

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

**DEPARTMENT:** Financial Services

**AGENDA DATE:** Introduction May 25, 2010  
Public Hearing June 1, 2010

**CONTACT PERSON NAME AND PHONE NUMBER:** Liza Ramirez-Tobias (915) 541-4074

**DISTRICT(S) AFFECTED:** Rep. Byrd, #2

**SUBJECT:**

An Ordinance authorizing the City Manager to sign a lease agreement between the City of El Paso and Woodworkers Club of El Paso, Texas, Inc., for the lease of the property at 3228 Sacramento Avenue, El Paso, Texas, for a term of twenty (20) years, with one renewal option for an additional ten (10) years.

**BACKGROUND / DISCUSSION:**

The Woodworkers desires to enter into a lease agreement with the City for the use of 3228 Sacramento Avenue, commonly known as the old Sacramento building to promote woodworking and provide an alternative recreational activity to the residents of the City of El Paso. The lease period shall be for a primary term of twenty (20) years, at a rate of \$1.00 per year and for certain additional in-kind public benefit consideration received, as outlined in greater detail in the attached Lease Agreement to include: roof replacement and ADA required improvements. This increases the availability of recreational facilities, which are of general benefit to the citizens of El Paso; and will also provide charitable activities.

**PRIOR COUNCIL ACTION:**

**AMOUNT AND SOURCE OF FUNDING:**

Revenue generating

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**BOARD / COMMISSION ACTION:**

CARE recommends approval

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

\_\_\_\_\_  
(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

*Information copy to appropriate Deputy City Manager*

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A  
LEASE AGREEMENT BETWEEN THE CITY OF EL PASO AND  
WOODWORKERS CLUB OF EL PASO, TEXAS, INC., FOR THE LEASE  
OF THE PROPERTY AT 3228 SACRAMENTO AVENUE, EL PASO,  
TEXAS, FOR A TERM OF TWENTY (20) YEARS, WITH ONE  
RENEWAL OPTION FOR AN ADDITIONAL TEN (10) YEARS.**

**WHEREAS**, WOODWORKERS CLUB desires to enter into a lease agreement with the CITY for the use of Lots 19, 20, 21 and 22 in Block 26 of the Grandview Addition to the City of El Paso, El Paso County, Texas, such property further referenced in the attached Exhibit "A," and commonly known as the Old Sacramento Building, at 3228 Sacramento Ave, El Paso Texas 79930, ("Premises") to provide a unique opportunity to the residents of El Paso by promoting woodworking through demonstrations, seminars, classes, and similar activities, and by performing community service projects for other non-profit organizations, City and County Governments, Fort Bliss, and local organizations such as schools; and

**WHEREAS**, CITY believes that the proposed use of the Premises by WOODWORKERS CLUB would serve the public purpose of increasing the availability of recreation alternatives to residents of El Paso and provide recreational and charitable activities, which are of general benefit to the citizens of El Paso.

**THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager is hereby authorized to sign, on behalf of the City of El Paso, a lease upon the following terms to WOODWORKERS CLUB OF EL PASO, TEXAS:

- (1) The area to be leased is located at 3228 Sacramento Ave., El Paso, El Paso County, Texas, as further identified in Exhibit "A" and known as "Premises".
- (2) The lease period shall be for a primary term of twenty (20) years, at a rate of \$1.00 (ONE AND NO/100 DOLLARS) per year for certain additional in-kind public benefit consideration received, as outlined in greater detail in the attached Agreement, and may be extended for one additional ten (10) year period under the same price, terms and conditions, upon mutual agreement of WOODWORKERS CLUB and CITY, by and through its City Manager. This lease agreement supersedes all prior agreements, whether written or oral, regarding the lease of the Premises by WOODWORKERS CLUB.

**ORDINANCE \_\_\_\_\_**

- (3) Said lease from the City of El Paso to WOODWORKERS CLUB shall be in the form that is attached as Exhibit "B" and incorporated herein by reference for all purposes as if set forth verbatim.

