

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

DEPARTMENT: Financial Services
AGENDA DATE: February 26, 2008
CONTACT PERSON/PHONE: Gonzalo Cedillos, P.E., 541-4074
DISTRICT(S) AFFECTED: 7



SUBJECT:

That the City Manager be authorized to sign an Assignment of Lease which consents to El Paso Communities, LP's acceptance of the Lessee's interest in the May 9, 1989 lease between the City of El Paso and Resource Development Corporation to construct and maintain a private road across City-owned property that is held for drainage purposes in Tract 8, Block 15, Ysleta Grant, City of El Paso, El Paso County, Texas.

BACKGROUND / DISCUSSION:

On May 9, 1983, Resource Development leased a portion of a City owned drainage channel to cross and access their mobile home development. Resource Development sold its property but did not request written consent from City Council. El Paso Communities, LP is the current owner and is requesting assignment to continue using City property to access the development. Staff does not object to this assignment.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

\$90 a year rental revenue

BOARD / COMMISSION ACTION:

N/A

CITY CLERK DEPT.
08 FEB 20 AM 9:58

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

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

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

APPROVED FOR AGENDA:

CITY MANAGER: Wang **DATE:** _____

RESOLUTION

WHEREAS, on May 9, 1989, the City of El Paso and Resource Development Corporation, entered into a lease agreement which allowed Resource Development Corporation to construct and maintain a private road across City-owned property that is held by the City for drainage purposes in Tract 8, Block 15, Ysleta Grant, City of El Paso, El Paso County, Texas; and

WHEREAS, the May 9, 1989 lease with the City of El Paso states that Resource Development Corporation cannot assign the lease agreement without the prior written consent of the El Paso City Council; and

WHEREAS, Resource Development Corporation sold its property which abuts the City-owned tract to the Davidson Group, which in turn sold the property to El Paso Communities, LP, and El Paso Communities, LP needs access across the City land; and

WHEREAS, neither Resource Development Corporation nor the Davidson Group requested the City of El Paso's prior written consent of the assignment of the Lessee's interest in the May 9, 1989 lease to allow for continued access across the City-owned land; and

WHEREAS, the City of El Paso does not object to El Paso Communities, LP's acceptance of the Lessee's interest in the identified lease if El Paso Communities, LP submits an application to the City of El Paso to purchase the Premises as soon as is reasonably possibly pursuant to City procedures,

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

That the City Manager be authorized to sign an Assignment of Lease which consents to El Paso Communities, LP's acceptance of the Lessee's interest in the May 9, 1989 lease between the City of El Paso and Resource Development Corporation to construct and maintain a private road across City-owned property that is held for drainage purposes in Tract 8, Block 15, Ysleta Grant, City of El Paso, El Paso County, Texas.

Dated this _____ day of _____, 2008.

CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen-Garney

Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:

Carmen Arrieta-Candelaria

Carmen Arrieta-Candelaria
Chief Financial Officer

CITY CLERK DEPT.
08 FEB 20 AM 9:58

LEASE ASSIGNMENT

This Lease Assignment, hereinafter referred to as the "Assignment", is entered into by and between the **CITY OF EL PASO**, hereinafter referred to as the "**CITY**", and **EL PASO COMMUNITIES, LP**, hereinafter referred to as "**EP COMMUNITIES**".

WHEREAS, on May 9, 1989, the **CITY** and Resource Development Corporation, hereinafter referred to as "Resource", entered into a lease agreement which allowed Resource to construct and maintain a private road across City-owned property that is held by the **CITY** for drainage purposes in Tract 8, Block 15, Ysleta Grant, City of El Paso, El Paso County, Texas; and

WHEREAS, the May 9, 1989 lease with the **CITY** states that Resource cannot assign the lease agreement without the prior written consent of the El Paso City Council; and

WHEREAS, Resource sold its property which abuts the City-owned tract to the Davidson Group, which in turn sold the property to **EP COMMUNITIES**, and **EP COMMUNITIES** needs access across the City land; and

