

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

DEPARTMENT: AIRPORT

AGENDA DATE: NOVEMBER 8, 2011

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña/780-4793

DISTRICT(S) AFFECTED: 3

SUBJECT:

That the City Manager be authorized to sign a First Amendment to Industrial Site Lease by and between the City of El Paso ("Lessor") and J. A. Cardwell, Sr. ("Lessee") for the property described as a portion of Section 40, Block 80, Township 2, T&PRR Surveys and a portion of Morehouse Survey No. 12, containing 2.07 acres of land, more or less, City of El Paso, El Paso County, Texas, and municipally known and numbered as 8836 Montana, allowing for an early termination of the Lease.

BACKGROUND / DISCUSSION:

Lessee requested that the City terminate this Industrial Site Lease for property located at 8836 Montana and operated as Putt Putt Golf and Games effective December 31, 2011. This business was closed May 2011 and the property is now vacant. Early lease termination requires payment by Lessee of \$152,702.42 which represents 50% of the monthly rental payments remaining until the expiration date of March 31, 2016. This lease was effective April 1, 1993, for a term of 13 years, and is currently in a ten year option period. No additional options are available.

Lessee will remove all improvements including concrete and asphalt and return site to its original condition with the exception of trees which will be allowed to remain. Lessee will provide the City a performance bond, letter of credit or other acceptable instrument totaling \$169,844.40 within 10 days of the Effective Date of this First Amendment to guarantee completion of this work. Lessee will also provide a Phase I environmental assessment acceptable to the City after completion of this work.

This lease termination will allow the City to release the land for other purposes and avoid having a vacant building on prime and highly visible land at the intersection of Hawkins and Montana.

PRIOR COUNCIL ACTION:

Industrial Site Lease between City of El Paso and Putt and Play, Inc. effective April 1, 1993.
Lessor's Approval of Sublease between Putt and Play, Inc. and Go-Carts, Inc. effective April 1, 1993
Lessor's Approval of Assignment for the Lease Agreement to J. A. Cardwell, Sr. on June 28, 1994
Lease assigned from Putt and Play, Inc. to J. A. Cardwell, Sr. by Consent to Assignment and Assumption of Lease effective July 1, 1994

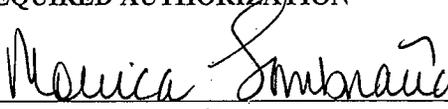
AMOUNT AND SOURCE OF FUNDING:

N/A - This is a revenue generating lease.

BOARD / COMMISSION ACTION: N/A

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

DEPARTMENT HEAD:



Monica Lombraña, A.A.E.
Director of Aviation

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

Information copy to appropriate Deputy City Manager

RESOLUTION

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

That the City Manager be authorized to sign a First Amendment to Industrial Site Lease by and between the City of El Paso ("Lessor") and J. A. Cardwell, Sr. ("Lessee") for the property described as a portion of Section 40, Block 80, Township 2, T&PRR Surveys and a portion of Morehouse Survey No. 12, containing 2.07 acres of land, more or less, City of El Paso, El Paso County, Texas, and municipally known and numbered as 8836 Montana, allowing for an early termination of the Lease.

ADOPTED this the _____ day of _____, 2011.

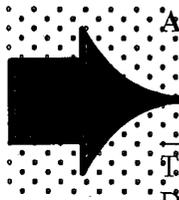
THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

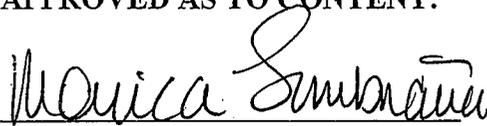
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Director of Aviation

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**FIRST AMENDMENT TO
INDUSTRIAL SITE LEASE**

This First Amendment to Industrial Site Lease by and between the City of El Paso, Texas ("Lessor") and J.A. Cardwell, Sr. ("Lessee") is made and entered into this ____ day of _____ 2011.