**PASSED AND APPROVED** on this the \_\_\_\_ day of \_\_\_\_\_, 2010.

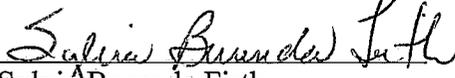
**THE CITY OF EL PASO**

**ATTEST:**

\_\_\_\_\_  
John F. Cook,  
Mayor

\_\_\_\_\_  
Richarda Duffy Momsen,  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Sylvia Borunda Firth  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Carmen Arietta-Candelaria  
Director, Financial Services

**ORDINANCE** \_\_\_\_\_

**EXHIBIT "A"**

**AERIAL MAP**

# 3228 Sacramento



EXHIBIT 'A'

## EXHIBIT "B"

The following repairs will need to be completed to be in compliance with the ADA Accessibility Guidelines and the Texas Accessibility Standards:

1. Remove door knobs and install Lever handles
2. Women's Restroom
  - a. Replace lavatory with ADA compliant lavatory.
  - b. Install new mirror with reflective surface at 40 inches maximum above the floor with the top edge a minimum of 74 inches above the finished floor or remove the mirror completely.
  - c. Install insulation/pipe wrapping on the water and drain pipes under the lavatory.
  - d. Remove one water closet, plug water and waste piping, and the stalls and convert restroom to single user toilet room.
  - e. Lower the remaining water closet so that the seat is 17 to 19 inches above the finished floor, the center of the toilet is 18 inches from the side wall, and ensure that flush controls are on the wide side of the water closet.
  - f. Install 42-inch grab bar on the side of the water closet and a 36-inch grab bar at the back of the water closet; both mounted 33 to 36 inches above the finished floor.
  - g. Widen the doorway to accommodate a 36-inch door and install a new 36 inch door, which will provide a clear 32 inch passage into the toilet room.
1. Men's Restroom
  - a. Replace lavatory with ADA compliant Lavatory.
  - b. Install new mirror with reflective surface at 40 inches maximum above the floor with the top edge a minimum of at 74 inches above the finished floor or remove the mirror completely.
  - c. Install insulation/pipe wrapping on the water and drain pipes under the lavatory.
  - d. Convert restroom to single user toilet room by removing partitions.
  - e. Lower the remaining water closet so that the seat is 17 to 19 inches above the finished floor, the center of the water closet is 18 inches from the side wall, and ensure that the flush controls are on the wide side of the water closet.
  - f. Install 42-inch grab bar on the side of the water closet and a 36-inch grab bar at the back of the water closet; both mounted 33 to 36 inches above the finished floor.
  - g. Replace urinal with ADA compliant urinal mounted 17 inches above the finished floor at the rim with a tapered elongated rim that narrows toward the front and that extends 14 inches from the wall where it is mounted or remove the urinal completely and plug water and waste piping.
  - h. Widen the doorway to accommodate a 36-inch door and install a new 36-inch door, which will provide a clear 32-inch passage into the toilet room.
1. Install new ADA compliant signage with raised character and #2 grade Braille on restrooms and any other rooms that are permanently labeled.

An asbestos survey will be required and abatement must be done, before any work is done that might disturb asbestos containing building material, including but not limited to sheet rock, tile, wall and ceiling plaster, cloth wrapped electrical wiring, etc.

# ***3228 Sacramento***



THE STATE OF TEXAS

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§  
§

LEASE AGREEMENT

COUNTY OF EL PASO

This Lease Agreement ("Lease"), made this the \_\_\_\_\_ day of \_\_\_\_\_, 2010, between the CITY OF EL PASO, a home rule municipal corporation ("CITY"), and THE WOODWORKERS CLUB OF EL PASO, TEXAS, INC., a non-profit corporation ("WOODWORKERS CLUB").

WHEREAS, WOODWORKERS CLUB desires to enter into a Lease with the CITY for the use of Lots 19, 20, 21 and 22 in Block 26 of the Grandview Addition to the City of El Paso, El Paso County, Texas, such property further referenced in the attached Exhibit "A," and commonly known as the Old Sacramento Building, at 3228 Sacramento Ave., El Paso TX 79930 ("Premises"); and

WHEREAS, WOODWORKERS CLUB intends to use the Premises to provide a unique opportunity to the residents of El Paso by promoting woodworking through demonstrations, seminars, classes, and similar activities, and by performing community service projects for other non-profit organizations, City and County Governments, Fort Bliss, and local organizations such as schools; and

WHEREAS, CITY believes that the activities contemplated herein and the agenda set forth by WOODWORKERS CLUB will serve the public by increasing the availability of recreation alternatives to residents of El Paso and provide recreational and charitable activities, which are of benefit to all citizens of El Paso; and

NOW, THEREFORE, for and in consideration of the following mutual covenants and agreements set forth herein, and other good and valuable consideration, the CITY hereby grants a non-assignable right to WOODWORKERS CLUB to lease the property at 3228 Sacramento Avenue, commonly known as the Old Sacramento Building, and further referenced in Exhibit "A" and referred to throughout the remainder of this Lease as "Premises".