WHEREAS, neither Resource nor the Davidson Group requested the **CITY**'s prior written consent of the assignment of the Lessee's interest in the May 9, 1989 lease to allow for continued access across the City-owned land; and

WHEREAS, the **CITY** does not object to **EP COMMUNITIES**'s acceptance of the Lessee's interest in the identified lease if **EP COMMUNITIES** submits an application to the City to purchase the Premises as soon as is reasonably possibly pursuant to City procedures,

NOW THEREFORE, for and in consideration of the foregoing and in further consideration of the mutual benefits, the Parties hereto agree as follows:

1. **EP COMMUNITIES.** **EP COMMUNITIES** agrees to assume the interests of Resource in the May 9, 1989 lease between the **CITY** and Resource, a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes.

In accordance with Paragraph 2, of Exhibit "A", **EP COMMUNITIES** agrees to submit an application to the **CITY** to purchase the Premises as soon as is reasonably possibly pursuant to City procedures.

2. **City.** The **CITY** consents to this Assignment, and the **CITY** agrees to look to **EP COMMUNITIES** for any Lessee's responsibility or obligation, which may arise or may have arisen under Exhibit "A".

3. **Notices.** Upon **EP COMMUNITIES**' assumption of the Lessee's interest in Exhibit "A", all notices given or made to the **CITY** hereunder shall be deemed to be duly and properly given or made if mailed to the address specified below, or delivered personally to the **CITY**'s representative. All notices or other papers given or delivered to **EP COMMUNITIES** hereunder shall be deemed to be sufficiently given or delivered if mailed, postage prepaid, to:

CITY CLERK DEPT.
08 FEB 20 AM 9:58

CITY CLERK DEPT.
08 FEB 20 AM 9:58

CITY: CITY OF EL PASO
City Manager
#2 Civic Center Plaza
El Paso, Texas 79901-1196

EP COMMUNITIES: EL PASO COMMUNITIES, LP
John Bovone
1654 The Alameda, Suite 100
San Jose, California 95126

IN WITNESS WHEREOF, the parties hereto have executed this Assignment, and the effective date of this Lease Assignment is _____, 2008.

CITY: CITY OF EL PASO

Joyce A. Wilson
City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

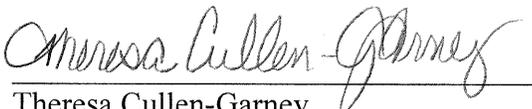
This instrument was acknowledged before me on the _____ day of _____, 2008, by Joyce Wilson, as **City Manager** of the **City of El Paso, Texas**.

My Commission Expires:

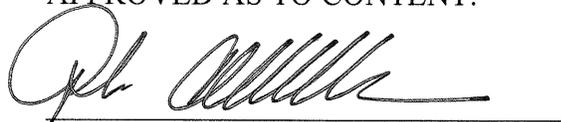
Notary Public, State of Texas

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Theresa Cullen-Garney
Deputy City Attorney



Gonzalo Cedillos, P.E.
Capital Assets Manager

(Signatures continued on next page)

EXHIBIT "A"

CITY CLERK DEPT.
08 FEB 20 AM 9:58

STATE OF TEXAS)
)
COUNTY OF EL PASO)

LEASE AGREEMENT

This Lease Agreement made this 9th day of May, 1989, by and between the CITY OF EL PASO, hereinafter referred to as the "City," and RESOURCE DEVELOPMENT CORPORATION, hereinafter referred to as "Lessee."

WHEREAS, Lessee owns property in Block 15, Ysleta Grant, City of El Paso, El Paso County, Texas; and

WHEREAS, Lessee proposes to develop the Valley Pines Mobile Home Community on said property; and

WHEREAS, Lessee proposes to construct and maintain a private road that will cross City-owned property that is held by the City for drainage purposes in Tract 8, Block 15, Ysleta Grant, City of El Paso, El Paso County, Texas; and

WHEREAS, the City Council finds that the execution of this Lease Agreement upon the terms and conditions hereinafter set forth would be in the public interest;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. DESCRIPTION. The City leases to the Lessee the following described real property situated in the City and County of El Paso, Texas:

A 0.0422 acre parcel of land being a portion of Tract 8, Block 15, Ysleta Grant, City of El Paso, El Paso County, Texas, and being more particularly described in

Exhibit "B" which is attached hereto and incorporated herein for all purposes. Said property is hereinafter referred to as "Premises."

