

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

DEPARTMENT: Community and Human Development

AGENDA DATE: March 17, 2020

CONTACT PERSON/PHONE: Nicole Ferrini, Director, 212-1659, ferrininm@elpasotexas.gov
Abraham Gutierrez, Administrative Services Manager, 212-1658,
gutierrezax@elpasotexas.gov

DISTRICT(S) AFFECTED: District 1

SUBJECT:

Discussion and action to modify the terms of a Loan Fund Agreement for the PB KP, LLC 2603 North Stanton, El Paso Texas 79902 Empowerment Zone Revolving Loan.

BACKGROUND / DISCUSSION:

Amendment Purpose: To remove Salina Van Deman as Principal and Section 3) Security Subsection (B) Collateral – A second lien on the property Lot 2, Block 1, Diamond Pointe Patio Homes Subdivision Amending Plat on the Empowerment Zone Revolving Loan Fund Program Loan Agreement and to remove Salina Van Deman as Guarantor 1 of the Continuing Limited Guaranty.

To add an Escrow Account Agreement in the amount of \$41,515.83 to substitute in place of the collateral removed as part of the contract amendment.

PRIOR COUNCIL ACTION:

Discussion and action on a Resolution to approve an Empowerment Zone Revolving Loan Fund Small Business Loan application and loan funding in the amount of \$175,000 to PB KP, LLC, as recommended by the Director of Community and Human Development; and, that the City Manager be authorized to execute any and all loan-related documents by and among the City of El Paso, PB KP, LLC, and loan guarantor(s), required to meet loan program requirements, loan disbursement, and loan securitization upon approval by the City Attorney's Office on May 16th, 2017.

AMOUNT AND SOURCE OF FUNDING:

No additional funding disbursed for this amendment.

BOARD / COMMISSION ACTION:

NA

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

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

DEPARTMENT HEAD:

Nicole Ferrini, Community and Human Development, Director

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

WHEREAS, on June 5, 2017, the City and the Borrower entered into an Empowerment Zone Revolving Loan Fund Program Loan Agreement (the “**Original Agreement**”) for the loan of funds from the Empowerment Zone Revolving Loan Fund Program; and

WHEREAS, on August 7, 2017, the City and the Borrower entered into a First Amendment to Empowerment Zone Revolving Loan Fund Program Loan Agreement and Promissory Note (the “**First Amendment**”), amending the Original Agreement to modify the term of the agreement and payment schedule; and

WHEREAS, on January 23, 2018, the City and the Borrower entered into a Second Amendment to Empowerment Zone Revolving Loan Fund Program Loan Agreement (the “**Second Amendment**”) amending the Original Agreement as previously amended by the First Amendment, to modify the loan disbursement period; and

WHEREAS, the parties wish to enter into this Third Amendment to modify the collateral requirements of the loan.

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

That the City Manager, or designee, is authorized to execute a Third Amendment to Empowerment Zone Revolving Loan Fund Program Loan Agreement, between the City of El Paso, Texas and PB KP, Limited Liability Corporation, a Texas Limited Liability Corporation, for modification of the collateral requirements of the Empowerment Zone Loan granted to PB KP, Limited Liability Corporation on June 5, 2017.

Further, that the City Manager, or designee, is authorized to execute an Escrow Agreement, a Release of Lien, and Partial Release of Continuing Limited Guaranty.

Further, that the City Manager, or designee, is authorized to exercise all rights within the documents authorized and execute any other documents necessary to protect the City’s security interest.

APPROVED this _____ day of _____, 2020.

THE CITY OF EL PASO:

ATTEST:

Dee Margo, Mayor

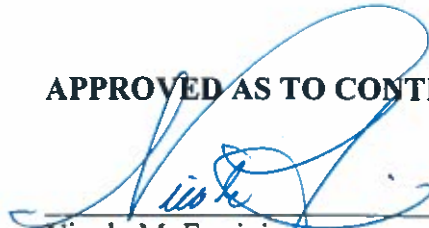
Laura D. Prine, City Clerk

APPROVED AS TO FORM:



Omar De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:



Nicole M. Ferrini,
Chief Resilience Officer for
Community and Human Development

THIRD AMENDMENT TO EMPOWERMENT ZONE REVOLVING LOAN FUND PROGRAM LOAN AGREEMENT

This Third Amendment to Empowerment Zone Revolving Loan Fund Program Loan Agreement ("**Third Amendment**") is entered this _____, 2020 ("**Effective Date**") by the City of El Paso, Texas, a home-rule municipal corporation (the "**City**") and PB KP, LLC, a Texas Limited Liability Company (the "**Borrower**").