1.0 TERM AND RENT

1.1 Term of Lease. This Lease is effective as of the above date ("Lease Date") and is for a primary term of twenty (20) years from that date. Said Lease may be extended for one additional ten (10) year extension under the same price, terms and conditions as approved jointly by WOODWORKERS CLUB and CITY by and through its City Manager, unless terminated as hereinafter provided in Section 6.0, *et seq.*, of this Lease.

1.2 Rent. As monetary consideration for this Lease WOODWORKERS CLUB will deliver to the CITY ONE AND NO/100 DOLLARS (\$1.00) per year for the lease term of this Lease, as stated in Section 1.1 above. Rent is due and payable upon execution, each subsequent year on the Lease Date, and for each extension, prior to the start of such extension.

CITY CLERK DEPT.  
10 MAY 20 AM 9:04

- 1.3 Additional Consideration. As additional consideration for the Lease, WOODWORKERS CLUB will make the following capital improvements to the Premises during the lease term:
- 1.3.1 Within three (3) months of the execution of the Lease, WOODWORKERS CLUB will replace the roof in accordance with all applicable municipal codes, laws and ordinances;
  - 1.3.2 WOODWORKERS CLUB will make all the improvements listed on **EXHIBIT "B"**, ADA Compliance, within thirty-six (36) months of the date the lease is executed; and
  - 1.3.3 WOODWORKERS CLUB will be solely responsible for the maintenance, utilities and upkeep of the Premises during the Lease term.

## 2.0 USE OF PREMISES

- 2.1 Premises. The Premises shall be under the control of WOODWORKERS CLUB during the lease term of this Lease, as stated in Section 1.1 above. WOODWORKERS CLUB understands and agrees that the Premises are to be open to the public on a non-discriminatory basis, yet that general admission and activities may be limited to members of the WOODWORKERS CLUB. WOODWORKERS CLUB may impose reasonable restrictions on admission consistent with the need to preserve and protect the Premises or the safety and welfare of any occupants therein.
- 2.1.1 It is understood that WOODWORKERS CLUB intends to use the Premises to provide a unique opportunity to the residents of El Paso by promoting woodworking through demonstrations, seminars, classes, and similar activities, by performing community service projects for other non-profit organizations, City and County Governments, Fort Bliss and local organizations such as schools, and open to anyone in and around the City of El Paso who becomes a member of WOODWORKERS CLUB. The use herein provided serves as the consideration provided to CITY for this Lease. WOODWORKERS CLUB expressly agrees to use the facility only for such public purposes of benefit to El Paso, a use that provides area residents a unique opportunity to participate in recreational and charitable activity and to include membership benefits based on Club Bylaws, policies, and 501(C)(3) status.
  - 2.1.2 Admission to Events at Facilities. WOODWORKERS CLUB may charge a fee for admission to its activities to include seminars, classes, demonstrations, and other standard WOODWORKERS CLUB programs ("Standard Activities") held at the Premises. WOODWORKERS CLUB may charge for specialized instruction.

- 2.1.3 The proceeds from membership, seminars, classes and specialized instruction allowed in Subsection 2.1.2 shall be used by WOODWORKERS CLUB solely and exclusively to pay operational costs and utilities due at the Premises pursuant to this Lease, for the costs to operate the Standard Activities allowed in this Lease and for building improvements. WOODWORKERS CLUB shall strictly abide by the terms of Subsection 7.16 below.
- 2.1.4 Alcoholic beverages shall not be permitted for any purpose or activity at the Premises.
- 2.1.5 WOODWORKERS CLUB, its officers, agents, servants, employees, volunteers and third parties shall not discriminate on account of race, color, religion, sex or national origin, nor permit or allow any discrimination. Admission to a public function held on the Premises and thus, covered by this Lease, shall not be denied to any person described in Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.
- 2.2 Landscaping. WOODWORKERS CLUB acknowledges that the exterior of the Premises contains impervious ground cover (asphalt and/or concrete) and landscaping. WOODWORKERS CLUB may provide planters and may plant and maintain same on any part of the exterior portion of the Premises that WOODWORKERS CLUB determines to be in need of such improvement and that are appropriate for such improvement. WOODWORKERS CLUB shall obtain written permission from the CITY, by and through its Capital Assets Manager or designee, prior to installing such improvements on the Premises.
- 2.2.1 WOODWORKERS CLUB understands and agrees that it shall water, trim and maintain any such improvements so that the same is kept in a neat, orderly and attractive condition at all times.
- 2.3 Repairs. WOODWORKERS CLUB shall keep the facilities, improvements and property on the Premises in good condition and repair during the lease term of this Lease, as stated in Section 1.1 above. WOODWORKERS CLUB shall be solely responsible for any repairs needed during the lease term. WOODWORKERS CLUB shall at all times during the term of this Lease keep the Premises clean, orderly and in an attractive condition. In the event of damage or destruction by fire or other casualty to the Premises, WOODWORKERS CLUB shall promptly restore or replace the same in a reasonable time. Further, WOODWORKERS CLUB shall submit a detailed listing of any and all defects to the interior or exterior of the Premises within ten (10) days of the start of the lease term. Should Premises not be in substantially the same condition as it was at the beginning of the term of this Lease, WOODWORKERS CLUB shall make any necessary repairs to restore Premises to its pre-lease condition, except that the

