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

DEPARTMENT: CITY ATTORNEY'S OFFICE

AGENDA DATE: **June 6, 2023**

PUBLIC HEARING DATE: June 6, 2023

CONTACT PERSON(S) NAME AND PHONE NUMBER: Karla M. Nieman; 915-212-0033

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: 8

SUBGOAL: 8.1

SUBJECT:

Discussion and action to approve a RESOLUTION of the Board of Directors of the City of El Paso Health Facilities Development Corporation authorizing a first supplement to indenture of trust and security agreement and approving documents in connection therewith; resolving other matters pertaining to such supplement; and providing an effective date

BACKGROUND / DISCUSSION:

The City of El Paso Health Facilities Development Corporation was duly created and organized by the City of El Paso, Texas pursuant to and in accordance with the provisions of the Health Facilities Development Act, Chapter 221, Texas Health and Safety Code, as amended, for the purpose of providing, expanding, and improving health facilities that the Corporation determines are needed to improve the adequacy, cost, and accessibility of health care, research, and education.

On May 23, 2023, the Council voted to reconstitute the Board and appoint the members of City Council to the HFDC Board.

Bienvivir Senior Health Services is requesting that the HFDC Board take action to approve modifications to existing bond documents that benefit Bienvivir in order to substitute the "SOFR" index for the "LIBOR" index that is being phased out globally. The changes to the bond documents are necessary because the LIBOR index is used in the existing bond documents. No costs are being incurred by the City or the HFDC with respect to the requested modifications. No City funds or taxes or HFDC funds are used to pay any debt issued by the HFDC for Bienvivir's benefit.

PRIOR COUNCIL ACTION: Numerous, including action at the May 23, 2023 meeting to reconstitute the Board

AMOUNT AND SOURCE OF FUNDING: N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ____YES ___NO

DEPARTMENT HEAD:

Karla M. Nieman, City Attorney

RESOLUTION OF THE BOARD OF DIRECTORS OF THE CITY OF EL PASO HEALTH FACILITIES DEVELOPMENT CORPORATION AUTHORIZING A FIRST SUPPLEMENT TO INDENTURE OF TRUST AND SECURITY AGREEMENT AND APPROVING DOCUMENTS IN CONNECTION THEREWITH; RESOLVING OTHER MATTERS PERTAINING TO SUCH SUPPLEMENT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, by resolution, the City of El Paso, Texas (the "***Sponsoring Entity***"), authorized and approved the creation of the City of El Paso Health Facilities Development Corporation (the "***Issuer***") as a nonprofit health facilities development corporation under the provisions of the Health Facilities Development Act, Chapter 221, Texas Health and Safety Code, as amended (the "***Act***"); and

WHEREAS, the Act authorizes and empowers the Issuer to issue revenue bonds on behalf of the Sponsoring Entity to finance and refinance the cost of "health facilities" (as defined in the Act); and

WHEREAS, the Issuer has previously issued, upon the request of Bienvivir Senior Health Services, a Texas non-profit corporation (the "***Corporation***"), the Issuer's Senior Care Facilities Variable Rate Revenue and Refunding Bonds (Bienvivir Senior Health Services Project), Series 2010 (the "***Bonds***"); and

WHEREAS, the Bonds were issued pursuant to the terms and provisions of that certain Indenture of Trust and Security Agreement, dated as of December 1, 2010 (the "***Indenture***"), between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the "***Trustee***"), and sold to JPMorgan Chase Bank, N.A., as the Initial Purchaser (as defined in the Indenture) and 100% holder of the Bonds (the "***Initial Purchaser***"), pursuant to the terms of a Private Placement Agreement, dated as of December 1, 2010, by and among the Issuer, the Initial Purchaser and the Corporation; and

WHEREAS, the Board of Directors of the Issuer (the "***Board***") has been presented with and examined the proposed form of the First Supplement to Indenture of Trust and Security Agreement (the "***First Supplement***"), including the form of replacement Bond attached thereto (the "***Replacement Bond***"), and the Board finds that the form and substance of such documents are satisfactory and the recitals and findings contained therein are true, correct and complete, and hereby adopts and incorporates by reference such recitals and findings as if set forth in full in this Resolution, and finds that it is in the best interest of the public and the Issuer and assists in carrying out the public purpose of the Issuer and the Act to authorize the execution and delivery of such documents; and

WHEREAS, the Board desires to create the new office of Assistant Treasurer of the Issuer and appoint the Chief Financial Officer of the Sponsoring Entity to such office.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF EL PASO HEALTH FACILITIES DEVELOPMENT CORPORATION THAT:

Section 1. Findings and Determinations. All of the above recitals are found and determined to be true and correct and are incorporated into the body of this Resolution as if repeated in their entirety.

Section 2. Approval of the First Supplement. The First Supplement amending and supplementing the Indenture is hereby authorized and approved in substantially the form attached hereto as Exhibit A, with such changes therein as the Authorized Officer executing the same may approve, such approval to be conclusively evidenced by such Authorized Officer's execution thereof. The President, Vice President, Secretary, Treasurer or Assistant Treasurer of the Issuer (each, an "***Authorized Officer***") are hereby severally authorized and directed to execute and deliver the First Supplement and the Replacement Bond on behalf of the Issuer, and the Secretary of the Issuer or any other Authorized Officer not executing the same, are hereby severally authorized, if necessary, to attest the First Supplement and the Replacement Bond, and affix the Issuer's seal, if any, to the Replacement Bond, with such changes therein as the Authorized Officer executing the same may approve, such approval to be conclusively evidenced by such Authorized Officer's execution thereof.

Section 3. Identification of Qualified Hedge. The Issuer acknowledges that the Corporation entered into a "Qualified Hedge" (as defined in the Internal Revenue Code of 1986, as amended (the "***Code***")) in connection with its obligations under the Bonds (the "***Swap***") and, in connection with the modification of the interest rate on the Bonds, the Swap will be modified (the "***Modified Swap***") by the Corporation and the counterparty to the Swap. The Board hereby authorizes and directs any Authorized Officer severally to execute and deliver an Identification of Qualified Hedge certificate relating to the Modified Swap as required by the Code, such approval to be conclusively evidenced by such Authorized Officer's execution thereof.

Section 4. Conditions Precedent. The actions and obligations authorized in this Resolution shall be subject to and conditioned upon the receipt by the Issuer, on the effective date of the First Supplement (the "***Closing Date***"), of (i) a certificate of a duly authorized officer of the Corporation substantially to the effect that all fees, expenses and charges of the Issuer, the Sponsoring Entity and their respective counsels and other professionals in relation to the execution and delivery of the First Supplement and the Replacement Bond, including Bond Counsel (as defined herein), shall be paid by the Corporation; and (ii) such opinions, evidences, certificates, instruments or other documents as shall be requested by Bond Counsel, to evidence due performance or satisfaction by the Corporation at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by it.

Section 5. Engagement of Professionals. Norton Rose Fulbright US LLP is hereby confirmed as the Issuer's bond counsel ("***Bond Counsel***"). Any Authorized Officer is authorized to engage rebate analysts, auditors and other professionals to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the requirements of Bond Counsel. The fees of any such additional consultants are to be paid by the Corporation.

