



SPECIAL CITY COUNCIL MEETING

Saturday, December 17, 2022 at 1:00 PM

CITY COUNCIL CHAMBERS - 120 Paint Rock Street, Eden, TX

Off: 325-869-2111 | Fax: 325-869-5075

AGENDA

1. CALL TO ORDER AND ROLL CALL

2. EXECUTIVE SESSION

The City Council for the City of Eden has the right to adjourn into executive session at any time during the course of this meeting to discuss any matter as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices, and 551.086 (Economic Development).

3. BUSINESS

Consideration and Possible Action On:

- A. USDA Sanitary Sewer and South Water Projects Meeting Update
- B. Approval of November 2022 Bills
- C. Consideration of Golf Course Club House Lease Agreement three year renewal and monthly rental rate increase from \$811.28 to \$939.47
- D. Consideration of approval of Golf Course Check Valve Replacement quote

4. ADJOURN

Notice is posted in accordance with Chapter 551 Government Code, Vernon's Texas Codes, Annotated. I certify that the above notice of meeting was posted on the bulletin board located at City of Eden City Hall on or before December 14, 2022 by 12:00 pm.

Laura Beeson, City Administrator

All agenda items listed above are eligible for discussion and action unless otherwise specifically noted.

This facility is wheelchair accessible. Accessible parking spaces are available. Requests for auxiliary aids and services must be made 48 hours prior to this meeting by calling (325) 869-2211.

December 14, 2022

Ms. Laura Beeson
City Administrator
City of Eden
P.O. Box 915
Eden, TX 76837
325-869-2211

via email: cityadmin@edentexas.com

Dear Ms. Beeson:

At the end of this year the current rental agreement for the Eden Golf Course house will expire. The new lease term will begin on January 1, 2023 and continue until December 31, 2025. Even though it is the responsibility of the lessee (the City of Eden) to calculate all cost of living adjustments and to determine the new rental rate (as set forth on page 5 of the rental agreement), I have taken the liberty of determining the new yearly rental rate. Calculations of the new rate and supporting documentation are enclosed.

If you agree with the new rental rate, please adjust the 2023 rental payments accordingly. If you have any questions concerning the new rate, please do not hesitate to contact me at 210-602-1800.

Best regards,



Amy Lin Pfluger
P.O. Box 6719
San Antonio, TX 78209
210-602-1800
amy.pfluger@yahoo.com

8th Renewal Term: January 1, 2023 – December 31, 2025
Annual Rent: \$11,273.69*

Monthly Rental Payment = \$939.47 *

To Determine Adjusted Rental Rate for the 8th Renewal Term:

Base Rate = \$9735.31 (7th renewal term annual rental)
October 2019 CPI = 257.346
October 2022 CPI = 298.012
(https://www.bls.gov/news.release/archives/cpi_11102022.htm)

New Annual Rental Rate:
 $(\$9,735.31) \times (298.012 / 257.346) = \$11,273.69$

Monthly Rental Payment = \$939.47*

*Total monthly payments may be less than Annual Rent due to rounding.

LEASE AGREEMENT

This Lease Agreement (herein so called) is made and entered by and between ELIZABETH LOU PFLUGER WHITE and AMY LIN PFLUGER ROWLAND (collectively, "Pfluger"), whose address is 2133 Office Park Drive, San Angelo, Texas 76904 (hereinafter "Lessor") and the CITY OF EDEN, CONCHO COUNTY, TEXAS, a municipality duly incorporated and existing under the laws of the State of Texas, whose address is P. O. Box 915, Eden, Texas 76837 (hereinafter "Lessee").

A. LEASE AGREEMENT.

1. Agreement to Lease. In consideration of the mutual covenants and agreements set forth in this Lease Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged and confessed, Lessor does hereby demise and lease to Lessee, and Lessee does hereby lease from Lessor, the following described real property (hereinafter the "Leased Premises") situated in Concho County, Texas, to-wit:

The surface estate only in and to 2.265 acres of land out of B.S.&F Survey No. 205, Abstract No. 92, Concho County, Texas, as more particularly described in EXHIBIT "A" attached hereto and made a part hereof the same as if fully copied and set forth at length and 11.000 acres of land out of B.S.&F. Survey No. 205, Abstract 92, Concho County, Texas, as more particularly described in Exhibit "B" attached hereto and made a part hereof the same as if fully copied and set forth at length, Lessor hereby expressly reserving unto himself, his heirs, legal representatives, successors

and assigns, and excepting from this Lease Agreement, any and all mineral rights or interests, of every nature, kind or description whatsoever in, on or under the Leased Premises.

