default in the payment of said debt when due or declared due, it shall be thereupon or any time thereafter, the duty of the trustee or his successor or substitute as hereinafter provided, at the request of the CITY to enforce this trust, and after posting such notice for twenty-one days at the court house and serving written notice by certified mail to the debtor twenty-one days preceding the sale, to sell the above-described and conveyed real property at public auction in accordance with such notices at public sale between the hours of 10:00 a.m. and 4:00 p.m. of the first Tuesday in any month. Such sale shall be to the highest bidder for cash, and the CITY or its authorized representative shall make due conveyance to the purchaser or purchasers, with general warranty binding the OWNERS, their heirs and assigns; and of the money arising from such

sale the CITY or its trustees shall first pay all expenses of advertising said sale and making the conveyance, including a commission of five percent (5%) thereon, which commission shall be due and owing in addition to the attorney's fees provided for in said note, and then to the CITY the full amount of principal, interest, attorney's fees and other charges due and unpaid on said note, rendering the balance of the sales price, if any, to the OWNERS, their heirs or assigns; and the recitals in the conveyance to said purchasers, shall be full and conclusive evidence of the truth of the matter therein stated, and all prerequisites to said sale shall be presumed to have been performed and such sale and conveyance shall be conclusive against the OWNERS, their heirs and assigns.

5. It is agreed that in the event a foreclosure hereunder shall be commenced by the Trustee, or his substitute or successor, the CITY may at any time before the sale of said property direct the Trustee to abandon said sale, and may then institute suit for the collection of said note, and for foreclosure of the liens herein created; and it is further agreed that if the CITY should institute suit for the collection thereof, and for a foreclosure of the liens herein created, that it may at any time before entry of final judgment in said suit dismiss the same, and require the said Trustee, his substitute or successor, to sell the property in accordance with the power of sale herein granted.

6. The CITY shall have the right to purchase at any sale of the property being the highest bidder, and to have the amount for which said property is sold credited on the debt then owing.

7. The CITY in any event is hereby authorized to appoint a substitute Trustee, to act instead of the Trustee named herein without other formality than the designation in writing of a substitute or successor Trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute Trustees successively until the INDEBTEDNESS hereby secured has been paid in full, or until said property is sold hereunder and each substitute and successor Trustee shall succeed to all of the rights and powers of the original Trustee named herein.

8. In the event of a sale of the property herein described, or any portion thereof, under the terms of the power of sale herein created, OWNERS, their heirs and assigns, shall forthwith upon making such sale surrender and deliver possession of the property so sold to the purchaser at such sale, and in the event of their failure to do so they shall thereupon from and after the making of such sale be, and continue as, the tenants at will of such purchaser, and in the event of their failure to surrender possession of said property upon demand, the purchaser, his heirs or assigns, shall be entitled to institute and maintain an action for forcible detainer of said property in the Justice of the Peace Court in the Justice Precinct in which the said property is situated.

9. As further security for the payment of the INDEBTEDNESS herein described, OWNERS hereby transfer, assign and convey unto CITY all rents issuing or to hereafter issue from said real property, and in the event of any default in the payment of said note, or other default hereunder, CITY, its agents or representatives, are hereby authorized, at their option,

to collect said rents, or if such property is vacant to rent the same and collect the rents, and apply the same to the payment of said INDEBTEDNESS.

10. In the event any portion of the INDEBTEDNESS herein described cannot be lawfully secured by the liens herein given and created upon the herein described property, it is agreed that the first payments made on said INDEBTEDNESS shall be applied to the discharge of that portion of said INDEBTEDNESS.

11. If this instrument is executed by one person or by a corporation, the plural reference to OWNERS shall be held to include the singular and all of the covenants and agreements herein undertaken to be performed by the owners or rights conferred upon the respective OWNERS herein named, shall be binding upon and inure to the benefit of not only said parties respectively but also their respective heirs, executors, administrators, grantees, successors and assigns.

12. If all or any part of the real property and improvements secured by this Builder's and Mechanic's Lien Contract and Deed of Trust (With Power of Sale), or any interest therein, is sold or transferred without the CITY'S prior written consent, excluding the creation of a lien or encumbrance subordinate to this Builder's and Mechanic's Lien Contract and Deed of Trust (With Power of Sale), or the creation of a purchase money security interest for household appliances, the CITY may, at the CITY'S option, declare all the sums secured hereby to be immediately due and payable. The CITY may require an increase in the rate of interest payable under the Note before giving its consent.

Executed this _____day of _____, 2006, but for all purposes, this Contract shall be effective upon the date recited in paragraph One (1) of page One (1) hereinabove.

THE CITY OF EL PASO

_____
Joyce Wilson
City Manager

APPROVED AS TO FORM:

_____
Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Nathalie Prise, Director
Community and Human Development

CONTRACTOR: Medsons Construction LTD Co.

By: _____
Lorenzo Medina, Managing Member

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2006, by **Lorenzo Medina d/b/a Medsons Construction LTD Co., with and/or on behalf of said Corporation organized under the laws of the State**.

JUAN M. ARAGON
NOTARY PUBLIC
STATE OF TEXAS
MARCH 08, 2007

_____
Notary Public, State of Texas

_____
Notary's name (printed)

NOTICE TO THE BORROWER. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU MAY HAVE THE CONTRACT EXAMINED BY YOUR ATTORNEY AT YOUR OWN EXPENSE IF YOU WISH. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN. UNDER THE LAW, YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE INTEREST OR TIME DIFFERENTIAL. KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS. OWNERS HEREBY ACKNOWLEDGE THAT THEY HAVE RECEIVED A COPY OF THIS BUILDER'S & MECHANIC'S LIEN CONTRACT AND DEED OF TRUST (WITH POWER OF SALE).

OWNERS, AS AFFIANTS, FURTHER STATE UNDER OATH THAT UP TO AND INCLUDING THE TIME OF EXECUTION OF THIS CONTRACT. NO MATERIALS HAVE BEEN PLACED UPON THE ABOVE-DESCRIBED PROPERTY AND NO LABOR HAS BEEN PERFORMED THEREON IN CONNECTION WITH SAID CONTRACT. THIS AFFIDAVIT IS MADE FOR THE PURPOSE OF INDUCING THE CITY TO RELY ON THE FACTS HEREIN STATED AND ADVANCE FUNDS IN CONNECTION THEREWITH AND ON THE VALIDITY OF THE LIENS CREATED HEREIN.

OWNER(S): Alfonso S. Perez

By: Alfonso S. Perez
Alfonso S. Perez

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 31st day of OCTOBER, 2006, by **Alfonso S. Perez, Owner.**

Juan M. Aragon
Notary Public, State of Texas
My Commission Expires: 3/8/2007

JUAN M. ARAGON
NOTARY PUBLIC
STATE OF TEXAS
MARCH 08, 2007

JUAN M. ARAGON
Notary's name (printed)