Section 6. Authorization to Perform Necessary Acts. The officers, employees and agents of the Issuer, and each of them, shall be and each is expressly authorized, empowered and directed from time to time to do and perform all acts and things and to execute, acknowledge and deliver in the name and under the corporate seal, if applicable, and on behalf of the Issuer, all agreements, consents, amendments, certificates, instruments and other papers, whether or not herein mentioned, as they may determine to be necessary or desirable in order to carry out the terms and provisions of this Resolution, such determination to be conclusively evidenced by the performance of such acts and things and the execution of any such agreement, consent, amendment, certificate, instrument or other paper.

Section 7. Authorization to File Form 8038. If determined by Bond Counsel to be necessary or desirable, the Board authorizes and directs that an Authorized Officer submit to the Secretary of the U.S. Treasury, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Closing Date occurs (or on such other date as shall be required in the opinion of Bond Counsel so that interest on the Bonds shall not be includable in gross income for federal income tax purposes), a statement or statements containing the information required by Section 149(e) of the Code.

Section 8. Appointment of Assistant Treasurer. The Board hereby creates the new office of Assistant Treasurer of the Issuer and appoints the Chief Financial Officer of the Sponsoring Entity, to such office.

Section 9. Ratification. The Board hereby ratifies all actions previously taken by each officer, employee and agent of the Issuer in furtherance of the purposes of this Resolution.

Section 10. Power to Revise Form of Documents. The Authorized Officers and all other officers of the Issuer, and each of them, shall be and they are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the seal of the Issuer and on behalf of the Issuer all agreements, instruments, or such other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Resolution. In addition, prior to the Closing Date, the Authorized Officers, and Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Resolution or to any of the documents or instruments authorized and approved by this Resolution in order to cure any technical ambiguity, formal defect, or omission in this Resolution or such other document and if such officer or counsel determines that such ministerial changes are consistent with the intent and purpose of this Resolution, which determination shall be final. In the event that any officer of the Issuer whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Section 11. Effective Date. This Resolution shall be in full force and effect from and upon the adoption hereof.

PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE CITY OF EL PASO HEALTH FACILITIES DEVELOPMENT CORPORATION ON THIS ___ day _____, 2023.

CITY OF EL PASO HEALTH FACILITIES DEVELOPMENT CORPORATION:

_____
Oscar Leeser
President

ATTEST:

_____
Laura Prine
Secretary

APPROVED AS TO FORM:

_____
Josette Flores
Deputy Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Robert Cortinas
Chief Financial Officer

Exhibit A

First Supplement

(*See Attached*)

FIRST SUPPLEMENT TO
INDENTURE OF TRUST AND SECURITY AGREEMENT

THIS FIRST SUPPLEMENT TO INDENTURE OF TRUST AND SECURITY AGREEMENT (hereinafter referred to as this "***Supplement***"), dated June __, 2023, between the City of El Paso Health Facilities Development Corporation, a non-profit corporation organized with the approval of the City of El Paso, Texas, and existing pursuant to the Health Facilities Development Act, Texas Health and Safety Code Chapter 221, as amended (herein referred to as the "***Issuer***," which term includes any successor corporation under the Indenture referred to herein), and The Bank of New York Mellon Trust Company, N.A., a national banking association, as trustee (herein referred to as the "***Trustee***," which term includes any successor to the trust granted by the Indenture referred to herein),

W I T N E S S E T H:

WHEREAS, the Issuer and the Trustee are parties to that certain Indenture of Trust and Security Agreement, dated as of December 1, 2010 (hereinafter referred to, as it may from time to time be supplemented, modified, or amended by one or more instruments supplemental thereto entered into pursuant to the applicable provisions thereof, the "***Indenture***"), between the Issuer and the Trustee;

WHEREAS, pursuant to the Indenture, the Issuer issued its Senior Care Facilities Variable Rate Revenue and Refunding Bonds (Bienvivir Senior Health Services Project) Series 2010 (the "***Series 2010 Bonds***");

WHEREAS, JPMorgan Chase Bank, N.A. is the Initial Purchaser (as defined in the Indenture) of the Series 2010 Bonds;

WHEREAS, the parties desire to amend and supplement the Indenture, at the request of the Borrower (as defined below) and the Initial Purchaser, to change certain definitions affecting calculation of the Index Rate (as defined in the Indenture) and certain provisions relating thereto;

WHEREAS, pursuant to *Section 12.02* of the Indenture, the Issuer and the Trustee may, with the consent of Bienvivir Senior Health Services, a Texas non-profit corporation (herein referred to as, together with its permitted successors and assigns, the "***Borrower***"), and the Holder of each Outstanding Bond (as such terms are defined in the Indenture) affected thereby and the delivery of the items specified in such section, enter into an indenture or indentures supplemental to the Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or modifying in any manner the rights of the Holders of the Bonds under the Indenture;

WHEREAS, the Initial Purchaser, as 100% Holder of the Series 2010 Bonds, has consented to and directed the Trustee to enter into this Supplement; and

WHEREAS, all things have been done which are necessary to constitute this Supplement a valid agreement and contract in accordance with the terms of the Indenture.

NOW, THEREFORE, the Issuer and the Trustee do hereby covenant and agree as follows:

SECTION 1. ***Definitions.***

Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Indenture.

SECTION 2. ***Amendments to Indenture.***

A. The following definitions appearing in *Section 1.01* of the Indenture are hereby amended and restated in their entirety to read as follows and appear in the appropriate alphabetical sequence:

"***Base Rate***" means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, or (b) the NYFRB Rate in effect on such day plus ½ of 1%.

"***Business Day***" for the Bonds means any day other than (1) a Saturday or a Sunday, (2) a legal holiday or the equivalent on which banking institutions generally are authorized or required to close in the Place of Payment therefor or in the city in which is located (a) the designated corporate trust office of the Trustee or the principal office of the Remarketing Agent or, (b) while any Credit Facility is in effect hereunder, the office of the Credit Enhancer or of its agent at which drafts or demands for payment under the Credit Facility are to be presented or, (c) while any Liquidity Facility is in effect hereunder, the office of the Liquidity Bank or of its agent at which drafts or demands for payment under the Liquidity Facility are to be presented, or (3) a day on which the New York Stock Exchange is closed; *provided* that when used in connection with interest at a rate based on SOFR or any other calculation or determination involving SOFR, the term "Business Day" means a U.S. Government Securities Business Day.

"***Initial Index Period***" means the period from the date of issuance of the Bonds through November 30, 2025, unless extended further by failure of the Initial Purchaser to exercise its put option on the next succeeding Optional Put Date.

"***Initial Put Date***" means December 1, 2025.

"***Place of Payment***" for Book-Entry-Only Bonds and for other Bonds while in a Fixed Mode means a city or political subdivision thereof in which the Issuer is by this Indenture required to maintain an agency for the payment of principal of and interest on the Bonds, and for Bonds (other than Book-Entry-Only Bonds) in a Daily Mode, Weekly Mode or Index Mode means the City and County of New York, New York.

"***Prime Rate***" means the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Initial Purchaser) or any similar release by the Federal Reserve Board (as determined by the Initial Purchaser). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

B. *Section 1.01* of the Indenture is hereby amended by the addition thereto of the following defined terms to read as follows and appear in their appropriate places in alphabetical sequence:

"***Adjusted Daily Simple SOFR***" means an interest rate per annum equal to (a) the Daily Simple SOFR, *plus* (b) 0.10%; *provided that* if the Adjusted Daily Simple SOFR as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Indenture.

"***Available Tenor***" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of the period of time for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Indenture as of such date.

"***Benchmark***" means, initially, Daily Simple SOFR; *provided* that if a Benchmark Transition Event, and the related Benchmark Replacement Date have occurred with respect to Daily Simple SOFR or the then-current Benchmark, as applicable, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to *Subsection B* of *Section 1.14*.