interior of the Premises shall be cleaned prior to vacating the Premises. At the conclusion of the lease, and at the discretion of the Capital Assets Manager (“Manager”), a payment in an amount determined appropriate by the sole discretion of the Manager may be accepted in lieu of completion of said repairs, cleaning, or painting.

2.3.1 WOODWORKERS CLUB acknowledges that the Premises are leased “**AS-IS.**” WOODWORKERS CLUB shall not request and CITY shall not be responsible for completion of any improvements, modifications, corrections, repairs or the like believed helpful or necessary to WOODWORKERS CLUB’S stated purpose, agenda or mission or believed necessary for the continuance of the facility. This **AS-IS** condition shall specifically include, but shall not be limited to plumbing, electrical, carpentry, Americans with Disabilities Act, and heating, ventilation, and air conditioning problems that may or may not exist. WOODWORKERS CLUB has been and is herein placed on notice that the leased Premises are old and that CITY neither has knowledge of, nor can it warrant against ADA noncompliance issues or the existence of asbestos, either of which may or may not exist on the leased Premises. Should WOODWORKERS CLUB determine at any time that asbestos exists or that ADA compliance issues are present, it may rescind lease without further obligation.

2.4 Maintenance of Grounds. All other maintenance and upkeep of the Premises shall be the responsibility of WOODWORKERS CLUB.

2.4.1 Garbage and Trash. WOODWORKERS CLUB shall provide a complete and proper arrangement for the adequate and proper handling and disposal, away from the Premises, of all trash, garbage and other refuse caused by the operations of the Premises.

2.4.1.1 WOODWORKERS CLUB shall provide and use suitable covered metal receptacles for all such garbage, trash and other refuse throughout the Premises. Piling of boxes, cartons, trash or similar items on the Premises, including the building, facilities, and improvements, shall not be permitted at any time. Additionally, the placement of trash receptacles shall be at locations approved by the Manager or that person’s designee.

2.5 Earth Work. No moving of earth abutting the Premises shall be performed unless such work is as authorized by the Capital Assets Manager and necessary permits have been requested and authorized by the CITY.

2.6 Utilities. WOODWORKERS CLUB shall be responsible for the payment of all utilities at the Premises. WOODWORKERS CLUB further agrees that the use of

outdoor recreational lighting will be done in accordance with all applicable City Ordinances, laws and regulations.

- 2.7 Improper Use. WOODWORKERS CLUB must not permit on the Premises any entertainment, amusement or other activity that violates any federal, state and local laws and regulations or that creates a nuisance to the surrounding residents.
- 2.8 Non-Profit Use/Zoning. WOODWORKERS CLUB expressly agrees that the Premises will only be used for non-profit community outreach activities that are in compliance with municipal regulations to include zoning regulations.
- 2.9 Safety and Security. WOODWORKERS CLUB is responsible for ensuring that its employees, agents, contractors, invitees, guests and licensees comply with all applicable laws, ordinances and regulations. WOODWORKERS CLUB must exercise every precaution for the safety of public and private property and persons.
- 2.9.1 WOODWORKERS CLUB understands and agrees that the CITY is not and will not be responsible for the safety or security of any items associated with the use of the Premises by WOODWORKERS CLUB or by the WOODWORKERS CLUB'S licensee nor will the CITY be responsible for any damage(s) to any items or materials used in connection with WOODWORKERS CLUB or its licensees.