WHEREAS, effective April 1, 1993, Lessor and Putt and Play, Inc. entered into an Industrial Site Lease (the "Lease") for the following real property:

A portion of Section 40, Block 80, Township 2, T&PRR Surveys, and a portion of Morehouse Survey No. 12, containing 1.881 acres of land, more or less, City of El Paso, El Paso County, Texas, which is more precisely set forth on Exhibit "A", attached hereto and made a part hereof and municipally known and numbered as 8836 Montana. ("Property");

WHEREAS, effective April 1, 1993, Lessor approved a Lessor's Approval of Sublease between Putt and Play, Inc. and Go-Carts, Inc.;

WHEREAS, on June 28, 1994, Lessor approved a Lessor's Approval of Assignment for the Lease Agreement to J.A. Cardwell, Sr.;

WHEREAS, the Lease was assigned from Putt and Play, Inc. to J.A. Cardwell, Sr. by that Consent to Assignment and Assumption of Lease with an effective date of July 1, 1994;

WHEREAS, Lessee exercised an option to extend the lease and the option expires March 31, 2016;

WHEREAS, Lessee has closed its business on the Property and desires to terminate the Lease and all rights to possession of the Property and to release the Property to Lessor; and

WHEREAS, Lessor has evaluated the situation and determined that it will be beneficial to accept the termination and to release Lessee from its obligations under the Lease under certain terms and conditions.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Lessor and Lessee agree that the term of the Lease shall expire on December 31, 2011.

2. As consideration for an early termination of the Lease, Lessee shall make a lump sum payment to Lessor of One Hundred Fifty-Two Thousand Seven Hundred Two and 42/100 Dollars (\$152,702.42) on or before December 31, 2011.
3. In addition, Lessee, at its own cost and expense, shall be responsible for the removal of all improvements and debris from the Property and a submission of an environmental assessment of the Property by December 31, 2011 in accordance with the following terms and conditions:
 - A. Within ten (10) days of the effective date of this First Amendment to Industrial Site Lease, Lessee shall deliver to Lessor an instrument for a total amount of One Hundred Sixty-Nine Thousand, Eight Hundred Forty-Four and 40/100 Dollars (\$169,844.40) which will guarantee the removal of all improvements and debris from the Property. Such instrument may be in the form of a performance bond, letter of credit or such other instrument that is mutually acceptable to Lessee and Lessor and shall be in place until removal of all improvements.
 - B. No later than five (5) days after the complete removal of improvements and debris from the Property, Lessee, at its own cost and expense, shall submit to Lessor a written copy of a current environmental assessment of the Property. The environmental assessment must be acceptable to Lessor; and if, in the sole opinion of Lessor, the Property shall require environmental remediation, Lessee shall perform any work as is necessary to cause the Property to be in compliance with applicable Environmental Laws or to return the Property into a condition equal or better to that as of the Effective Date of the Lease.
 - C. Any occupancy by Lessee beyond December 31, 2011 for the purposes of removing the improvements and debris, completing the environmental assessment and any required remediation of the Property shall be subject to the rental due hereunder as a hold over tenant and provided further that Lessee shall continue to be bound by the terms and conditions of this Lease. Lessee and Lessor agree that this continued tenancy will not be continued as an extension or renewal of the lease term for other than the removal and completion of the identified environmental assessment.
 - D. If Lessee fails to provide the environmental assessment and any required remediation of the Property, Lessor may provide at Lessee's expense.
4. Lessee acknowledges that it shall be responsible for all rentals as required by Article V of the Lease through December 31, 2011.
5. Lessor and Lessee agree that any occupancy of the Property by Lessee beyond December 31, 2011 for any reason or purpose including not limited to removing

the improvements and debris, completing the environmental assessment and any required remediation of the Property shall be subject to the terms and conditions of Paragraph 4.03, Holding Over, of the Lease the rental due hereunder as a hold over tenant and provided further that Lessee shall continue to be bound by the terms and conditions of this Lease. Lessee and Lessor agree that this continued tenancy will not be continued as an extension or renewal of the lease term for any permitted use other than for the removal of improvements and debris and completion of the required environmental assessment.

6. All ad valorem taxes attributable to the Property and the Lessee's leasehold interest which accrued during the Lease term and through December 31, 2011 or any hold over tenancy shall be paid by Lessee, and Lessee shall provide written confirmation to Lessor of payment for all taxes.
7. All terms and conditions of the Lease not specifically amended by this First Amendment to Industrial Site Lease shall remain in full force and effect.
8. The person signing this First Amendment to Industrial Site Lease on behalf of Lessor and Lessee warrants that he or she has the authority to do so and to bind the party represented.