"***Benchmark Replacement***" means the sum of: (a) the alternate benchmark rate that has been selected by the Initial Purchaser and the Borrower as the replacement for the then-current Benchmark for the applicable tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to the above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Indenture and the other Bond Documents.

"***Benchmark Replacement Adjustment***" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Initial Purchaser and the Borrower for the applicable tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining

such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities at such time.

"***Benchmark Replacement Conforming Changes***" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," timing and frequency of determining rates and making payments of interest, timing of prepayment or conversion notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Initial Purchaser decides may be appropriate to reflect the adoption and implementation of such Benchmark and to permit the administration thereof by the Initial Purchaser in a manner substantially consistent with market practice (or, if the Initial Purchaser decides that adoption of any portion of such market practice is not administratively feasible or if the Initial Purchaser determines that no market practice for the administration of such Benchmark exists, in such other manner of administration as the Initial Purchaser decides is reasonably necessary in connection with the administration of this Indenture and the other Bond Documents).

"***Benchmark Replacement Date***" means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current available tenors of such Benchmark (or the published component used in the calculation thereof).

"***Benchmark Transition Event***" means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"***Benchmark Unavailability Period***" means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Bond Document in accordance with Section 1.14 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Bond Document in accordance with Section 1.14.

"***Bond Documents***" means, collectively, this Indenture, the Bonds and the Loan Agreement.

"***Daily Simple SOFR***" means, for any day (a "***SOFR Rate Day***"), a rate per annum equal SOFR for the day (such day a "***SOFR Determination Date***") that is five (5) U.S. Government Securities Business Day prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

"***Federal Funds Effective Rate***" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions, as determined in such manner as shall be set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; *provided* that if the Federal Funds Effective Rate as so determined would be less than the Floor, such rate shall be deemed to be the Floor for purposes of this Indenture.

"***First Supplement Effective Date***" means June __, 2023.

"***Floor***" means 0%.

"***NYFRB***" means the Federal Reserve Bank of New York.

"***NYFRB Rate***" means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); *provided* that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Initial Purchaser from a federal funds broker of recognized standing selected by it; *provided*, *further*, that if any of the aforesaid rates as so determined would be less than the Floor, such rate shall be deemed to be the Floor for purposes of this Indenture.

"***Overnight Bank Funding Rate***" means, for any day, the rate comprised of both overnight federal funds and overnight eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the SOFR Administrator's Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

"***Reference Time***" with respect to any setting of the then-current Benchmark means (1) if such Benchmark is Daily Simple SOFR, then four Business Days prior to such setting or (2) the time determined by the Initial Purchaser in its reasonable discretion.

"***Relevant Governmental Body***" means, the Federal Reserve Board and/or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

"***SOFR***" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"***SOFR Administrator***" means the NYFRB (or a successor administrator of the secured overnight financing rate).

"***SOFR Administrator's Website***" means the NYFRB's website, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"***SOFR Determination Date***" has the meaning specified in the definition of "Daily Simple SOFR."

"***SOFR Rate Day***" has the meaning specified in the definition of "Daily Simple SOFR."

"***Unadjusted Benchmark Replacement***" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"***U.S. Government Securities Business Day***" means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the NYFRB is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

C. The definitions of "***Adjusted One Month LIBOR Rate***" and "***One-Month LIBOR Rate***" set forth in *Section 1.01* of the Indenture are hereby deleted in their entirety.

D. The Indenture is hereby amended by the addition thereto of the following new *Section 1.14* to read as follows:

SECTION 1.14. ***Alternative Rate of Interest***

A. Subject to *Subsections B*, *C*, *D*, *E* and *F* of this Section, if: the Initial Purchaser determines (which determination shall be conclusive absent manifest error) at any time, that adequate and reasonable means do not exist for ascertaining the applicable Adjusted Daily Simple SOFR, then until the Initial Purchaser notifies the Borrower that the circumstances giving rise to such notice no longer exist with respect to Adjusted Daily Simple SOFR, the interest rate for Bonds shall be the Base Rate.

B. Notwithstanding anything to the contrary herein or in any other Bond Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Bond Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement

is provided to the Borrower without any amendment to, or further action or consent of any other party to, this Indenture or any other Bond Document.

C. Notwithstanding anything to the contrary herein or in any other Bond Document, the Initial Purchaser will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Bond Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Indenture or any other Bond Document.

D. The Initial Purchaser will promptly notify the Borrower and the Trustee of (1) any occurrence of a Benchmark Transition Event, (2) the implementation of any Benchmark Replacement, (3) the effectiveness of any Benchmark Replacement Conforming Changes, (4) the removal or reinstatement of any tenor of a Benchmark pursuant to *Subsection F* below and (5) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Initial Purchaser pursuant to this Section, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Indenture or any other Bond Document, except, in each case, as expressly required pursuant to this Indenture.

E. Notwithstanding anything to the contrary herein or in any other Bond Document, at any time (including in connection with the implementation of a Benchmark Replacement), (1) if the then-current Benchmark is a term rate (including a term SOFR rate) and either (a) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Initial Purchaser in its reasonable discretion or (b) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Initial Purchaser may modify such definitions for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (2) if a tenor that was removed pursuant to clause (1) above either (x) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (y) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Initial Purchaser may modify such definitions for all Benchmark settings at or after such time to reinstate such previously removed tenor.

F. On the date of the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to the rate then-applicable to the Bonds, the interest rate for Bonds shall be the Base Rate.

E. *Sections 3.01(e)* of the Indenture is hereby amended by (i) deleting "One-Month LIBOR" where used and replacing such term with "Adjusted Daily Simple SOFR" in all places used, and (ii) deleting the phrase "Section 5.03D hereof" where used and replacing such phrase with "Section 5.03D of the Indenture."

F. *Section 3.01(j)(i)* of the Indenture is hereby amended and restated in its entirety to read as follows:

> (i) "***Business Day***" for this Bond means any day other than (1) a Saturday or a Sunday, (2) a legal holiday or the equivalent on which banking institutions generally are authorized or required to close in the Place of Payment therefor or in the city in which is located (a) the designated corporate trust office of the Trustee or the principal office of the Remarketing Agent or, (b) while any Credit Facility is in effect under the Indenture, the office of the Credit Enhancer or of its agent at which drafts or demands for payment under the Credit Facility are to be presented or, (c) while any Liquidity Facility is in effect under the Indenture, the office of the Liquidity Bank or of its agent at which drafts or demands for payment under the Liquidity Facility are to be presented, or (3) a day on which the New York Stock Exchange is closed; *provided* that when used in connection with interest at a rate based on SOFR or any other calculation or determination involving SOFR, the term "Business Day" means a U.S. Government Securities Business Day;

G. *Section 3.01(j)(iii)* of the Indenture is hereby amended and restated in its entirety to read as follows:

> (iii) "***Rate Adjustment Date***" means (1) each day on which this Bond will begin to bear interest at a newly determined Daily Rate, Weekly Rate or Fixed Rate determined in accordance with *Article Five* of the Indenture, whether or not such rate is different from the interest rate previously in effect on this Bond, and (2) the first Business Day of each Interest Period for this Bond in an Index Mode.

H. *Section 3.02A(1)* of the Indenture is hereby amended by deleting "One-Month LIBOR Rate" where used and replacing such term with "Adjusted Daily Simple SOFR" in all placed used.

SECTION 3. ***Amendment to Series 2010 Bond***.

