

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

DEPARTMENT: Planning & Inspections Department
AGENDA DATE: Consent Agenda 4/4/17
CONTACT PERSON/PHONE: Larry F. Nichols, (915) 212-1550
Nelson Ortiz, (915) 212-1606
DISTRICT(S) AFFECTED: 5

SUBJECT:

A Resolution authorizing the City Manager to sign an Escrow Agreement between the Paisano Housing Redevelopment Corporation ("Paisano"), and the City of El Paso, Texas a municipal corporation ("City"), and WestStar Title Company ("WestStar") for the deposit of park fees in connection with the purchase of a 9.0184-acre portion, more or less, out of Lot 2, Block 2, Hueco Commercial Unit 2, an addition to the City of El Paso, El Paso County, Texas. Subject Property: West of Rich Beem and South of Montana; Applicant: Paisano Housing Redevelopment Corporation
(District 5)

BACKGROUND / DISCUSSION:

The Housing Authority of the City of El Paso (HACEP) is acquiring property known as a portion of Lot 2, Block 2, Hueco Commercial Unit Two, to be used for a multi-family residential housing development. The City has determined that this property would be assessed parkland fees related to the development in accordance with Title 19. HACEP disputes the amount of parkland fees. The City and HACEP recommend that HACEP deposit the parkland fees upon closing of the sale of the property, into an escrow account held by WestStar Title Company, until a resolution of the dispute.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

LEGAL: (if required) N/A

FINANCE: (if required) N/A

DEPARTMENT HEAD: Larry F. Nichols, Director
Planning & Inspections Department

APPROVED FOR AGENDA:

CITY MANAGER: _____ DATE: _____

RESOLUTION

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

That the City Manager be authorized to sign an Escrow Agreement between the Paisano Housing Redevelopment Corporation ("Paisano"), and the City of El Paso, Texas a municipal corporation ("City"), and WestStar Title Company ("WestStar") for the deposit of park fees in connection with the purchase of a 9.0184-acre portion, more or less, out of Lot 2, Block 2, HUECO COMMERCIAL UNIT 2, an addition to the City of El Paso, El Paso County, Texas.

APPROVED this ____ day of _____ 2017.

CITY OF EL PASO

Oscar Leaser, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Karla M. Nieman
Assistant City Attorney

APPROVED AS TO CONTENT:



Tracy Novak, Director
Parks and Recreation Department

ESCROW AGREEMENT

This **ESCROW AGREEMENT** (the “*Agreement*”) is entered into as of this ____ day of _____, 2017 (the “*Effective Date*”), by and between Paisano Housing Redevelopment Corporation (“*Paisano*”) and The City of El Paso, Texas, a municipal corporation (the “*City*”) and WestStar Title Company (“*Escrow Agent*”).

RECITALS

A Paisano will purchase certain property located in El Paso, El Paso County, Texas being more particularly described on Exhibit “A” and Exhibit “A-1” attached hereto (the “*Property*”).

B. The Property is affected by that certain Protective Covenants for Hueco Commercial Unit 2, recorded under Document No. 20070088621, Real Property Records of El Paso County, Texas (the “*Protective Covenants*”) which restricted the Property to industrial, retail (including, without limitation, fast food, convenience stores and sit down restaurants), office, commercial or warehousing purposes.

C. Paisano has obtained Hueco Investments I, Ltd., a Texas limited partnership, as “Declarant”, and River Oaks Properties, Ltd., a Texas limited partnership, as “Owner”, an executed First Amendment to Protective Covenants for Hueco Commercial Unit 2 (the “*Amended Protective Covenants*”) which allows the Property to be used for multi-family residential housing, including apartments and duplexes, and any customary appurtenances to such residential apartment buildings or duplexes as allowed under the zoning designation, provided, however, no more than 153 dwelling units shall be constructed on the Property. A copy of the Amended Protective Covenants is attached hereto as Exhibit “B”.

D. City requires that all residential subdivisions provide for the parkland needs of the community within its corporate limits, which includes property where the zoning allows for single family, two-family or multi-family development (apartments).

E. The calculation for parkland requirements is determined by using the gross density permitted by the zoning classification on the property or by the subdivider verifying by deed restrictions or other legal instrument the density permitted within the subdivision is less than the gross density.

F. Paisano and the City are disputing the amount of parkland fees (“*Parkland Fees*”) related to the development of the Property that are required to be paid by Paisano, if any, pursuant to the requirements in Section 19.20 Parks and Open Space of the El Paso Municipal Code (the “*Dispute*”).