WHEREAS, on June 5, 2017, the City and the Borrower entered into an Empowerment Zone Revolving Loan Fund Program Loan Agreement (the "**Original Agreement**") for the loan of funds from the Empowerment Zone Revolving Loan Fund Program; and

WHEREAS, on August 7, 2017, the City and the Borrower entered into a First Amendment to Empowerment Zone Revolving Loan Fund Program Loan Agreement and Promissory Note (the "**First Amendment**"), amending the Original Agreement to modify the term of the agreement and payment schedule; and

WHEREAS, on January 23, 2018, the City and the Borrower entered into a Second Amendment to Empowerment Zone Revolving Loan Fund Program Loan Agreement (the "**Second Amendment**") amending the Original Agreement as previously amended by the First Amendment, to modify the loan disbursement period; and

WHEREAS, the parties wish to enter into this Third Amendment to modify the collateral requirements of the loan.

The parties agree as follows:

1. Section 3 (Security) of the Original Agreement is amended to add a new Subsection (C) that reads as follows:

(C) Provided the Borrower complies with the terms of this Subsection, the Borrower may elect to open an escrow account ("**Escrow Account**"), at the Borrower's sole expense, in lieu of providing the City a second lien on the property commonly known as 5792 Teresa del Mar described in Subsection B above. If the Borrower elects to open an Escrow Account for the benefit of the City, the Borrower will comply with the following:

(1) The Escrow Account must be with an institution located within the City of El Paso, Texas ("**Escrow Institution**").

(2) The Borrower will deposit a minimum amount of \$41,515.83 ("**Escrow Amount**") in the Escrow Account.

(3) The Borrower is entitled to keep any interest that is generated from the Escrow Account, if any.

(4) The Borrower will use the Escrow Agreement attached to this Agreement as Exhibit B-1.

(5) The Escrow Amounts will remain in escrow until one of the following occurs:

i. The City sends written communication to the Escrow Institution that the Borrower has complied with all terms of the Agreement and related documents.

ii. The City sends written communication to the Escrow Institution that the Borrower has defaulted under the terms of the Agreement or related documents and the Escrow Institution releases to the City the Escrow Amount pursuant to the terms of the Agreement.

iii. The City sends written communication to the Escrow Institution stating that the Borrower has sufficient collateral under the Continuing Limited Guaranty and General Security Agreement to cover the unpaid balance of the loan and therefore the Escrow Account and the Escrow Amount can be released back to the Borrower.

(6) Once the Escrow Account is open, the Borrower will not send any communications to the Escrow Company requesting that any funds be released.

(7) The Borrower will not send any communications to the Escrow Account disputing the release to the City of any Escrow Amount funds. The Borrower will send all disputes directly to the City following disbursement of the Escrow Amount funds to the City by the Escrow Institution.

2. Section 3 (Security) of the Original Agreement is amended to add a new Subsection (D) that reads as follows:

(D) If the Borrower establishes an Escrow Account as provided in Subsection (C) above and provides satisfactory proof to the City, then the City will release the second lien on the property commonly known as 5792 Teresa del Mar described in Subsection B above of this Agreement as well as partially release Salina Van Deman from the Continuing Limited Guaranty executed on June 5, 2017. The releases will be in substantial form as provided in Attachments C-1 and D-1 attached to this Agreement. The Borrower will be responsible for the costs and the recording any releases at the El Paso County records.

3. The Original Agreement is amended to incorporate Attachment's B-1, Attachment C-1, and Attachment D-1 attached to this Third Amendment.

4. Except as amended in this Third Amendment, the terms of the Original Agreement, First Amendment, and Second Amendment remain in full force and effect.

BORROWER:

BORROWER:

ACKNOWLEDGMENT

STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2020, by
, on behalf of .

Notary Public, State of Texas

Notary's name (printed)

Notary's Commission Expires:

ACKNOWLEDGMENT

STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2020, by
, on behalf of .