In conformity with the amendments to the Indenture set forth in *Section 2* hereof, upon the execution and delivery of this Supplement, the Issuer shall execute a new Bond in the form attached hereto as ***Exhibit A***, which the Trustee shall authenticate and deliver to the Initial Purchaser in exchange for the Bond initially delivered to the Initial Purchaser on the Issue Date therefor pursuant to *Section 12.05* of the Indenture.

SECTION 4. ***Miscellaneous***.

A. ***Indenture to Remain in Effect***. Except as otherwise expressly provided herein, the Indenture, as in effect before the execution and delivery of this Supplement, shall remain in full force and effect.

B. ***Ratification, Approval, and Confirmation***. In all respects not inconsistent with the terms and provisions of this Supplement, the Indenture is hereby ratified, approved, and confirmed.

C. ***Governing Law***. This Supplement shall be governed by and construed in accordance with the same law as the Indenture.

D. ***Acceptance by the Trustee***. The Trustee accepts the amendments to the Indenture as set forth in this Supplement and agrees to perform the duties of the Trustee upon the terms and conditions set forth herein and in the Indenture. Without limiting the generality of the foregoing, the Trustee assumes no responsibility for the correctness of the recitals contained herein, which shall be taken as the statements of the Issuer, and, except as provided in the Indenture, the Trustee shall not be responsible or accountable in any way whatsoever for or with respect to the validity, execution or sufficiency of this Supplement and makes no representation with respect thereto.

E. ***Execution, Delivery and Validity***. The Issuer represents and warrants to the Trustee that this Supplement has been duly and validly executed and delivered by the Issuer and constitutes its legal, valid and binding obligation, enforceable against the Issuer in accordance with its terms.

F. ***No Extinguishment***. It is not the intent of the parties hereto that the delivery of the amended Series 2010 Bond in connection with *Section 3* of this Supplement constitute a redemption or novation of the existing Series 2010 Bond or other extinguishment of the debt evidenced thereby.

[EXECUTION PAGES FOLLOW]

This Supplement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Supplement to be executed on their behalf by their duly authorized officers all as of the day and year first above written.

CITY OF EL PASO HEALTH FACILITIES DEVELOPMENT CORPORATION

By: _____
President

ATTEST:

_____
Secretary

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: _____
Vice President

The undersigned, as the Borrower referred to in the Indenture, hereby consents to the amendments to the Indenture effected by this Supplement.

BIENVIVIR SENIOR HEALTH SERVICES

By: _____
Name: _____
Title: _____

The undersigned, as the Initial Purchaser, hereby certifies that it is the Holder of 100% of the Outstanding Series 2010 Bonds and hereby consents to the amendments to the Indenture effected by this Supplement and directs the Trustee to enter into this Supplement.

JPMORGAN CHASE BANK, N.A.

By: _____
Name: _____
Title: _____

EXHIBIT A

FORM OF BOND

UNITED STATES OF AMERICA
STATE OF TEXAS

Registered	**Registered**
No. R-2	**$18,580,000**

CITY OF EL PASO HEALTH FACILITIES DEVELOPMENT CORPORATION
SENIOR CARE FACILITIES VARIABLE RATE REVENUE AND REFUNDING BONDS
(BIENVIVIR SENIOR HEALTH SERVICES PROJECT)
SERIES 2010

Interest Rate:	Dated Date:	Due:	Date of Series:
Adjustable	June __, 2023	October 1, 2040	December 8, 2010

CITY OF EL PASO HEALTH FACILITIES DEVELOPMENT CORPORATION (herein referred to as the "***Issuer***," which term includes any successor corporation under the Indenture herein referred to), a non-profit corporation organized with the approval of City of El Paso, Texas, and existing pursuant to the Health Facilities Development Act, as amended, Texas Health and Safety Code, Chapter 221, for value received, hereby promises to pay, *but solely* from and to the extent of the sources herein described, to

JPMORGAN CHASE BANK, N.A.

or registered assigns, on the due date specified above, the principal sum of

EIGHTEEN MILLION FIVE HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS

(or so much thereof as shall not have been paid upon prior redemption) and to pay, *but solely* from and to the extent of such sources, interest on the unpaid portion thereof from the date herein described until payment of such portion is made or duly provided for at the Maturity hereof or, if earlier and unless registered in the name of the Securities Depository referred to in the Indenture herein described or its nominee, until the date for mandatory tender hereof, unless such tender is waived or the Purchase Price therefor is not duly paid or provided for, all as provided herein or hereon, at the rate or rates of interest and to the Person hereinafter described. The principal and Redemption Price of this Bond are payable at the agency of the Issuer for such purpose (herein referred to as the "***Paying Agent***") in any city designated by the Trustee herein named, which agency shall initially be the principal payment office of the Trustee in the City of Dallas, Texas unless the Bonds of this series are not all registered in the name of such Securities Depository and are in a Daily Mode or Weekly Mode referred to herein, in which case the City and County of New York, New York (such place herein referred to as the "***Place of Payment***"), upon presentation and surrender of this Bond. All capitalized terms used herein not otherwise defined shall have the meanings assigned to them in the Indenture, as herein defined.

NEITHER THE STATE OF TEXAS NOR ANY POLITICAL SUBDIVISION OR AGENCY OF THE STATE OF TEXAS, INCLUDING CITY OF EL PASO, TEXAS, SHALL BE OBLIGATED TO PAY THE BONDS OR THE INTEREST THEREON. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS, CITY OF EL PASO, TEXAS, OR ANY OTHER POLITICAL SUBDIVISION OR AGENCY THEREOF IS PLEDGED TO THE PAYMENT OF PRINCIPAL OF OR INTEREST OR ANY REDEMPTION PREMIUM ON THE BONDS.

If the specified date for any payment hereon shall be a Saturday, Sunday, or legal holiday or the equivalent (other than a moratorium) on which banking institutions generally are authorized to close in the Place of Payment or in the city in which is located the principal corporate trust office of the Trustee or shall otherwise be a day other than a Business Day, as herein defined, then such payment may be made on the next succeeding day which is not one of the foregoing days without additional interest and with the same force and effect as if made on the specified date for such payment. All such payments shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

1.1. ***Interest.*** The interest payable, and punctually paid or duly provided for, on any Interest Payment Date herefor will, as provided in the Indenture herein referred to, be paid to the Person in whose name this Bond (or one or more Predecessor Bonds representing the same debt) is registered at the end of the day on the Regular Record Date for such interest specified herein, except that the difference (herein referred to as the "***Bank Differential***") between the total of such interest on this Bond or any portion hereof and the amount of such interest accrued at the Daily Rate or Weekly Rate, each as defined herein, herefor otherwise in effect during the period during which such interest accrued will be paid to the Person in whose name the beneficial ownership of this Bond or such portion is registered on the Bank Bond Register (as defined in the Indenture) on such Regular Record Date. Any such interest otherwise so payable to the Holder on such Regular Record Date which is not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date, and may be paid to the Person in whose name this Bond (or one or more Predecessor Bonds) is registered at the close of business on a Special Record Date for the payment of such defaulted interest to be fixed by the Trustee, notice thereof being given to Bondholders not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner, all as more fully provided in said Indenture. All such interest shall be payable at the Place of Payment and shall be paid by check or draft mailed to the address of such Person specified in the Bond Register or pursuant to customary arrangements made by such Person and acceptable to the Paying Agent, except that, if the registered owner hereof is the Securities Depository, as defined in the Indenture referred to herein, and upon the written request of any other Holder of not less than $1,000,000 aggregate principal amount of Bonds provided to such Paying Agent not less than one business day prior to the relevant record date for interest due on any Interest Payment Date herefor, such interest shall be paid by federal funds wire transfer to any designated account within the United States of America.