The City retains, reserves, and shall continue to enjoy, for drainage purposes, the use of the drainage channel which will be under the crossing which Lessee is constructing and which is described in paragraph 3 below.

2. **TERM.** The term of this Lease Agreement shall be for thirty (30) years from the date hereof, or until the Lessee purchases the Premises, whichever is sooner, it being acknowledged that Lessee has made formal application to the City to purchase the Premises as soon as is reasonably possible pursuant to City procedures. The City agrees that the City's appraisals of the Premises, which will be obtained as part of the purchase procedure, will not include the improvements being constructed by Lessee described in paragraph 3 below.

3. **IMPROVEMENTS.** Under this Lease Agreement, Lessee shall construct, maintain and use a crossing over the Premises that includes two (2) storm drainage pipes, a concrete header wall, a concrete box culvert and drop inlet, a concrete rip rap and paving approximately thirty-six feet (36') wide and twenty-five feet (25') long. Said improvements are shown on Exhibit "B". Lessee shall not construct any significant additional improvements, or make any significant additions or alterations to the plans which have already been approved by the City Engineer without the consent of the City. This Lease Agreement shall be without cost to the City for the development, maintenance or

CITY CLERK DEPT.
08 FEB 20 AM 9:59

009712

improvement of the Premises. It shall be the sole responsibility of the Lessee to keep, maintain and operate the entirety of the Premises and all improvements placed thereon at Lessee's sole cost and expense.

4. USE OF PROPERTY. This Lease Agreement is entered into solely for the uses described in this agreement. This Agreement allows Lessee to construct and maintain a crossing over the Premises and to use the Premises as a private road.

This Lease Agreement shall not permit or be construed to permit any other private use of the Premises which impairs its use for drainage purposes.

5. CONSIDERATION. Consideration for this Lease Agreement is Lessee's payment of an annual rental amount of \$90.00, which shall be paid on each anniversary date of this Lease.

6. IMPROPER USE. Lessee shall not permit on the Premises any activity which violates any State statute or City ordinance.

Lessee shall not construct any additional improvements on the Premises other than those set forth on Exhibit "B" without the written consent of the City.

7. WORK PERFORMANCE. All work performed by Lessee and its employees shall be done in a good and workmanlike manner, in compliance with all City Ordinances.

8. EQUIPMENT. All equipment, tools and machinery used in connection with the Lease Agreement shall be supplied by Lessee and shall be maintained in a satisfactory working condition. Equipment shall not be used in any manner that may cause damages

to the Premises, property of third parties, or cause injury to any person.

9. SAFETY. Lessee shall comply with all applicable city, state and federal laws, ordinances and regulations pertaining to safety of work. Lessee shall exercise every necessary precaution for the safety of the Premises and the protection of any and all persons or property located adjacent to the Premises. Lessee shall immediately report to the City Engineer all accidents arising out of performance of work and resulting in personal injury or damage to the Premises.

10. REPAIRS. Lessee will keep the Premises in good condition and repair and in a clean, orderly and attractive condition during the term of this Lease Agreement. Lessee shall be responsible for all maintenance of the crossing and drainage improvements and repair any damage to the crossing and improvements regardless of the cause of such damage, unless said damage is caused by the City.

11. INDEMNITY AND LIABILITY INSURANCE. The City shall be indemnified by Lessee as herein provided. In the use of the property, and in the exercise of the rights herein granted, Lessee shall indemnify, defend and hold the City, its officers, agents, servants, and employees, harmless from any and all losses incurred by the City arising out of Lessee's use of the property.

Lessee shall promptly, before utilizing the property, subject to this Lease Agreement, provide public liability insurance for personal injuries and death growing out of any one

000712

accident or other cause in a minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000) per person, and Five Hundred Thousand Dollars (\$500,000) for two or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand Dollars (\$100,000) for property damage growing out of any one accident or other cause. These amounts are not a limitation upon Lessee agreeing to indemnify and hold the City harmless.