### **3.0 CONTRACTUAL RELATIONSHIP**

- 3.1 WOODWORKERS CLUB is an independent contractor and is otherwise a tenant in a landlord-tenant relationship with CITY. Except as may be expressly and unambiguously provided in this Lease, no partnership or joint venture is intended to be created by this Lease, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or sub-contractors.
- 3.1.1 As an independent contractor, WOODWORKERS CLUB understands and agrees that it will be responsible for its respective acts or omissions, and the CITY is in no way responsible as an employer to WOODWORKERS CLUB's officers, employees, agents, representatives or sub-contractors who perform any service in connection with this Lease.
- 3.1.2 WOODWORKERS CLUB shall select its own employees and such employees shall be and shall act under the exclusive and complete supervision and control of WOODWORKERS CLUB.
- 3.2 WOODWORKERS CLUB will not receive any compensation or benefits from the CITY.

3.3 WOODWORKERS CLUB understands and expressly agrees that, in all things relating to this Lease, the CITY is performing a governmental function, as defined by the Texas Tort Claims Act. The parties hereby agree that the CITY enters into this Lease as a governmental entity for the purpose of performing a governmental function.

**4.0 INSURANCE AND INDEMNIFICATION PROVISIONS.** WOODWORKERS CLUB agrees to provide the following as a condition of the Lease:

4.1 **LIABILITY INSURANCE.** WOODWORKERS CLUB must provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of One Million and NO/100 Dollars (\$1,000,000.00) per occurrence, One-Million and No/100 Dollars (\$1,000,000.00) aggregate, Five-Thousand and No/100 Dollars (\$5,000.00) per person premises medical payments and Five-Hundred Thousand and No/100 Dollars (\$500,000.00) per occurrence in Fire Damage Legal Liability.

4.1.1 WOODWORKERS CLUB is required to purchase liability insurance on behalf of the City or, alternatively, may name the City as an additional insured on the policy of general liability insurance referenced above. Such insurance shall provide coverage for any alleged acts or omissions of the City, its agents, employees or independent contractors, alleged or asserted by any individual, in connection with the performance of this Lease. Certificate of Insurance should be on behalf of the City of El Paso, 2 Civic Center Plaza, El Paso, Texas 79901.

4.1.2 WOODWORKERS CLUB must maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy must provide that the insurer will defend against all claims and lawsuits that arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and contractors, its officers, agents, servants or employees.

4.1.3 Immediately upon execution of this Lease WOODWORKERS CLUB must file a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk and the Capital Assets Manager for the City. Such policy or certificate must provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the Term of this Lease will be grounds for cancellation of this Lease.

4.2 **FIRE AND CASUALTY INSURANCE.** WOODWORKERS CLUB must keep the Premises insured with a solvent insurance company that is authorized to do business in Texas, to the full amount of replacement cost of the property, for the benefit of WOODWORKERS CLUB and the City, as their interests may appear.

WOODWORKERS CLUB must provide a Certificate of Insurance indicating such coverage to the City within ten (10) days of the execution of this Lease. Failure to provide the required proof of insurance, naming the City as an additional insured will result in the WOODWORKERS CLUB default in the terms of this Lease.

- 4.3 **INDEMNITY.** AS A CONDITION OF THIS LEASE, WOODWORKERS CLUB OR ITS INSURER SHALL INDEMNIFY, DEFEND AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE,) INCLUDING BUT NOT LIMITED TO ALL JUDGMENTS, SETTLEMENT AMOUNTS, ATTORNEYS' FEES, COURT COSTS AND EXPENSES INCURRED IN THE INVESTIGATION, HANDLING, DEFENSE AND LITIGATION OF ANY CLAIM OR SUIT, INCLUDING BUT NOT LIMITED TO ANY CLAIM OR SUIT FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON REGARDLESS OF THE MERITS OF OR OUTCOME OF SUCH CLAIM OR SUIT ARISING OUT OF OR RELATED TO THIS LEASE. **THIS INDEMNIFICATION PARAGRAPH SHALL APPLY EVEN WHERE SUCH BODILY OR PERSONAL INJURY, ILLNESS, LOSS OF SERVICES, PHYSICAL OR MENTAL IMPAIRMENT TO OR DEATH OF ANY PERSON, OR FOR DAMAGE OR DESTRUCTION TO ANY PROPERTY RESULTS FROM OR INVOLVES NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES.** Without modifying the conditions precedent for preserving defenses, asserting claims or enforcing any legal liability, against the City as required by the City Charter or any law, the City shall promptly forward to WOODWORKERS CLUB every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. WOODWORKERS CLUB shall 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as WOODWORKERS CLUB may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. WOODWORKERS CLUB shall pay all judgments in actions defended by WOODWORKERS CLUB pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by WOODWORKERS CLUB, and premiums on any appeal bonds. The City, at its election shall have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City shall not be responsible for any loss of or damage to WOODWORKERS CLUB's property from any cause.