(a) ***Interest Generally.*** During the period from and including the first day of each Daily Mode, Weekly Mode, Index Mode and Fixed Mode (each herein referred to as an "***Interest Mode***") for this Bond described below to and excluding the first day of the next Interest Mode therefor designated by the Borrower or otherwise established in accordance with the provisions of the Indenture described below, this Bond (or such portion) shall, *except* when a Bank Bond (as defined in the Indenture) and *subject* to the provisions of *paragraph (k)* below, bear

interest at the corresponding Daily Rate, Weekly Rate, Index Rate or Fixed Rate, respectively, established as described below. Interest accrued at (i) the Daily Rate, Weekly Rate, Index Rate or Bank Rate shall be computed on the basis of a 365- or 366-day year, as applicable, for actual days elapsed and (ii) the Fixed Rate for an Interest Period of more than six months, shall be computed on the basis of a 360-day year comprised of twelve 30-day months. The interest hereon shall accrue from and including the later of the Date of Series specified above or the most recent Interest Payment Date therefor to which interest hereon and thereon has been paid or duly provided for.

(b) ***Establishment of Interest Modes and Interest Periods.*** From the Date of Series specified above through the day preceding the first day of any subsequent Daily Mode, Weekly Mode, Index Mode or Fixed Mode for this Bond established in accordance with the provisions of the Indenture, this Bond shall be in an Index Mode. As provided in the Indenture and subject to certain conditions therein set forth, *unless* the Interest Mode for this Bond then in effect is the Fixed Mode, such Interest Mode may be changed to a Daily Mode, Weekly Mode, Index Mode or Fixed Mode, at the election of the Borrower on, but only on an Interest Payment Date, if a Daily Mode or a Weekly Mode is then in effect therefor, or if an Index Mode is then in effect therefor, then on any Business Day on which this Bond or such portion may be redeemed at the option of the Borrower, *if* (except in the case of a change from a Daily Mode or Weekly Mode to the other such Interest Mode) in the Opinion of Counsel of nationally recognized standing in the field of municipal bond law delivered to the Trustee on the day for such change in Interest Mode such change will not adversely affect any exclusion of interest on any Bond from gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes.

(c) ***Daily Rate.*** On each day during which this Bond is in a Daily Mode and except as provided in *paragraph (i)* below, this Bond will bear interest at the "***Daily Rate***" for such day, which shall be the least of (i) 15% per annum, (ii) the lowest per annum rate of interest specified in any Credit Facility (unless in the form of municipal bond insurance) or Liquidity Facility then in effect under the Indenture as the rate at which money available to be paid thereunder to pay interest on the Bonds in such Interest Mode has been computed, or (iii) a per annum rate of interest equal to the Market Rate therefor determined as herein described by 9:30 a.m., New York, New York, time, on such day or, if such day is not a business day for the Remarketing Agent, on the business day immediately preceding such business day (each such day referred to herein as a "***Rate Determination Date***"). Interest accrued on this Bond while it is in a Daily Mode shall be payable on the first Business Day of each month and on the Business Day immediately succeeding the last day of such Daily Mode, and the Regular Record Date for such interest shall be the immediately preceding day (whether or not a Business Day).

(d) ***Weekly Rate.*** On each day during which this Bond is in a Weekly Mode and except as provided in *paragraph (i)* below, this Bond will bear interest at the "***Weekly Rate***," which shall be the least of (i) 15% per annum, (ii) the lowest per annum rate of interest specified in any Credit Facility (unless in the form of municipal bond insurance) or Liquidity Facility then in effect under the Indenture as the rate at which money available to be paid thereunder to pay interest on the Bonds in such Interest Mode has been computed, or (iii) the variable per annum Market Rate of interest most recently determined in accordance with the provisions of this paragraph (d) prior to such day. The Remarketing Agent is required to determine such Market Rate prior to the first day of such Weekly Mode and on each Wednesday that occurs at least six days thereafter or, if such Wednesday is not a business day for the Remarketing Agent, on the next

such business day (each such day referred to herein as a "***Rate Determination Date***"), provided, however, that the first Weekly Rate shall be determined by the initial purchaser or the Remarketing Agent on the date of execution of a purchase contract or a date not later than the Business Day immediately before the effective day of the Weekly Mode in the manner set forth in this paragraph (d) and shall apply to the period commencing from the commencement of the Weekly Mode and ending on the next Wednesday; thereafter, the Weekly Rate shall be in effect, from and including the day following each Rate Determination Date (or, if such Rate Determination Date is not a Wednesday, such Rate Determination Date) to and including the following Rate Determination Date (or, if such following Rate Determination Date is not a Wednesday, then the day preceding such Rate Determination Date). Interest accrued on this Bond while it is in a Weekly Mode shall be payable on the first Business Day of each month and the Business Day immediately succeeding the last day of such Weekly Mode, and the Regular Record Date for such interest shall be the immediately preceding day (whether or not a Business Day).

(e) ***Index Rate***. On each day during which this Bond is in an Index Mode, this Bond will bear interest at the "***Index Rate***," which shall be the lesser of the maximum lawful rate of interest or, except as provided in clause (i), (ii) or (iii) of this paragraph, for the Initial Index Period at a rate per annum equal to 67% of (Adjusted Daily Simple SOFR plus 2.00% per annum) and for each subsequent Index Mode Period such rate determined by the Initial Purchaser pursuant to Section 5.03D of the Indenture and provided to the Borrower at least 120 calendar days prior to Optional Put Date; *provided, however*,

(i) Upon determination of Taxability and as additional interest on the Bonds, the Bonds shall from the effective date of any Taxable Event, including if such effective date is deemed retroactive to the issuance date of the Bonds, an amount equal to the Taxable Adjustment Amount.

*"**Determination of Taxability***" means the first to occur of the following: (1) the date when the Borrower files any statement, supplemental statement or other tax schedule, return or document which discloses that a Taxable Event shall have occurred, (2) the date when the Borrower or Issuer shall be advised in writing by the Commissioner or any District Director of the Internal Revenue Service that, based upon any filings of the Borrower or upon any review or audit of the Borrower or upon any other ground whatsoever, a Taxable Event shall have occurred, or (3) on that date when the Borrower receives written notification from (A) the Initial Purchaser that the Internal Revenue Service has assessed as includable in the gross income of the Initial Purchaser all or any portion of the interest on the Bonds due to the occurrence of a Taxable Event, or (B) the Commissioner or any District Director of the Internal Revenue Service that all or any portion of the interest on the Bonds is includable in the gross income of the Initial Purchaser due to the occurrence of a Taxable Event.

"***Taxable Adjustment Amount***" means an amount equal to the difference, if any, between (1) the amount of interest on the principal amount of the Bonds actually paid to the Initial Purchaser since the effective date of a Taxable Event to the Interest Payment Date or redemption date on which such Taxable Adjustment Amount is first paid, and thereafter from the previous Interest Payment Date to the next Interest Payment Date or redemption date, and (2) the amount of interest which would have been payable on such

principal amounts to such owner or former owner for the same period since the date of the Taxable Event at a rate equal to Adjusted Daily Simple SOFR plus 2.0% per annum, in each case calculated on the basis of actual days elapsed for a year of 360-days.