Notary Public, State of Texas

Notary's name (printed)

Notary's Commission Expires:

Attachment "B-1"
Escrow Agreement

This Escrow Agreement ("**Agreement**"), dated _____ ("**Effective Date**"), is between the _____ ("**Borrower**"), the City of El Paso Texas ("**City**"), and _____ ("**Escrow Agent**"), whose principal place of business is located at _____.

RECITALS

City and Borrower executed a Empowerment Zone Revolving Loan Fund Program Loan Agreement (the "**Loan Agreement**"), dated _____ to provide an Empowerment Zone loan.

The Loan Agreement provides for the payment of funds to Escrow Agent as earnest money to be held and applied by Escrow Agent in accordance with the Loan Agreement and this Agreement;

Therefore, in consideration of the agreements set forth in the Loan Agreement and the mutual covenants set forth in this instrument, the parties agree as follows:

1. Contemporaneously with City's execution of the Loan Agreement, Borrower directs Escrow Agent to hold the earnest money in accordance with the terms of this Agreement.
2. Escrow Agent agrees to hold, administer and disburse the earnest money pursuant to this Agreement. Escrow Agent shall deposit all money provided by Borrower in an interest bearing account with a national banking association or other federally insured banking institution with which Escrow Agent has established a banking relationship. All interest which shall accrue on the deposited money shall inure to the benefit of the Borrower. The Borrower's federal tax identification number is Tax Identification Number _____. The Escrow Agent will hold the funds deposited into the escrow account for the duration of the Loan Agreement.
3. Upon receipt by Escrow Agent of written notice and certification from City to the Escrow Agent (and with a copy of this notice to be directed to the Borrower), that there exist certain conditions or facts which, under the Loan Agreement, entitle the City to receipt of the escrow funds from Escrow Agent, the Escrow Agent shall disburse the funds in the escrow to the City, or the Borrower as directed by the City to the Escrow Agent in the amounts directed by the City. Upon release of the funds as directed by the City, the Escrow Agent is discharged from all liability under this Agreement.

4. All fees charged by Escrow Agent shall be paid by the Borrower separate and shall not be discounted by the Escrow Agent from any funds deposited into the Escrow Account. Escrow Agent shall be liable only to hold the earnest money and to deliver it to the parties named in this Agreement in accordance with the provisions of this Agreement. It is understood that by acceptance of this Agreement, that Escrow Agent is only acting in the capacity of a depository, and shall not be liable or responsible to anyone for any damages, loss or expense unless caused by the negligence or willful malfeasance of Escrow Agent. In the event of any disagreement among any of the parties to this Agreement, or among any of them and any other person, resulting in adverse claims and demands being made in connection with or for any property involved in or affected by this Agreement, Escrow Agent shall be entitled to refuse to comply with any such claims or demands as long as the disagreement continues, and in so refusing, shall make no delivery or other disposition of any property then held by Escrow Agent under this Agreement, and in so doing, Escrow Agent shall not become liable for such refusal. Escrow Agent shall be entitled to continue to refrain from acting until

- (a) the right of adverse claimants is finally settled by binding arbitration or finally adjudicated in a court assuming jurisdiction of the property involved in this Agreement or affected by this Agreement or
- (b) all differences are adjusted by Agreement and Escrow Agent is notified in writing of such an Agreement signed by the other parties to this Agreement.
- (c) Furthermore, the Escrow Agent shall have the right, at any time after a dispute between Borrower and City has arisen, to pay the earnest money into any court of competent jurisdiction for payment to the appropriate party, at which point Escrow Agent's obligation under this Agreement shall terminate.

6. Wherever any notice is required or permitted under this Agreement, the notice shall be in writing and shall be deemed given on personal delivery or upon mailing in the United States mail, registered or certified mail, return receipt requested, postage prepaid, to the addresses set out below or at other addresses as are specified by written notice delivered in accordance with this Agreement:

Borrower:

With a copy to:

Escrow Agent:

- 7. This Agreement shall bind, and inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.
- 8. Time is of the essence of this Agreement.

The parties have executed this Agreement on the date and year written above.