## 5.0 RISK ALLOCATION – LIMITATION OF LIABILITY

5.1 Liability. This Lease is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

5.1.1 Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Lease, the CITY shall not be liable to WOODWORKERS CLUB nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind - including lost profits, loss of business, and further including, mental anguish and emotional distress - as a result of breach of any term of this Lease, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein. The CITY will not be liable to WOODWORKERS CLUB or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by WOODWORKERS CLUB regardless of whether the party receiving said information from WOODWORKERS CLUB was advised, had other reason to know, or in fact knew thereof.

5.1.2 Maximum Aggregate Liability. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Lease, **IN NO EVENT SHALL THE CITY'S AGGREGATE LIABILITY TO WOODWORKERS CLUB (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY WOODWORKERS CLUB), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS LEASE, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNT OF CONSIDERATION ACTUALLY PAID OR PAYABLE UNDER THE TERMS OF THIS LEASE.**

5.1.3 Intentional Risk Allocation. The CITY and WOODWORKERS CLUB each acknowledge that the provisions of this Lease were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Lease. The disclaimers and limitations in this Lease are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

5.1.4 No Indemnification. The Parties expressly agree that WOODWORKERS CLUB does not have the right to seek indemnification or contribution from the CITY for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Lease.

**6.0 TERMINATION.** This Lease may be terminated as provided herein.

6.1 Termination by Mutual Consent. The parties may terminate this Lease by mutual consent upon such terms as they may agree in writing.

6.2 Termination by Either Party. It is further understood and agreed by WOODWORKERS CLUB and the CITY that either party may terminate this Lease, in whole or in part, upon thirty (30) days written notice if the other party fails to perform any of its material obligations hereunder and fails to completely cure the breach.

6.3 Termination by CITY. If WOODWORKERS CLUB ceases to use or occupy the Premises for the purposes herein contemplated for a time period of more than three (3) continuous months, or if WOODWORKERS CLUB defaults in any of its obligations under this Lease and fails to correct such default within thirty (30) days written notice, CITY may cancel said Lease and take possession of the property. At the time of such an event, all rights of WOODWORKERS CLUB in the Premises, including buildings, facilities and improvements, will terminate. Any waiver by the CITY of any breach of any of WOODWORKERS CLUB's obligations will not be deemed a continuing waiver and will not prevent the CITY from exercising any remedy it may have for any succeeding breach of the same or another obligation of WOODWORKERS CLUB.

6.4 Time of Performance Termination – Force Majeure. Neither party to this Lease will be liable for failure to comply with any term of this Lease when such failure is caused by an event of war, fire, earthquake, flood, strike, any law, rule, regulation or act of governmental authority, or any other act, event, cause or occurrence rendering a party to this Lease unable to perform its obligations, which is not within its reasonable control. The party affected by such event will immediately notify the other party in writing.

6.5 Termination Shall Not Be Construed as Release. Termination by either party shall not be construed as a release of any claims that may be lawfully asserted against the terminating party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Lease.

6.5.1 Upon termination of this Lease for any reason, ownership of all improvements done by WOODWORKERS CLUB on the Premises will revert to the CITY.

## 7.0 GENERAL PROVISIONS

- 7.1 Taxes and Assessments. WOODWORKERS CLUB will promptly pay all taxes and assessments to the extent require by law levied on WOODWORKERS CLUB'S leasehold interest, on the buildings and structures on the property as well as on WOODWORKERS CLUB'S personal property.
- 7.2 Assignments and Subletting. WOODWORKERS CLUB may not assign this Lease nor sublet the Premises or any part thereof without the prior written consent of the CITY, except that WOODWORKERS CLUB may grant permission, in the nature of licenses (as the term is used in real property law), but not in the nature of leases or subleases, for the use of the property for the purposes contemplated by this Lease, but such permission shall not impair or diminish the rights of the CITY hereunder. The CITY shall have the right to refuse any license when such license authorizes a use not contemplated within this Lease.
- 7.3 Liens and Encumbrances. WOODWORKERS CLUB may not give nor permit any liens or encumbrances on the Premises. Upon termination of this Lease, WOODWORKERS CLUB must peacefully surrender such Premises to the CITY free of all such liens or encumbrances. **WOODWORKERS CLUB shall defend and indemnify the CITY against any liability and loss of any type arising from any such lien or encumbrance on the Premises, including facilities, buildings, improvements and park, together with reasonable attorney's fees, costs and expenses incurred by the CITY in negotiating, settling, defending or otherwise protecting against such liens or encumbrances.**
- 7.4 Inspections. The CITY shall have the right to enter the Premises at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Lease.
- 7.5 Signs. All signs on the Premises, including building, facilities and improvements, must comply with the El Paso Building Code, El Paso Zoning Code, and other relevant ordinances of the CITY. The size, design and location of all signs are subject to the approval of the Manager or designee prior to installation.
- 7.6 Right to Assurance. Whenever one party to this Lease in good faith has reason to question the other party's intent to perform, said party may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within five (5) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the Lease.
- 7.7 Survival. Each party shall remain obligated to the other under all clauses of this Lease that expressly or by their nature extend beyond the expiration or termination of this Lease, including but not limited to the Indemnification provisions hereof.