"***Taxable Event***" means the application of the proceeds of the Bonds in any manner, the existence of any condition or the occurrence or nonoccurrence of any event, which has the result that, under the Code and the Regulations, all or any portion of the interest on the Bonds is or becomes includable in the gross income of the Initial Purchaser.

(ii) ***Yield Protection***. So long as any portion of the principal amount of the Bond or interest thereon remains unpaid, if there is a change in the Code or in the interpretation thereof by any court, administrative authority or other governmental authority (other than an Event of Taxability under *clause (i)* heretofore) which takes effect after the issuance of the Bonds and which changes the effective yield on the Bonds to the Initial Purchaser, including but not limited to, changes in the federal income tax rates, the interest rate on the Bonds will increase accordingly to compensate for such changes in effective yield on the Bonds. The Issuer agrees to pay on demand, but only from amounts provided by the Borrower pursuant to Section 3.04 of the Loan Agreement, each such Holder and prior Holder for the additional amounts described above.

(iii) ***Default Rate***. Upon the occurrence and continuation of any Event of Default, interest on the Bonds shall accrue at the Base Rate plus 4.00% annum, until such Event of Default is cured in accordance with *Article Nine* herein.

Interest accrued on this Bond or any portion hereof while it is in an Index Mode shall be payable on the first Business Day of each month and the Regular Record Date for such interest shall be the immediately preceding day (whether or not a Business Day).

(f) ***Fixed Rate***. After the Interest Mode for this Bond has been converted to the Fixed Mode, this Bond shall bear interest at the "***Fixed Rate***" therefor, which shall be a fixed per annum rate equal to the lesser of (i) 18% per annum or (ii) the Market Rate therefor determined as herein described on any date designated by the Remarketing Agent which is not more than 35 days preceding nor later than the last business day for such Remarketing Agent preceding such Fixed Mode (herein referred to as a "***Rate Determination Date***"). Interest accrued while this Bond is in a Fixed Mode shall be payable semiannually on each April 1 and October 1, the Regular Record Date for which shall be the last day (whether or not a Business Day) of the preceding calendar month or the first day of such Fixed Mode, whichever is later."

(g) ***Determination of Market Rates***. The "***Market Rate***" for this Bond determined on each Rate Determination Date shall (i) be the minimum per annum rate of interest determined in accordance with the provisions of the Indenture by the Remarketing Agent appointed thereunder to be necessary to produce a bid for this Bond or such portion equal to 100% of the principal amount thereof plus interest, if any (other than the Bank Differential), accrued from the Date of Series specified above or the most recent Interest Payment Date therefor to which interest has been paid or duly provided for, and (ii) the Index Rate determined by the Initial Purchaser in accordance with the provisions of the Indenture. If for any reason no Remarketing Agent shall have been appointed under the Indenture on any Rate Determination Date, the

Remarketing Agent or Initial Purchaser fails to determine the Market Rate on such Rate Determination Date, or any Market Rate determined by the Remarketing Agent or Initial Purchaser on such Rate Determination Date is determined by a court of competent jurisdiction to be invalid or unenforceable, the "***Market Rate***" for this Bond to be determined on such Rate Determination Date shall be, if the Interest Period therefor during which such Market Rate is to be in effect is (i) greater than one-half year, excluding an Index Mode Period, the percentage of "The 11-Bond Municipal Bond Index" most recently published by *The Bond Buyer* or any successor publication set forth below under the longest period specified which does not exceed the duration of such Interest Period:

Interest Period equal to or longer than (in years):

15	13	10	7	5	2	½
100%	**97%**	**93%**	**86%**	**80%**	**70%**	**65%**

, (ii) equal to or less than one-half year, then The Securities Industry and Financial Markets Association Municipal Swap Index (if the Bonds are in a Daily Mode or Weekly Mode) most recently published by *The Bond Buyer* or any successor publication, or (iii) an Index Mode Period, equal to the immediately preceding rate; *provided* that, if either such index in *clause (i) or (ii)* ceases to be published, it shall be replaced for the foregoing purposes by the most comparable published index designated by the Trustee on the advice of the Remarketing Agent or any other dealer bank or broker-dealer competent in such matters and chosen by the Trustee."

(h) ***Notice of Interest Rates***. The Trustee is required to give notice of each change in Interest Mode for this Bond to the Holder hereof by mail, first-class postage prepaid, within the period of and by the time specified in the Indenture before the day such change becomes effective. Each Daily Rate and Weekly Rate on this Bond for this Bond may be ascertained by telephoning the Remarketing Agent. Each Index Rate on this Bond for this Bond may be ascertained by telephoning the Initial Purchaser.

(i) ***Bank Bonds***. For each day on which any portion hereof is a Bank Bond (as defined in the Indenture), such portion shall bear interest at the Bank Rate (as defined in the Indenture). Interest accrued during any Interest Mode on any portion of this Bond which is a Bank Bond shall be payable on each Interest Payment Date for such Interest Mode described above, and, in the case of Bank Differential, on the day on which such Bank Bond ceases to be a Bank Bond, and the Regular Record Date for the payment of such interest shall be the immediately preceding day (whether or not a Business Day).

(j) ***Definitions***. As used herein:

(i) "***Business Day***" for this Bond means any day other than (1) a Saturday or a Sunday, (2) a legal holiday or the equivalent on which banking institutions generally are authorized or required to close in the Place of Payment therefor or in the city in which is located (a) the designated corporate trust office of the Trustee or the principal office of the Remarketing Agent or, (b) while any Credit Facility is in effect under the Indenture, the office of the Credit Enhancer or of its agent at which drafts or demands for payment under the Credit Facility are to be presented or, (c) while any Liquidity Facility is in effect under the Indenture, the office of the Liquidity Bank or of its agent at which

drafts or demands for payment under the Liquidity Facility are to be presented, or (3) a day on which the New York Stock Exchange is closed; *provided* that when used in connection with interest at a rate based on SOFR or any other calculation or determination involving SOFR, the term "Business Day" means a U.S. Government Securities Business Day;

(ii) "***Payment Default***" means a default in the payment of principal of or interest on any Bond when due, provided that the obligor on the policy referred to in the statement of insurance, if any, appearing on the within Bond or any Credit Facility accepted by the Trustee under the Indenture is then in default thereunder; and

(iii) "***Rate Adjustment Date***" means (1) each day on which this Bond will begin to bear interest at a newly determined Daily Rate, Weekly Rate or Fixed Rate determined in accordance with *Article Five* of the Indenture, whether or not such rate is different from the interest rate previously in effect on this Bond, and (2) the first Business Day of each Interest Period for this Bond in an Index Mode.

(k) ***Usury Savings Clause***. Notwithstanding anything herein or in the Indenture to the contrary, however, in no event shall the aggregate of the interest on the Bonds (including Bank Bonds) plus any other amounts paid in connection therewith which are deemed "interest" under the laws of the State of Texas and the United States of America in effect on the Date of Series specified above permitting the charging and collecting of the highest non-usurious interest rate on the Bonds (herein referred to as "***Applicable Law***") ever exceed the maximum amount of interest which could be lawfully charged and paid on the Bonds under Applicable Law, and if any amount of interest taken or received by the Holder hereof shall be in excess of the maximum amount of interest which, under Applicable Law, could lawfully have been collected and paid hereon, then the excess shall be deemed to have been the result of a mathematical error by the Issuer, the Trustee, and such Holder and shall be refunded promptly to the Trustee for the account of the Issuer. All amounts paid or agreed to be paid in connection with the indebtedness evidenced by the Bonds which under Applicable Law would be deemed "interest" shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated, and spread throughout the full term of the Bonds.