2. Term of Lease.

- (a) The Primary Term (herein so called) of this Lease Agreement shall be for the term beginning March 24, 1997 and ending on December 31, 2001.
- (b) Lessee shall have the right to extend the term of this Lease Agreement for an additional twenty-four (24) years in increments of three (3) years each beyond the Primary Term on the following terms and conditions:
 - (i) Should Lessee fully and faithfully perform all of the terms and conditions of this Lease Agreement, Lessee may extend the term of this Lease Agreement for periods of three (3) years each, with each Extended Term (herein so called) to begin on the day immediately following the termination of the preceding term, and to terminate on the last day of the thirty-sixth (36th) month thereafter; provided, however, that if at the date of expiration of the Primary Term or any Extended Term, Lessee is in default of any terms or provisions of this Lease Agreement, then Lessee shall have no right to extend the term hereof beyond the then expiring term. All the terms, covenants, and provisions of the original Lease Agreement applicable to the Primary Term

shall apply to the Extended Term, except as otherwise expressly provided herein; and

- (ii) Lessee shall exercise its option to extend the term of the Lease Agreement by giving Lessor written notice of its intention to do so not later than sixty (60) days prior to the expiration of the Primary Term or any subsequent Extended Term.
- (c) If Lessee holds over and continues in possession of the Leased Premises after expiration of the Primary Term or any Extended Term, other than as provided herein, Lessee shall be deemed to be occupying the Leased Premises on the basis of a month-to-month tenancy, subject to all of the terms and conditions of this Lease Agreement.
- (d) Hereinafter, the term "lease term" or "term of the lease" shall mean the Primary Term of this Lease Agreement and any Extended Term of this Lease Agreement if this Lease Agreement is properly extended as provided herein.
- (e) This lease is subject to an existing lease of the house situated on the 2.265 acre tract of land described in Exhibit "A" attached hereto together with a right of ingress and egress for the tenants under said lease from the house to a public road. Said existing lease terminates on June 1, 1997 at which time, and only at which time, Lessee shall be entitled to possession of said house.

3. Rental.

- (a) Lessee shall pay to Lessor as rental during the Primary Term monthly installments in the sum of FIVE HUNDRED & NO/100THS DOLLARS (\$500.00) in advance each calendar month during the Primary Term of this Lease Agreement. The first payment hereunder shall be due on June 1, 1997; rental shall be payable in advance on the first day of each calendar month thereafter. Notwithstanding the foregoing, until and through May 31, 1997, Lessor shall forego the payment of rental otherwise due by Lessee but shall be entitled to collect rental from the existing tenant of a building located upon the Leased Premises through May 31, 1997, such existing tenant having agreed to vacate such building by the end of May 31, 1997.
- (b) In the event Lessee exercises one or more of its options to extend the term of this Lease Agreement, then and in each such instance, the rent due hereunder shall be adjusted on the effective date of each renewal (the "Adjustment Date"). On each Adjustment Date, the Base Rent (herein so called and being the greater of the sum of SIX THOUSAND AND NO/100THS DOLLARS (\$6,000.00) or the amount of the annual rental for the immediately preceding Extended Term) will be adjusted to an amount equal to the product of (a) the Base Rent; and (b) a fraction, the numerator of which is the Consumer Price Index (as defined hereinafter) for the calendar month which is three (3) months prior to the Adjustment Date in question and the denominator of which is the Consumer Price Index for the calendar month which is three (3) months prior to the Adjustment Date immediately preceding the Adjustment Date in question