G. Paisano and the City have each agreed that Paisano will deposit the executed Amended Protective Covenants and the purported amount of Parkland Fees owed by Paisano with Escrow Agent, in accordance with the terms of this Agreement until the Dispute is resolved between Paisano and the City.

AGREEMENT

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Paisano, City and Escrow Agent agree as follows:

1. **Receipt of Parkland Fees.** In connection with the execution of this Agreement, Paisano has deposited with Escrow Agent by cash or wire transfer, the sum of One Hundred Four Thousand and Forty and No/100ths Dollars (\$104,040.00) (consisting of the Parkland Fees which are calculated based on One Hundred Fifty Three (153) units multiplied by Six Hundred Eighty and No 100ths Dollars (\$680.00) per unit) (the “*Escrow Funds*”). The City represents and warrants to Paisano and Escrow Agent that the Escrow Funds is the amount of Parkland Fees that the City purports must be paid by Paisano pursuant to Section 19.20 Parks and Open Space of the El Paso Municipal Code.

2. **Investment of Escrow Funds.** Upon receipt of the Escrow Funds, Escrow Agent shall immediately invest the Escrow Funds into an interest bearing account, with a federally insured financial institution selected by Escrow Agent and approved by Paisano and the City, such approval not to be unreasonably withheld. All interest earned on the Escrow Funds shall be the property of Paisano. Any Escrow Funds remaining on deposit with Escrow Agent after the Resolution (hereinafter defined) of the Dispute shall be returned to Paisano.

3. **Receipt of Amended Protective Covenants.** In connection with the execution of this Agreement, Paisano has deposited the Amended Protective Covenants with Escrow Agent (the “*Escrow Document*”).

4. **Dispute Resolution and Disbursement of Escrow Funds and Escrow Document.**

a. **Dispute Resolution.** The following shall be deemed an automatic resolution of the Dispute (the “*Resolution*”) without further notice or documentation by the parties:

1. Paisano sends notice to Escrow Agent to pay the full amount of the Escrow Funds (less any interest earned thereon) to the City; or
2. Paisano and the City send written notice to Escrow Agent that the City will accept an amount less than Escrow Funds for satisfaction of the Parkland Fees or that no Parkland Fees shall be owed by Paisano to the City for the development of the Property.

b. **Disbursement of Escrow Funds.**

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1. Upon Resolution of the Dispute, Escrow Agent shall deliver the Escrow Funds to the party(ies) required under the Resolution of the Dispute and Escrow Agent shall record the Escrow Document in the Real Property Records of El Paso County, Texas and provide a recorded copy to both parties.

5. Liabilities of Escrow Agent. The acceptance by Escrow Agent of its duties as such under this Agreement is subject to the following terms and conditions, which all parties to this Agreement hereby agree shall govern and control with respect to the rights, duties, liabilities and immunities of Escrow Agent:

- a. Escrow Agent shall not be bound by any agreement to which it is not a party;

- b. Escrow Agent acts hereunder as depository only, and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness, or validity of any funds deposited with it;

- c. Escrow Agent shall be entitled to rely upon and shall be protected in acting upon any written notice, request, waiver, consent, receipt or other paper document which Escrow Agent in good faith believes to be genuine and to be signed by the proper person;

- d. Escrow Agent shall not be liable for any error of judgment, or for any act done or step taken or omitted in good faith, or for any mistake of fact or law, or for anything done or refrained from in connection herewith, except for its own default or negligence;

- e. Escrow Agent may consult with, and obtain advice from, legal counsel, and it shall incur no liability and shall be fully protected in acting or refraining from acting in good faith in accordance with the advice of such counsel;

- f. The liability of Paisano and the City to Escrow Agent hereunder shall be limited to the amount of Escrow Funds in the possession of Escrow Agent as of the time any claim is made by such Escrow Agent hereunder and the exclusive source for satisfying any such claims shall be such Escrow Funds.