In the event any interest required to be paid at any time exceeds the maximum lawful non-usurious rate of interest, the portion of such interest required to be paid on a current basis shall equal such maximum lawful non-usurious rate of interest; provided, however, that the differential between the amount of interest payable assuming no maximum lawful non-usurious rate of interest and the amount paid on a current basis after giving effect to the maximum lawful non-usurious rate of interest shall be carried forward and shall be payable on any subsequent date of calculation so as to result in a recovery of interest previously unrealized (because of the limitation dictated by such maximum lawful non-usurious rate of interest) at a rate of interest, and as part of the interest payable, that, after giving effect to the recovery of such excess and all other interest paid and accrued hereunder to the date of calculation, does not exceed such maximum lawful non-usurious rate of interest.

1.2. ***Title; Limited Obligations***. This Bond is one of a duly authorized series of Bonds of the Issuer designated as its "SENIOR CARE FACILITIES VARIABLE RATE REVENUE AND REFUNDING BONDS (BIENVIVIR SENIOR HEALTH SERVICES PROJECT) SERIES 2010" (herein referred

to as the "***Bonds***"), issued and to be issued under, and all equally and ratably secured by, an Indenture of Trust and Security Agreement, dated as of December 1, 2010 (herein, together with all indentures supplemental thereto, referred to as the "***Indenture***"), between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (herein in such capacity referred to as the "***Trustee***," which term includes any successor Trustee under the Indenture), to which Indenture reference is hereby made for a description of the properties thereby pledged and assigned, the nature and extent of the security, the respective rights thereunder of the Holders of the Bonds, the Trustee, and the Issuer, and the terms upon which the Bonds are, and are to be, authenticated and delivered.

The Bonds are limited obligations of the Issuer payable solely from and to the extent of loan payments to be made or provided for by Bienvivir Senior Health Services, a Texas non-profit corporation (herein, together with successors referred to in the Indenture, referred to as the "***Borrower***"), pursuant to a Loan Agreement with the Issuer, dated as of even date with the Indenture (herein, together with all amendments and supplements thereto, referred to as the "***Loan Agreement***"), the obligations of the Borrower under which are evidenced by a promissory note of even date therewith made by the Borrower and an affiliate (herein referred to as the "***Note***") and entitled to the benefit and security of that certain Second Amended and Restated Master Trust Indenture and Security Agreement, dated as of December 1, 2010, as supplemented by that certain First Supplement to Second Amended and Restated Master Trust Indenture and Security Agreement, dated as of December 1, 2010, and as further supplemented from time to time, among the Borrower and The Bank of New York Mellon Trust Company, N.A. (successor in trust to U.S. Trust Company of Texas, N.A.), as trustee, and any other funds held or required to be held under the Indenture for such purpose.

1.3. ***Redemption, Mandatory Tender, and Acceleration.*** The Bonds are subject to (a) mandatory sinking fund redemption on the first Interest Payment Date therefor (or, for Bonds in a Daily Mode or Weekly Mode, the first Business Day) on or after October 1 of each year, in each case commencing in 2011 and in the aggregate principal amounts specified in the Indenture, and mandatory redemption, in the case of Bank Bonds, on the dates and in the principal amounts specified in the Indenture, (b) mandatory redemption, in the case of Bank Bonds, on the dates and in the principal amounts specified in the Indenture, (c) redemption at the option of the Borrower as a whole or from time to time in part (i) if the Bonds to be redeemed are in a Daily Mode or Weekly Mode, on any Business Day therefor, (ii) on the first day of the Fixed Mode, (iii) if the Bonds are in Index Mode on any Interest Payment Date, and (iv) on any day for Bank Bonds, Initial Put Date and successive Put Dates, (d) redemption at the option of the Borrower when the Bonds are in an Index Mode on a day other than set forth in (c)(iii), (e) redemption as a whole or in part at the option of the Borrower upon and not later than 365 days after the occurrence of or receipt of proceeds from certain events specified in the Indenture which adversely affect the Borrower, and (f) in the case of Bonds or parts thereof in the Fixed Mode, at the option of the Borrower, as a whole or from time to time in part on the respective dates specified in or determined in accordance with the Indenture, in all cases on prior written notice given by mail as provided in the Indenture, upon payment of the redemption price, which shall consist of (1) in the case of redemption pursuant to *Clause (a)*, *(b)*, *(c)* or *(e)*, if not in an Index Mode, above, 100% of the principal amount of the Bonds or parts thereof so redeemed, (2) in case of any redemption pursuant to *Clause (d)* or *(e)*, if in an Index Mode, above, 100% of the principal amount of the Bonds plus any Consequential Loss, and (3) in the case of any redemption pursuant to *Clause (f)* above,

initially the percentage of the principal amount to be redeemed for the applicable Interest Period specified in the above table, declining by 1% of principal amount on each subsequent anniversary of the first day of such Interest Period, but in no event to less than 100% of principal amount, plus in all cases interest, if any, accrued thereon from the Date of Series specified above or the most recent period through which interest thereon has been paid or duly provided for to the Redemption Date.

The Indenture requires this Bond to be tendered by the Holder for purchase upon each Purchase Date described under '*Mandatory Tender'* in the '*Notice of Demand Privilege and Mandatory Tender'* appearing hereon. By accepting this Bond the Holder agrees to all such provisions.

It is provided in the Indenture that Bonds may be redeemed in part and that upon any partial redemption of any such Bond the same shall, *except* as otherwise permitted by the Indenture, be surrendered in exchange for one or more new Bonds in authorized form for the unredeemed portion of principal. Bonds (or portions thereof) for whose redemption and payment provision is made in accordance with the Indenture shall thereupon cease to be entitled to the lien of the Indenture and shall cease to bear interest from and after the date fixed for redemption.

If an Event of Default, as defined in the Indenture, shall occur, the principal of and accrued interest on the Bonds may become or be declared due and payable in the manner and with the effect provided in the Indenture.

1.4. ***Amendments; Waivers; Limited Enforcement Rights***. The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Issuer and the rights of the Holders of the Bonds under the Indenture at any time by the Issuer with the consent of certain Persons. The Indenture also contains provisions permitting certain Persons specified in the Indenture to waive certain past defaults under the Indenture and their consequences under terms and conditions specified therein on behalf of the Holders of all the Bonds. Any such consent or waiver shall be conclusive and binding upon the current and all future Holders of this Bond and of any Bond issued upon the transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Bond.

The Holder of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in, or defend any suit or other proceeding with respect thereto, *except* as provided in the Indenture.

1.5. ***Denominations; Transfer and Exchange***. Bonds issued upon transfer or in lieu of or in exchange for this Bond are issuable as fully registered bonds only, without coupons, in the denominations of $5,000 and any integral multiple thereof if issued during the Fixed Mode and $100,000 and any integral multiple of $5,000 in excess thereof if issued in any other Interest Mode.

As provided in the Indenture and subject to certain limitations therein set forth, this Bond is transferable on the Bond Register of the Issuer, upon surrender of this Bond for transfer to the Paying Agent at the Place of Payment duly endorsed by, or accompanied by a written

instrument of transfer in form satisfactory to the Bond Registrar duly executed by, the registered Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Bonds of authorized denominations, bearing interest at the same rate and for the same period, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

As provided in the Indenture and subject to certain limitations therein set forth, Bonds are exchangeable for a like aggregate principal amount of Bonds of different authorized denominations, as requested by the Holder, but bearing interest at the same rate and for the same period, upon surrender of the Bonds to be exchanged to the Paying Agent at the Place of Payment.