(or, in the case of the first Adjustment Date, the calendar month which is three (3) months prior to the Primary Term). However, in no event will the Base Rent as adjusted pursuant to the preceding sentence be less than \$6,000.00. All cost of living adjustments to the Base Rent will be computed by Lessee and communicated to Lessor in the City's written notice of its option to extend the lease term as required by subparagraph A(2)(b)(ii) above. As used in this Lease Agreement, "Consumer Price Index" means the Consumer Price Index, All Urban Consumers, All Items, as published by the United States Department of Labor, Bureau of Labor Statistics, U.S. City Average (1982-84 = 100). The Consumer Price Index for each adjustment of the Base Rent will be the one reported in the U.S. Department of Labor's most comprehensive official index then in use and most nearly meeting the foregoing description of the index to be used. If that index is calculated from a base different from the base period (1982-84 = 100), figures used for calculating the adjustments will first be converted under a formula supplied by the U.S. Department of Labor Statistics. If the Consumer Price Index is no longer published at an Adjustment Date, it will be constructed by conversion tables included in any new index. If neither the Consumer Price Index nor conversion tables are published any longer, then the most widely published all encompassing index of buying power in the United States will be used. If no such index is published, then the most widely published all encompassing commodity index for the United States will be used. If any moratorium is imposed on increases in rent which prevents a scheduled adjustment to the Base Rent or permits only a partial adjustment, the full adjustment will immediately take effect on

the lifting of such moratorium, and regular adjustments thereafter will be made as provided above.

4. Permitted Use. Lessee will use the Leased Premises only for the purpose of (a) supporting the construction, operation, and maintenance of a nine hole public golf course contiguous to the Leased Premises (the "Golf Course") to be constructed by Lessee pursuant to that certain Master Plan of the Eden Golf Course prepared by William Gill & Associates, dated June 8, 1994 (the "Master Plan"), the real property on which the golf course will be constructed having this day been conveyed by Lessor to Lessee; and (b) the conduct of such public recreational activities as are incidental to the operation of a public golf course and which are included in the Master Plan and/or the City's plan upon which a Texas Parks and Wildlife Department grant has been awarded, unless Lessor, upon prior written request from Lessee, shall give Lessee prior written consent for a different use. Lessee shall not use or permit the use of the Leased Premises in any manner that will cause a cancellation of fire, liability, or other insurance policies insuring the Leased Premises or any improvements thereon, or insuring the Lessor for any liability in connection with the ownership of the Leased Premises. Lessee shall not use or permit the use of the Leased Premises in any manner that results in waste of the Leased Premises or any improvements thereon or constitutes a nuisance. Lessee shall not use or permit the use of the Leased Premises for any illegal purpose or in any manner which results in a violation of laws, statutes, ordinances or codes applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Toxic Substance Control Act of 1976, the Clean Water Act, the Clean Air Act, and any other federal, state or local environmental laws or regulations. Lessee, at its own expense, will comply, and will cause its employees, agents, invitees, and licensees to comply with

all applicable laws and ordinances, and with all applicable rules and regulations of governmental agencies concerning the use of the Leased Premises.

5. Repairs, Maintenance, and Services.

- (a) Lessee, at Lessee's sole cost and expense, shall maintain throughout the term of this Lease Agreement the Leased Premises, including the buildings and improvements thereon, in good order, repair and in a safe and clean condition, reasonable wear and tear excepted. Lessee, at its sole cost and expense, shall make all repairs of and to the Leased Premises, and the buildings and improvements located thereon, including plumbing, roofing, air conditioning and heating, electrical, and all other structural and non-structural parts and systems of the Leased Premises. In the event Lessee shall neglect or fail, for a period of thirty (30) days after receipt of notice from Lessor to commence and diligently pursue to completion repairs identified by Lessor in such notice, to reasonably maintain and repair the Leased Premises, Lessor shall have the right, but not the obligation, to cause such repairs or maintenance to be made, and the cost incurred for such repairs or maintenance by Lessor shall be payable by Lessee to Lessor as additional rent on the next rental installment date.
- (b) Lessee shall pay promptly as they become due all charges for furnishing of water, electricity, garbage service, sewer service, gas service, and other public utilities to the Leased Premises during the term of this Lease Agreement.

6. Taxes on Lessee's Property. Lessee shall be liable for payment of all taxes levied or assessed against personal property, furniture, equipment or fixtures placed by Lessee in or on the Leased Premises. If such taxes for which Lessee is liable are levied or assessed against Lessor or Lessor's property, and if Lessor elects to pay the same, or if the assessed value of Lessor's property is increased by inclusion of personal property, furniture, equipment or fixtures placed by Lessee on the Leased Premises, and Lessor elects to pay the taxes based on such increase, then same shall constitute additional rental hereunder and Lessee shall pay to Lessor said amount on the next rental installment date after Lessee receives notice of the amount so due.