IN WITNESS WHEREOF, this First Amendment to Industrial Site Lease has been executed by the parties hereto as of the date, month and year first hereinabove written.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

CITY OF EL PASO:

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Theresa Cullen,
Deputy City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña

Monica Lombraña, A.A.E.
Director of Aviation

LESSOR'S ACKNOWLEDGMENT

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2011, by Joyce A. Wilson as City Manager of the City of El Paso, Texas.

Notary Public
Notary's Printed Name:

My Commission Expires:

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

ATTEST:

By: *Irma M. Torres*
Printed Name: Irma M. Torres

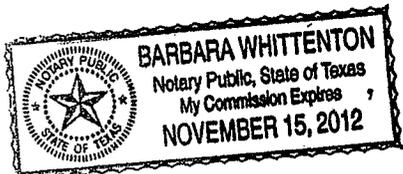
LESSEE: J.A. CARDWELL, Sr.

By: *J.A. Cardwell*
Printed Name: J.A. Cardwell
Title: President

LESSEE'S ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 3rd day of October, 2011, by J.A. CARDWELL, Sr.



Barbara Whittenton
Notary Public
Notary's Printed Name:

My Commission Expires:

MONTANA AVENUE

HAWKINS BOULLEVAR D

N 81° 10' 00" E - 245.86'

N 81° 10' 00" E -

446.25'

N 09° 10' 16" W - 206.125'

S 81° 06' 48" W

429.31'

S 4° 27' 50" E - 206.43'

PARCEL "B"

AREA:

90,200.722 Sq. Ft.
2.070 Ac. ±

30' UTILITY EASEMENT

BUILDING LINE

CIELO VISTA
GOLF COURSE

MOREHOUSE SURVEY No. 12

TR 1B, BLK 2, ASCARATE GRANT

MOREHOUSE SURVEY No. 12,
SEC 40, BLK 80, TSP. 2



SCALE: 1"=100'

GOLF COURSE PARKING

EXHIBIT
A

"NOT A SURVEY"

PLAT

BEING A PORTION OF THE MOREHOUSE SURVEY No. 12
AND A PORTION OF SECTION 40, BLOCK 80, TSP 2,
TEXAS AND PACIFIC RR. Co. SURVEYS,
EL PASO COUNTY, TEXAS.

REVISED: JUNE 9, 1982
REVISED: July 20, 1981.

FIELD:	DRAWN: J. B. S.
CHK'D: R. E. LARA.	APP'D: R. E. LARA.
DATE: MARCH 25, 1981.	DRW'G No.

CREMANS, INC.
ENGINEERS-PLANNERS
EL PASO, TEXAS.

PREPARED FOR: El Paso International Airport
Old Par 3 Course, SE Corner
Montana and Hawkins
Parcel 'B'

PROPERTY DESCRIPTION

Description of a parcel of land being a Portion of Morehouse Survey No. 12 and a portion of Section 40, Block 80, TSP 2, T & P RR Survey; El Paso County, Texas and being more particularly described by metes and bounds as follows:

From a point, said point being the intersection of the easterly right-of-way line of Hawkins Blvd. and the southerly right-of-way line of Montana Ave., thence North $81^{\circ} 10' 00''$ East along the southerly right-of-way line of Montana Ave. a distance of 265.86 feet to the POINT OF BEGINNING:

Thence continuing along the southerly right-of-way line of Montana Ave., North $81^{\circ} 10' 00''$ East a distance of 446.25 feet;

Thence South $04^{\circ} 27' 50''$ East a distance of 206.45 feet;

Thence South $81^{\circ} 06' 48''$ West a distance of 429.31 feet;

Thence North $09^{\circ} 10' 16''$ West a distance of 206.25 feet to the POINT OF BEGINNING and containing 90,200.722 square feet or 2.070 acres of land, more or less; subject to all easements of record.


RAMON E. LARA, P.E.
CREMANS, INC.

JUNE 9, 1982