Lessee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. All policies shall name the City of El Paso, it's officers, agents, servants and employees as additional insureds as to the Premises. Lessee shall file a copy of the policy or certificate of insurance with the City Clerk. Such policy or certificate shall provide that the insurance cannot be cancelled or the amount of coverage changed without thirty (30) days prior written notice to the City Clerk.

12. **CANCELLATION.** Should at any time the City determine that the Lease Agreement herein granted is no longer in the best interest of the general public, such Lease Agreement shall terminate upon thirty (30) days written notice from the City Council, and all rights of Lessee in the Premises shall be terminated. Lessee shall be given actual notice of any proposed cancellation being placed on the City Council Agenda so that Lessee will have the opportunity to be present when the cancellation is voted upon by the City Council.

08 FEB 20 AM 9:59
CITY CLERK DEPT.

In addition, if Lessee shall cease to construct upon, use or occupy the property for the purposes herein contemplated for a period of four (4) months, or if Lessee defaults in any of its obligations under this Lease Agreement and fails to correct such default within sixty (60) days after written notice to do so, the City Council may terminate this Lease Agreement and take possession, and all rights of Lessee on the property shall then terminate. Any waiver by the City of any breach of any of Lessee's obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of Lessee.

Lessee may cancel this Lease Agreement, for any reason, upon thirty (30) days written notice to the City, and all rights of the Lessee in the Premises shall then be terminated.

13. LIENS AND ENCUMBRANCES. Lessee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the property, arising or alleged to have arisen from Lessee's use of the Premises.

14. ASSIGNMENT. Lessee shall not assign this Lease Agreement without the prior written consent of the City Council. The City shall not assign this Lease Agreement without the prior written consent of Lessee.

15. MISCELLANEOUS.

a. **RIGHT OF ENTRY AND INSPECTION:** The City's authorized representative shall have the right to enter upon the property at

all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Lease Agreement.

b. **LAWS AND ORDINANCES:** Lessee shall comply with all statutes, laws, codes and ordinances applicable to Lessee's use or occupancy of the property. In addition, Lessee shall obtain all required permits and inspections and pay the necessary permit fees, including, but not limited to, building permits.

c. **SIGNS:** This Lease Agreement does not grant any permission to erect signage. Permission to erect signage on the Premises shall be given through a separate instrument.

d. **SUCCESSORS AND ASSIGNS:** All the terms, provisions, covenants and conditions of this Lease Agreement shall inure to the benefit and be binding upon the parties, their successors and assigns.

e. **NOTICES:** All notices provided for herein shall be sufficient if sent by certified mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso
Attn: Mayor
No. 2 Civic Center Plaza
El Paso, Texas 79901-1196

with copy to: City of El Paso
Attn: City Clerk
No. 2 Civic Center Plaza
El Paso, Texas 79901-1196

and: Mr. Schuyler Nash, President
RESOURCE DEVELOPMENT CORPORATION
619 Arizona
El Paso, Texas 79902

CITY CLERK DEPT.
08 FEB 20 AM 9:59

with copy to: Mrs. Risher S. Gilbert
Grambling & Mounce
P. O. Drawer 1977
El Paso, Texas 79950-1977

or to such other addresses as the parties may designate to each other in writing from time to time.

f. **ENTIRE AGREEMENT:** This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

g. **SEVERABILITY:** The invalidity or illegality of any provision hereof shall not affect the remaining provisions hereof.

h. **LAW GOVERNING:** The laws of the State of Texas shall govern the validity, performances and enforcement of this Lease Agreement.

16. **RESTRICTIONS AND RESERVATIONS:** This Lease Agreement is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the initial term of this Lease Agreement, or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Lessee's use of the Premises, Lessee shall have the right to terminate this Lease Agreement upon giving the City prior written notice of its intention to do so.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

SIGNATURES CONTINUE ON NEXT PAGE

8

Exhibit "A"
Page 8 of 10

009712

CITY CLERK DEPT.
08 FEB 20 AM 9:59