7. Taxes on Leased Premises. Lessee shall be liable for payment of all ad valorem taxes levied or assessed, or which are anticipated to be levied or assessed, against the Leased Premises and the buildings and improvements located thereon. If any such ad valorem taxes for which Lessee is liable are not timely paid by Lessee, Lessor may, at its option, pay same, and Lessee shall pay to Lessor said amount as additional rent on the next rental installment date.

8. Insurance. Lessee, at Lessee's sole cost and expense, shall obtain and maintain throughout the term of this Lease Agreement fire and extended insurance coverage on all buildings situated on Leased Premises insuring said buildings for an amount equal to the full replacement cost thereof and insuring the contents therein in the sum of at least \$15,000.00. Lessee, at its sole cost and expense, shall also provide and maintain in force during the lease term public liability insurance in the amount of at least \$2,000,000.00 per occurrence. Lessee shall name Lessor as an additional insured on all such policies and shall include in all such policies such other terms and provisions, and coverages, as Lessor may request. Copies of all such policies shall be furnished to Lessor within thirty (30) days

after same are issued from time to time and Lessee shall furnish to Lessor original certificates of insurance with respect to all insurance policies required hereby at least thirty (30) days prior to the expiration of the then term thereof, provided such certificates and copies of all such insurance policies have been delivered to Lessor at the time of the execution of this Lease Agreement by Lessor. All insurance required hereunder shall be issued by one or more insurance companies authorized to transact business in Texas and approved by Lessor. In the event Lessee shall fail to obtain the insurance coverage provided for herein, Lessor shall have the right, but not the obligation, to obtain such coverage, and Lessee shall pay to Lessor as additional rental the premiums for said insurance coverage on the next rental installment date.

9. Alterations, Additions, Improvements, and Fixtures.

- (a) Lessee shall not make any alterations, additions, or improvements to the Leased Premises without the prior written consent of Lessor. Consent for alterations, additions, and improvements shall not be unreasonably withheld by Lessor, and if such consent is granted, then Lessee shall effect such alterations, additions or improvements in accordance with all applicable laws, ordinances and regulations, free of any liens and in a good and workmanlike manner.
- (b) Upon the expiration of the term of this Lease Agreement or the earlier termination hereof by Lessor, all alterations, additions, or improvements made by Lessee to or upon the Leased Premises shall become the property of Lessor; however, Lessee shall promptly remove, if Lessor so elects, any or all alterations, additions, and

improvements, and any other property placed in or on the Leased Premises, and Lessee shall repair any damage caused by such removal.

- (c) Lessee shall have the right at all times to erect or install furniture and fixtures in the buildings upon the Leased Premises, provided that Lessee complies with all applicable governmental laws, ordinances, and regulations and such work is performed free of liens and in a good and workmanlike manner. Lessee shall have the right to remove such furniture and fixtures upon the expiration of the term of this Lease Agreement, provided Lessee is not in default at that time, the furniture and fixtures can be removed without material damage to any building on the Leased Premises, and any damage caused by such removal is repaired by Lessee. Notwithstanding the foregoing, if this Lease Agreement is terminated by Lessor prior to the expiration of the term hereof pursuant to any right to do so granted to Lessor in this Lease Agreement, then all furniture and fixtures of Lessee located in, on or about the Leased Premises shall, at the option of Lessor, be and become the property of Lessor.

10. Damage or Destruction to Leased Premises. If the Leased Premises or any structure or improvements on the Leased Premises should be damaged or destroyed by fire, tornado, or other casualty, Lessee shall give immediate written notice of the damage or destruction to Lessor, including a description of the damage and, as far as known to Lessee, the cause of the damage. Lessee shall, at its sole cost and risk, proceed immediately to rebuild or repair the damaged structure or improvements to substantially the condition in which they existed prior to such damage. Any insurance proceeds paid as a result of such damage or destruction shall be applied to the cost of said

rebuilding and repair. If the Leased Premises are untenable in whole or in part following such damage, nevertheless, the rent payable during the period in which they are untenable shall not be adjusted. In the event Lessee should fail to complete such rebuilding or repairs within one hundred eighty (180) working days from the date of the occurrence of the damage, Lessor may terminate this Lease Agreement by written notification to Lessee.