No service charge shall be made for any such transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

1.6. ***Persons Deemed Owners***. The Issuer, the Trustee, and their agents may treat the Person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes (except as otherwise provided in the Indenture), whether or not this Bond be overdue, and none of the Issuer, the Trustee, or any such agent shall be affected by notice to the contrary.

1.7. ***Severability; Governing Law***. In case any provision in this Bond or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. This Bond shall be construed in accordance with and governed by the laws of the State of Texas and the federal law of the United States of America.

Unless either a Registration Certificate of the Comptroller of Public Accounts of the State of Texas has been executed by such Comptroller or his duly authorized agent or a certificate of authentication hereon has been executed by the Trustee, in each case by manual signature, this Bond shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be duly executed.

CITY OF EL PASO HEALTH FACILITIES DEVELOPMENT CORPORATION

By: _____
President

ATTEST:

_____
Secretary

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds referred to in the within-mentioned Indenture, a Predecessor Bond which has been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: _____
Authorized Signature

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto (print or typewrite name, address, and zip code of transferee) _____. _____ Social Security or other identifying number: _____) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Signature(s) guaranteed (pursuant to the Securities Transfer Association signature guarantee program):

_____

_____

NOTICE: The signature(s) on this assignment must correspond with the name(s) of the registered owner(s) appearing on the face of the within Bond in every particular.

The following abbreviations, when used in the inscription on the face of the within Bond or above Assignment, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM – as tenants in common

TEN ENT -- as tenants by the entireties

JT -- as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT

_____ *Custodian* _____

(Cust. *(Minor)*

under Uniform Gifts to Minors Act

_____

State

Additional abbreviations may also be used though not in the above list.

Bienvivir Senior Health Services

Series 2010 Bonds: Transition from LIBOR to SOFR

May/June, 2023

bienvivir
ALL-INCLUSIVE SENIOR HEALTH

CAIN BROTHERS
A division of
KeyBanc Capital Markets

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Interest rates used herein are hypothetical and take into consideration conditions in today's market and other factual information such as the issuer's credit rating, geographic location and market sector. Interest rates applied herein are hypothetical, based on current market facts and should not be viewed as rates that Cain Brothers expects to achieve for you should we be selected to act as your underwriter or placement agent. Information about interest rates and terms for SLGs is based on current publicly available information and treasury or agency rates for open-market escrows are based on current market interest rates for these types of credits and should not be seen as costs or rates that Cain expects to achieve for you should we be selected to act as your underwriter or placement agent.

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A number of our corporate and institutional team members are employed by both KeyBanc Capital Markets Inc. and KeyBank N.A. These "dual employees" are licensed securities representatives of KeyBanc Capital Markets Inc., and they are there to better serve your needs, by making available both securities and banking products and services.

Further, in connection with our effort to deliver a comprehensive array of banking and securities products and services to you in a seamless manner, from time-to-time KeyBank N.A. and KeyBanc Capital Markets Inc. will share with each other certain non-public information that you provide to us. Of course, as always, this information will not be shared or otherwise disclosed outside of the KeyCorp organization without your express permission. Please also be assured that, as with other banks and broker-dealers, KeyBank N.A. and KeyBanc Capital Markets Inc. adhere to established internal procedures to safeguard your corporate information from areas within our organization that trade in or advise clients with respect to the purchase and sale of securities.

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Transition from LIBOR to SOFR

Bond Structure and Why the City is Involved:

- The City of El Paso Health Facilities Development Corporation (HFDC) is a Texas non-profit health facilities development corporation duly created by the City pursuant to the provisions of Chapter 221, Texas Health and Safety Code, as amended, as a constituted authority and instrumentality of the City of El Paso

- In order for Bienvivir Senior Health Services (Bienvivir) to borrower money on a tax-exempt basis, bonds were issued through the HFDC
  - Series 2002: Financing of new 88,000 sf McKinnley PACE Center
  - Series 2007: Refinancing of Series 2002 and $6.3 million capital expenditures
  - Series 2010: Refinancing of Series 2007 and $2.5 million capital expenditures

- HFDC is not an obligor on the debt and no City funds or taxes are used to pay any debt issued by the HFDC for Bienvivir's benefit

- As Issuer of the Series 2010 Bonds, HFDC must consent to any changes to the loan documents

Transition from LIBOR to SOFR

Reason for Modification to the Bonds:

- The Bienvivir Series 2010 bonds are tax-exempt and pay interest at a variable rate based on a percentage of the London Interbank Offered Rate (LIBOR) with a tenor of 1-month
- In 2017, UK regulators[1] announced the discontinuation of LIBOR
- **1-month LIBOR will cease to be reported on June 30, 2023**
- In 2017, US regulators[2] identified the Secured Overnight Financing Rate (SOFR) as the recommended replacement to USD LIBOR
- In March, 2021, Bloomberg[3] published recommended spreads to be added to SOFR as a replacement to 1-month LIBOR.
- JPMorgan Chase Bank, N.A., as lender, has offered to replace 1-month LIBOR at SOFR plus a spread that is 0.01448% less than the recommended published spread

bienvivir
ALL-INCLUSIVE SENIOR HEALTH

[1] *UK Financial Conduct Authority*
[2] *Alternative Reference Rates Committee (ARRC)*
[3] *Under the International Swaps and Derivatives Association (ISDA) definitions and the LIBOR Act passed by Congress, Bloomberg is the "golden source" for calculating the Fallback Rate SOFR which includes the recommended spreads added to SOFR so that when combined with the spread, it approximates LIBOR*

Transition from LIBOR to SOFR

Action Needed to Achieve HFDC consent:

- City Council first reappoints members to the HFDC Board
- For ease of administration, the City amended the HFDC articles of incorporation at its May 23 Council meeting such that the HFDC Board mirrors the City Council
- The HFDC Board/City Council now meets to approve the change to the Bienvivir loan documents
- **The HFDC President (and Secretary) will sign the First Supplement to the Indenture of Trust and Security Agreement and the Bond reflecting the changed terms**
- Bienvivir will pay all City legal fees associated with these modifications

Series 2010 Bonds: Transition from LIBOR to SOFR

Summary of Changed Terms of the Indenture of Trust and Security Agreement

The changes being made to the existing loan documents are minimal and are summarized as follows:

1. Existing interest rate will change from 67% x (**1-Month LIBOR** + 2.00%) to 67% x ((**SOFR + 0.10%**) + 2.00%))

2. Definitions are added to account for the new index

3. Provisions are added to provide for a mechanism for determining a new index rate in the future if SOFR is ever discontinued

No changes are being made to the existing term, security structure, nor covenants

Summary

Request of City and City Council Members

- Bienvivir Senior Health Services, located at 2300 McKinley Ave 79930 has requested that the City reconstitute the governing board of the HFDC in order to approve modifications to the Bienvivir existing loan documents
    - City Council took action on May 23
- Bienvivir requests that the HFDC Board take action to approve the loan document modifications in order to substitute the SOFR index for the LIBOR index that is being phased out
- The changes to the loan documents are necessary because of the global phase out of the LIBOR index which is used in the existing loan documents
- No costs are being incurred by the City with respect to the requested modification
- No City funds or taxes are used to pay any debt issued by the HFDC for Bienvivir's benefit