- 7.8 Amendments and Waiver. The parties may amend this Lease at any time by mutual consent. Unless otherwise provided herein, this Lease may be amended only by written instrument duly executed on behalf of the CITY and WOODWORKERS CLUB. No claim or right arising out of a breach of this Lease can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
- 7.9 Attorney's Fees. In any action brought by either party for the enforcement of any provision of this Lease, the successful party shall be entitled to recover reasonable attorney's fees.
- 7.10 Complete Lease. This Lease constitutes the entire agreement between the parties relating to the terms and conditions of the Lease. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Lease confers no rights on any person(s) or business entity(s) that is not a party hereto. This Lease shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Lease.
- 7.11 Governing Law. This Lease shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City of El Paso.
- 7.12 Severability. All agreements and covenants contained in this Lease are severable. Should any term or provision of this agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Lease should be valid and binding and have full force and effect as if the invalid portion had not been included.
- 7.13 Venue. For the purpose of determining place of this Lease and the law governing the same, this Lease is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, State of Texas.
- 7.14 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address below or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

CITY: City of El Paso  
Attention: City Manager  
Two Civic Center Plaza, 10<sup>th</sup> Floor  
El Paso, Texas 79901-1196

COPY TO: Financial Services Department  
Attention: Capital Assets Manager  
Two Civic Center Plaza, 7<sup>th</sup> Floor  
El Paso, Texas 79901-1196  
(915) 541-4074

LESSEE: WOODWORKERS CLUB OF EL PASO, TEXAS, INC.  
Attention: Robert Bonner, Club President  
P.O. Box 3291  
El Paso, Texas 79923  
(915) 584-5709

- 7.15 Warranty of Capacity to Execute Lease. The person signing this Lease on behalf of WOODWORKERS CLUB warrants that he/she has the authority to do so and to bind WOODWORKERS CLUB to this Lease and all the terms and conditions contained herein.

**Each person signing below represents that he or she has read this Lease, and all attachments, in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.**

- 7.16 Financial Statement, Right to Audit, and Annual Activity Reports. WOODWORKERS CLUB shall submit a financial report, to the Capital Assets Manager, detailing all financial activity related to the Premises for the prior year each year at the anniversary of the execution of this Lease. The City Manager or designee shall have the right at all times to audit WOODWORKERS CLUB'S books and other records related to monies derived from all uses of the leased Premises permitted pursuant to Subsection 2.1.2. Any proceeds from the use of the Premises shall be used for the operation, maintenance, and upkeep of the leased Premises, improvements thereto (as determined necessary by the WOODWORKERS CLUB) to benefit WOODWORKERS CLUB at the Premises and/or otherwise permitted by IRS Code 501(C)(3).

As consideration for this Lease and as part of the terms and conditions of this Lease, WOODWORKERS CLUB shall provide an annual report outlining the nature and scope of all public purpose activities completed, the numbers of participants, and the dates and times when such activities were provided. WOODWORKERS CLUB must also include in the annual report the number of each kind of activity that has taken place at the leased Premises, the charge (if any) for and the revenue generated from each activity at the leased Premises. WOODWORKERS CLUB will include in the annual report the number and kind

of charitable contributions provided to community recipients. It is understood that City would not have entered into this Lease without the Section 2.1 public purpose projects and activities promised. As such, this annual report should demonstrate compliance with both the letter and spirit of this lease. It shall be forwarded to the Capital Assets Manager of the City of El Paso.