11. Condemnation.

- (a) If during the term of this Lease Agreement, all of the Leased Premises, or so much thereof as prevents the use of the Leased Premises for the Permitted Use, should be taken by any governmental instrumentality, except Lessee, for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or should be sold to such condemning authority under threat of condemnation, this Lease Agreement shall terminate, and the rent shall be abated during the unexpired term of this Lease Agreement, effective as of the date of the taking of the Leased Premises by such condemning authority. In such event, the full amount of the condemnation award shall be payable to Lessor.
- (b) If less of the Leased Premises is taken such that the Leased Premises may continue to be used for the Permitted Use, then this Lease Agreement shall not terminate, the rental hereunder shall not be adjusted, and Lessor and Lessee shall share in the condemnation award on the basis of the value of the property interests lost by each.

12. Inspection by Lessor. Lessor and his officers, agents, employees, and representatives shall have the right to enter into and upon any and all parts of the Leased Premises at all reasonable hours for purposes of inspection, but without any obligation to perform said inspection, or to show the Leased Premises to prospective tenants, purchasers, or lenders. Lessee shall not be entitled to any abatement or reduction of rent by reason of the entry of Lessor or any of his officers, agents, representatives, or employees pursuant to this paragraph, nor shall such entry be deemed an actual or constructive eviction.

13. Mechanic's Lien. Lessee shall not permit any mechanic's lien or liens to be placed upon the Leased Premises or upon any improvements on the Leased Premises. If a mechanic's lien is filed on the Leased Premises or on any such improvements on the Leased Premises, Lessee shall promptly notify Lessor of such lien and shall pay the lien within thirty (30) days prior to the date on which the lien can be enforced. If default in payment of the lien continues for twenty days after written notice from Lessor to Lessee or beyond the aforesaid thirty (30) day limitation, Lessor may, at its option, pay the lien or any portion of it without inquiry as to its validity. Any amounts paid by Lessor to remove a mechanic's lien filed against the Leased Premises or against any improvements located on the Leased Premises (other than Lessor's Improvements), including expenses and interest at the rate of twelve percent (12%) per annum, shall be due and payable by Lessee to Lessor on the next rental installment date hereunder after receipt of notice by Lessee of the amount so paid by Lessor.

14. Indemnity. Lessee agrees to, and does hereby, indemnify and hold Lessor harmless from and against, and shall defend Lessor at Lessee's sole cost and expense (including the expense of legal counsel of Lessor's choice) with respect to any and all claims, demands, causes of action, actions

(including remedial or enforcement actions of any kind), damages, costs, and expenses, of every nature, kind or description whatsoever, including the existence of Hazardous Materials (hereinafter defined) in, on or under or leeching from the Leased Premises, arising out of, resulting from or connected with Lessee's business on the Leased Premises, or the use of the Leased Premises, or any breach on the part of Lessee of any terms or conditions of this Lease Agreement, or any act or failure to act of Lessee, its officers, agents, contractors, employees, subtenants, invitees, or licensees, in or about the Leased Premises. In case of any action or proceeding brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, agrees to defend the action or proceeding by counsel acceptable to Lessor. As used in this Lease Agreement, the term "Hazardous Materials" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "infectious wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws or regulations, including, without limitation, oil, petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons. Lessee shall notify Lessor in writing of: (i) any spill, release, discharge or disposal of any Hazardous Materials in, on or under the Leased Premises or any portion thereof which occur outside the scope of constructing, maintaining, operating and supporting a public golf course or driving range in a reasonably commercial manner, e.g. application of fertilizers, pesticides, and other chemicals normally used in the day-to-day operation of a golf course; (ii) any enforcement, cleanup, removal or other governmental or regulatory action instituted, contemplated or threatened with respect to Hazardous

Materials; (iii) any claim made or threatened by any person against Lessee or the Leased Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iv) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in, on or removed from the Leased Premises, including any complaints, notices, warnings, reports or asserted violations in connection therewith.

15. Assignment or Sublease. Lessee shall not assign or sublet, in whole or in part, this Lease Agreement or any interest therein, or pledge, mortgage, encumber or otherwise hypothecate the Leased Premises of any part thereof or Lessee's interest in this Lease Agreement, without first obtaining the written consent of Lessor. A consent by Lessor to one assignment, subletting or hypothecation shall not be deemed to be a consent to any subsequent assignment, subletting or hypothecation. An assignment, subletting or hypothecation without the written consent of Lessor, or any assignment, subletting or hypothecation by operation of law, shall be void and shall, at the option of Lessor, terminate this Lease Agreement. Lessor is expressly given the right to assign and/or hypothecate any or all of its interest under or in and to this Lease Agreement.