- g. In the event of any unresolved dispute between Paisano and the City as to whether the Escrow Funds, or any portion thereof, should be released to Paisano or the City, the validity or meaning of this Agreement, or any of the facts or matters relating to the transaction contemplated by this Agreement, Escrow Agent shall be under no obligation to act, except under process or order of court, or until it has been adequately indemnified to its full satisfaction, and shall sustain no liability for its failure to act pending such process or court order or indemnification. In the event of any such unresolved dispute, Escrow Agent may, in its reasonable discretion, deposit and interplead the Escrow Funds (or such portion of the Escrow Funds as is in the possession of Escrow Agent) with the clerk of a court of competent jurisdiction

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and, upon depositing the Escrow Funds and filing a complaint of interpleader, Escrow Agent shall be relieved of any and all liability as to the funds so deposited.

6. Notices. Except as otherwise provided herein, all notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall, unless otherwise provided herein, be given or served (i) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (ii) by overnight delivery using a nationally recognized overnight courier, or (iii) by personal delivery. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) business day after such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified between the hours of 8:00 a.m. and 5:00 p.m. of any business day with delivery made after such hours to be deemed received the following business day. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

If to Paisano:

Housing Authority of the City
of El Paso
Attention: Gerald Cichon
5300 E. Paisano Dr.
El Paso, Texas 79905

If to City:

City of El Paso, Texas
Attention: City Manager
300 N. Campbell
El Paso, Texas 79901

With copy to:

Mendel Blumenfeld, PLLC
Attention: Bob Blumenfeld
5809 Acacia Cir.
El Paso, Texas 79912
If to Escrow Agent:

With copy to:

City Attorney of El Paso, Texas
Attention: Theresa Cullen
300 N. Campbell
El Paso, Texas 79901

WestStar Title
Attention: Travis Smith
641 N. Stanton
El Paso, Texas 79901

7. Termination. This Agreement shall automatically terminate upon complete distribution of the Escrow Funds and Escrow Document in accordance with the terms of this Agreement.

8. Performance. This Agreement is entered into and shall be performable in El Paso County, Texas, and in the event of litigation hereunder, it is specifically stipulated that this Agreement shall be interpreted and construed according to the laws of the State of Texas.

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9. Attorneys Fees. In the event of litigation to enforce this Agreement, the prevailing party shall be entitled to recover its attorneys' fees from the non-prevailing party.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument and shall be effective when at least one counterpart of this Agreement has been executed and delivered by each of the parties hereto.

[SIGNATURE PAGE FOLLOWS]

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EXECUTED as of the Effective Date.

PAISANO:

PAISANO HOUSING REDEVELOPMENT
CORPORATION

By: 
Name: Gerald Cichon
Title: Chief Executive Officer

CITY:

CITY OF EL PASO, TEXAS
a Texas municipal corporation

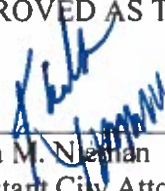
By: _____
Name: Tommy Gonzalez
Title: City Manager

ESCROW AGENT:

WESTSTAR TITLE

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:


Karla M. Neenan
Assistant City Attorney

{8229.22/JRHO/06524312.4}

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EXECUTED as of the Effective Date.

PAISANO:

PAISANO HOUSING REDEVELOPMENT
CORPORATION

By: _____
Name: Gerald Cichon
Title: Chief Executive Officer

CITY:

CITY OF EL PASO, TEXAS
a Texas municipal corporation

By: _____
Name: Tommy Gonzalez
Title: City Manager

ESCROW AGENT:

WESTSTAR TITLE

By:  _____
Name: TRAVIS JOEL SMITH
Title: COMMERCIAL ESCROW OFFICER

Exhibit "A"
Property

A 9.0184 acre portion, more or less, out of Lot 2, Block 2, HUECO COMMERCIAL UNIT 2, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file under Clerk's File no. 20070088619, Real Property Records, El Paso County, Texas, said portion being more particularly described by metes and bounds in Exhibit "A-1" attached hereto.

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Exhibit "A-1"
Metes and Bounds Description

Property Description: The Parcel of land herein described is A 9.0 acre portion, more or less, out of Lot 2, Block 2, HUECO COMMERCIAL UNIT 2, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file under Clerk's File No. 20070088619, Real Property Records, El Paso County, Texas, being more particularly described by metes and bounds as follows:

Commencing at an existing city monument laying on the centerline of Rich Beem Boulevard, located adjacent to the easterly boundary line of said parcel herein being described; Thence, S81°16'29"W, abandoning said centerline, a distance of 55.00 feet to a found chiseled "X" for a property corner lying on the westerly right-of-way line of Rich Beem Boulevard also being the easterly boundary line of the parcel of land herein being described and a point for a curve, said point being the TRUE POINT OF BEGINNING of this description;