CITY OF EL PASO:

Tomás González
City Manager

APPROVED AS TO FORM:

Omar De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:



Nicole Ferrini, Director
Community & Human Development

ACKNOWLEDGMENT

STATE OF TEXAS)

)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2020, by Tomás González, City Manager of THE CITY OF EL PASO, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

Notary's name (printed)
Notary's Commission Expires:

BORROWER:

BORROWER:

ACKNOWLEDGMENT

STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2020, by
, on behalf of .

Notary Public, State of Texas

Notary's name (printed)
Notary's Commission Expires:

ACKNOWLEDGMENT

STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2020, by
, on behalf of .

Notary Public, State of Texas

Notary's name (printed)
Notary's Commission Expires:

ESCROW AGENT:

Name:

Title:

Acknowledgment

STATE OF TEXAS §

§

COUNTY OF EL PASO §

This instrument was acknowledged before me on the _____ day of _____, 2020, by _____, as _____, on behalf of _____.

Notary Public, State of Texas

Notary's name (printed)

Notary's Commission Expires:

Attachment C-1
RELEASE OF LIEN

Deed of Trust: Deed of Trust dated June 5, 2017
Grantor: Lance and Salina Van Deman
Trustee: The City Clerk of the City of El Paso, Texas
Beneficiary: The City of El Paso, Texas
Grantor's Mailing Address (including County):

1337 Calle Lago
El Paso, Texas 79912
El Paso County, Texas

Note and Lien are described in the following documents recorded in:

Deed of Trust dated June 5, 2017, recorded under Document #20170041736 of the Real Property Records of El Paso County, Texas.

Property (including any improvements) Subject to Lien:

Lot 2, Block 1, DIAMOND POINTE PATIO HOMES SUBDIVISION AMENDING PLAT, an addition to the City of El Paso, El Paso County, Texas according to the Plat thereof recorded in Volume 80, Page 38, Plat Records of El Paso County, Texas.

Beneficiary and Trustee of the note releases the Property from the lien.

When the context requires, singular nouns and pronouns include the plural.

(Signature Page Follows)

EXECUTED this _____ day of _____, 2020.

THE CITY OF EL PASO

Tomás González
City Manager

Laura D. Prine
City Clerk and Trustee

APPROVED AS TO FORM:



Omar De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:



Nicole Ferrini, Director
Community and Human Development

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2020, by TOMÁS GONZÁLEZ, as City Manager of the City of El Paso, a municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

Notary's Commission Expires:

Notary's name (printed)

[Acknowledgment continues on the following page]

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2020, by LAURA D. PRINE, as City Clerk and Trustee of the City of El Paso, a municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

Notary's Commission Expires:

Notary's name (printed)

AFTER RECORDING RETURN TO:

PREPARED IN THE LAW OFFICE OF:
City Attorney's Office
P. O. Box 1890
El Paso, TX 79950-1890

Attachment D-1
Partial Release of Continuing Limited Guaranty

Whereas, on June 5, 2017, Salina Van Deman and Joey Hass executed a Continuing Limited Guaranty in favor of the City of El Paso to guaranty the debt to the City of El Paso issued to PB KP, LLC (the "Borrower") under an Empowerment Zone Revolving Loan Fund Program Loan Agreement dated June 5, 2017 (the "Loan Agreement"), as amended; and

Whereas, the Third Amendment to the Loan Agreement allowed the substitution of collateral in exchange for the establishment of an escrow account with sufficient funds to secure the unpaid balance of the loan issued under the Loan Agreement; and

Whereas, the Borrower has established an escrow account to secure the unpaid balance of the loan;

Whereas, Salina Van Deman no longer has an ownership interest with the Borrower.

The City of El Paso, Texas, a Texas home-rule municipality, agrees as follows:

1. The City of El Paso releases Salina Van Deman from the Continuing Limited Guaranty executed on June 5, 2017.
2. This release by the City of El Paso does not release Joey Hass or PB KP, LLC from any obligations under the Loan Agreement, subsequent amendments to the Loan Agreement, promissory notes, or any Guaranty, or security agreements executed by them.
3. This release does not modify any terms of the Loan Agreement, promissory notes, Guaranty, security agreements, or any documents related to the Loan Agreement.

EXECUTED this _____ day of _____, 2020.

THE CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Omar De La Rosa
Assistant City Attorney

Nicole Ferrini, Director
Community and Human Development