**THE CITY OF EL PASO**

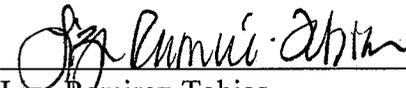
\_\_\_\_\_  
Joyce Wilson,  
City Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Sylvia Borunda Firth  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Nanette Smejkal  
Director of Parks

  
\_\_\_\_\_  
Liza Ramirez-Tobias  
Capital Assets Manager

**ACKNOWLEDGMENT**

THE STATE OF TEXAS    )  
  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2010,  
by **Joyce A. Wilson** as **City Manager** of the **City of El Paso**.

\_\_\_\_\_  
**Notary Public, State of Texas**

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

CITY CLERK DEPT.  
10 MAY 20 AM 9:05

WOODWORKERS CLUB OF EL PASO,  
TEXAS, INC.

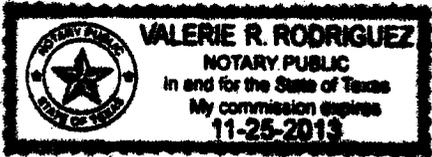
*Robert S. Bonner*

Robert Bonner  
Club President

ACKNOWLEDGMENT

THE STATE OF TEXAS )  
  )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on this 19<sup>th</sup> day of May, 2010,  
by Robert Bonner as President of the Woodworkers Club of El Paso, Texas, Inc.

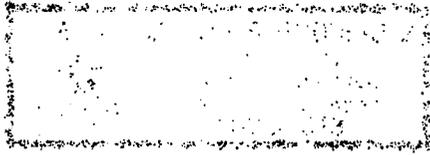


*Valerie Rodriguez*  
Notary Public, State of Texas

CITY CLERK DEPT.  
10 MAY 20 AM 9:05

# EXHIBIT "A"

## AERIAL MAP



# 3228 Sacramento



EXHIBIT 'A'

## EXHIBIT "B"

The following repairs will need to be completed to be in compliance with the ADA Accessibility Guidelines and the Texas Accessibility Standards:

1. Remove door knobs and install Lever handles
2. Women's Restroom
  - a. Replace lavatory with ADA compliant lavatory.
  - b. Install new mirror with reflective surface at 40 inches maximum above the floor with the top edge a minimum of 74 inches above the finished floor or remove the mirror completely.
  - c. Install insulation/pipe wrapping on the water and drain pipes under the lavatory.
  - d. Remove one water closet, plug water and waste piping, and the stalls and convert restroom to single user toilet room.
  - e. Lower the remaining water closet so that the seat is 17 to 19 inches above the finished floor, the center of the toilet is 18 inches from the side wall, and ensure that flush controls are on the wide side of the water closet.
  - f. Install 42-inch grab bar on the side of the water closet and a 36-inch grab bar at the back of the water closet; both mounted 33 to 36 inches above the finished floor.
  - g. Widen the doorway to accommodate a 36-inch door and install a new 36 inch door, which will provide a clear 32 inch passage into the toilet room.
1. Men's Restroom
  - a. Replace lavatory with ADA compliant Lavatory.
  - b. Install new mirror with reflective surface at 40 inches maximum above the floor with the top edge a minimum of at 74 inches above the finished floor or remove the mirror completely.
  - c. Install insulation/pipe wrapping on the water and drain pipes under the lavatory.
  - d. Convert restroom to single user toilet room by removing partitions.
  - e. Lower the remaining water closet so that the seat is 17 to 19 inches above the finished floor, the center of the water closet is 18 inches from the side wall, and ensure that the flush controls are on the wide side of the water closet.
  - f. Install 42-inch grab bar on the side of the water closet and a 36-inch grab bar at the back of the water closet; both mounted 33 to 36 inches above the finished floor.
  - g. Replace urinal with ADA compliant urinal mounted 17 inches above the finished floor at the rim with a tapered elongated rim that narrows toward the front and that extends 14 inches from the wall where it is mounted or remove the urinal completely and plug water and waste piping.
  - h. Widen the doorway to accommodate a 36-inch door and install a new 36-inch door, which will provide a clear 32-inch passage into the toilet room.
1. Install new ADA compliant signage with raised character and #2 grade Braille on restrooms and any other rooms that are permanently labeled.

An asbestos survey will be required and abatement must be done, before any work is done that might disturb asbestos containing building material, including but not limited to sheet rock, tile, wall and ceiling plaster, cloth wrapped electrical wiring, etc.

Doc. No. 45223 v12

Doc. Name: CAM/Lease/Woodworkers Club-Exhibit B

Doc. Author: SFIR