THENCE, 277.23 feet, with said boundary line and along the arc of a curve to the right, having a radius of 1945.00 feet, a central angle of 08°10'00" and a chord which bears S04°38'31"E a distance of 277.00 feet to a found 1/2" iron pin with damaged plastic cap for a property corner;

THENCE, S00°33'31"E, continuing with said boundary line, a distance of 52.19 feet to a set nail on rockwall for a property corner, lying on the common boundary line of said Lot 2 and the most northerly boundary line of Tierra Commercial Unit Forty Six Subdivision (File No. 20060114345);

THENCE, S89°26'29"W, with said boundary line, a distance of 467.67 feet to a found nail on rockwall for a property corner;

THENCE, N00°33'31"W, with the common boundary line between Lot 2 and said northerly boundary of Tierra Commercial Unit Forty Six, a distance of 40.39 feet to a found nail;

THENCE, S89°26'29"W with the common boundary line of said northerly boundary line between Tierra Commercial Unit Forty Six (a ponding area) and Lot 2, a distance of 300.00 feet to a found nail for a property corner lying on the common boundary line between said Lot 2 and a 300' wide El Paso Electric Company right-of-way (Volume 998, Page 841);

THENCE, N00°33'31"W, with said boundary line, a distance of 466.29 feet to a set 1/2" iron pin with SLI plastic cap stamped "TX2998" for a property corner;

THENCE, N84°46'48"E, a distance of 475.32 feet to a point for a property corner;

THENCE, N81°16'29"E, a distance of 240.62 feet to a set mark for a property corner lying on the westerly right-of-way line of Rich Beem Boulevard;

THENCE, S08°43'31"E, with said right-of-way line, a distance of 253.58 feet back to the TRUE POINT OF BEGINNING of this description.

Said parcel of land containing 9.0184 acres (392,840.91 sq. ft.) of land, more or less.

SLI ENGINEERING, INC.
Consulting Engineers - Land Surveyors

Guillermo Licon
Registered Professional Land Surveyor
Texas License No. 2998

October 15, 2016
Job# 06-16-****
M&B/

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Exhibit "B"
Amended Protective Covenants
TO BE ATTACHED SEPARATELY

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FIRST AMENDMENT TO PROTECTIVE COVENANTS
FOR HUECO COMMERCIAL UNIT 2

This Amendment to the below described Protective Covenants: HUECO COMMERCIAL UNIT 2 is made to be effective on March 24, 2017 by HUECO INVESTMENTS I, LTD., a Texas limited partnership (the “Declarant”) and River Oaks Properties, Ltd. (the “Owner”).

Recitals

Owner is the owner of the following described property in El Paso County, Texas:

Lot 2, Block 2, HUECO COMMERCIAL UNIT 2, an addition to the City of El Paso, El Paso County, Texas (hereinafter the “Property”); and,

The Declarant, prior owner of the Property, filed Protective Covenants: Hueco Commercial Unit 2 under Document No. 20070088621, Official Public Records of El Paso County, Texas (the “Restrictive Covenants”); and,

Declarant and Owner are authorized to amend and modify the Restrictive Covenants with respect to Lot 2 per Section D-9 of the Restrictive Covenants without the consent of the Owner of Lot 1; and,

Declarant and Owner mutually desire to amend the Restrictive Covenants as provided below:

NOW THEREFORE, Declarant and Owner do hereby make and file this Amendment to the Restrictive Covenants, as follows:

1. **Amendment:** Part D, Section D-1, under the heading “RESTRICTIONS APPLICABLE TO BOTH LOTS” is hereby withdrawn and replaced with the following language (with the amended language shown in bold, underline):

D-1 No premises or building on said Lots shall be used for other than industrial, retail (including without limitation, fast food, convenience stores and sit down restaurants), office, commercial or warehousing purposes, **except with respect to the 9.0 acre portion of Lot 2 (the “Multi-Family Parcel”), as designated on Attachment A hereto, which shall be entitled to have multi-family residential housing, including apartments and duplexes, and any customary appurtenances to such residential apartment buildings or duplexes, as an allowed use on the Multi-Family Parcel provided, however, no more than 153 dwelling units shall be constructed on the Multi-Family Parcel.**

2. The City of El Paso shall have the right to enforce by proceedings at law or equity, Section D-1 of these Covenants. Any amendment to Section D-1 shall require approval of the City of El Paso Economic Development Department to determine if additional parkland fees or dedication is required and said development shall not be allowed until such fees are paid. Failure to enforce this provision shall in no event be deemed a waiver of the right to do so thereafter. Any park fees assessed by the City as a result of the change in use on the Multi-Family Parcel shall be paid by the owner that initiates the change in use.

3. **Other terms and conditions in the Declarations:** All other terms and conditions in the Restrictive Covenants shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant and Owner have jointly executed this Amendment as of the 23rd day of March, 2017.

DECLARANT:

HUECO INVESTMENTS I, LTD.

By: HUECO Investments, Inc., General Partner

By: 
Douglas A. Schwartz, President

THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 23rd day of March, 2017, by Douglas A. Schwartz, President of Hueco Investments, Inc., General Partner of Hueco Investments I, Ltd., a Texas limited partnership on behalf of such partnership, and authorized to make the amendments described herein.




Notary Public, State of Texas

(Signatures Continued on Next Page)

OWNER:

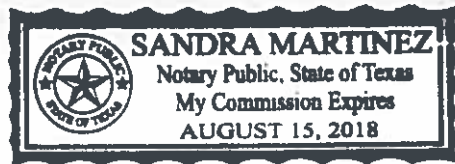
RIVER OAKS PROPERTIES, LTD.

By: River Oaks Asset Management, Inc.

By: 
Gerald Rubin, Chairman

THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 24th day of March, 2017, by Gerald J. Rubin, Chairman of River Oaks Asset Management, Inc., General Partner of River Oaks Properties, Ltd., a Texas limited partnership on behalf of such partnership, and authorized to make the amendments described herein.




Notary Public, State of Texas

ATTACHMENT A

PROPERTY DESCRIPTION METES AND BOUNDS

Property Description: The Parcel of land herein described is A 9.0 acre portion, more or less, out of Lot 2, Block 2, HUECO COMMERCIAL UNIT 2, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file under Clerk's File No. 20070088619, Real Property Records, El Paso County, Texas, being more particularly described by metes and bounds as follows:

Commencing at an existing city monument laying on the centerline of Rich Beem Boulevard, located adjacent to the easterly boundary line of said parcel herein being described; Thence, S81°16'29"W, abandoning said centerline, a distance of 55.00 feet to a found chiseled "X" for a property corner lying on the westerly right-of-way line of Rich Beem Boulevard also being the easterly boundary line of the parcel of land herein being described and a point for a curve, said point being the TRUE POINT OF BEGINNING of this description;

THENCE, 277.23 feet, with said boundary line and along the arc of a curve to the right, having a radius of 1945.00 feet, a central angle of 08°10'00" and a chord which bears S04°38'31"E a distance of 277.00 feet to a found 1/2" iron pin with damaged plastic cap for a property corner;

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THENCE, S08°43'31"E, with said right-of-way line, a distance of 253.58 feet back to the TRUE POINT OF BEGINNING of this description.

Said parcel of land containing 9.0184 acres (392,840.91 sq. ft.) of land, more or less.

SLI ENGINEERING, INC.
Consulting Engineers - Land Surveyors

Guillermo Licon
Registered Professional Land Surveyor
Texas License No. 2998

October 15, 2016
Job# 06-16-****
M&B/

MEMORANDUM

DATE: March 28, 2017

TO: The Honorable Mayor and City Council
Tommy Gonzalez, City Manager

FROM: Nelson Ortiz, Lead Planner

SUBJECT: Escrow Agreement for a portion of Lot 2, Block 2, Hueco Commercial Unit 2.

The Housing Authority of the City of El Paso (HACEP) is acquiring property known as a portion of Lot 2, Block 2, Hueco Commercial Unit Two, to be used for a multi-family residential housing development. The City has determined that this property would be assessed parkland fees related to the development in accordance with Title 19. HACEP disputes the amount of parkland fees. The City and HACEP recommend that HACEP deposit the parkland fees upon closing of the sale of the property, into an escrow account held by WestStar Title Company, until a resolution of the dispute.

Staff recommends **approval**.

Applicant: Paisano Housing Redevelopment Corporation



Recommendation/Public Input

- **Planning & Inspections Recommendation:** Approval

Strategic Goal #3-Promote the Visual Image of El Paso

- 3.1 Provide business-friendly permitting and inspection processes
- 3.2 Improve the visual impression of the community.