16. Lessee's Default. The following events shall be deemed to be events of default by Lessee under this Lease Agreement:

- (a) Lessee fails to pay any installment of rent due under this Lease Agreement on the date due, including any sums in addition to installments of rent which are otherwise due

and payable by Lessee hereunder, and failure continues for a period of thirty (30) days.

- (b) Lessee fails to comply with any other term, provision, or covenant of this Lease Agreement other than the payment of rent or other monetary obligations of Lessee hereunder, and does not cure the failure within thirty (30) days after written notice of the failure to Lessee.
- (c) Lessee makes an assignment for the benefit of creditors, whether voluntarily or by operation of law, or defaults upon a general obligation of Lessee with respect to which the taxing powers of Lessee have been pledged.
- (d) Lessee abandons or vacates any portion of the Leased Premises which are necessary or useful to the operation of the Golf Course for a period of sixty (60) days.
- (e) Lessee fails to cause to be completed the Golf Course in accordance with the Master Plan within two (2) years from the execution hereof or, having timely completed the Golf Course as aforesaid, fails for a period of sixty (60) days to continue to operate the Golf Course and keep same open to the public for playing golf.

17. Lessor's Rights Upon Lessee's Default. Upon Lessee's default under this Lease Agreement and Lessee's failure to cure same within any applicable curative period, Lessor shall have the following cumulative remedies:

- (a) Lessor may terminate this Lease Agreement, whereupon Lessee shall immediately surrender the Leased Premises to Lessor. If Lessee fails to do so, Lessor may, without prejudice to any other remedy that he may have for possession or arrearages in rent, enter upon and take possession of the Leased Premises and expel or remove Lessee and any other person who may be occupying the Leased Premises or any part of them from the Leased Premises without being liable for prosecution or any claim of damages for such entrance and expulsion or removal. Lessee agrees to pay Lessor on demand the amount of all loss and damage that Lessor suffers by reason of such termination, whether through inability to relet the Leased Premises on terms satisfactory to Lessor or otherwise.
- (b) Lessor may, without terminating this Lease Agreement, enter upon and take possession of the Leased Premises and expel or remove Lessee, and any other person who may be occupying the Leased Premises or any part of them from the Leased Premises without being liable for prosecution or any claim for damages for such entrance and expulsion or removal, and relet the Leased Premises on such terms as Lessor deems advisable and receive the rent for the reletting. Lessee agrees to pay Lessor on demand any deficiency that may arise by reason of such reletting, such deficiency being the difference between the economic benefit Lessor was entitled to receive under this Lease Agreement and the economic benefit Lessor actually receives as a result of such reletting.

- (c) Lessor, without terminating this Lease Agreement, may enter upon the Leased Premises without being liable for prosecution or any claim for damages for such entry, and do whatever Lessee is obligated to do under the terms of this Lease Agreement to correct the default. Lessee agrees to reimburse Lessor on demand for any expenses that Lessor may incur in affecting compliance with Lessee's obligations under this Lease Agreement in this manner, and Lessor shall not be liable for any damages resulting to Lessee from such action.
- (d) Lessor may terminate this Lease Agreement and accelerate the payment of all sums, including rent, due and payable by Lessee hereunder throughout the term of this Lease Agreement.

No reentry or taking possession of the Leased Premises by Lessor shall be construed as an election on his part to terminate this Lease Agreement unless a written notice of such intention shall be given to Lessee. Notwithstanding any such reletting or reentry or taking possession without terminating this Lease Agreement, Lessor may at any time thereafter elect to terminate this Lease Agreement. The loss or damage that Lessor may suffer by reason of termination of this Lease Agreement, or the deficiency from any reletting as provided for above, shall include, without limitation, the expenses of repossession and/or reletting.

18. As Is/Where Is. Lessee hereby acknowledges and confesses that Lessor has made no representations or warranties whatsoever to Lessee, its agents, employees, representatives, consultants or independent contractors, with respect to the physical condition of the Leased Premises, or any buildings or other structures located thereon, or with respect to any Hazardous Materials which may or may not be located upon, in or under the Leased Premises. Lessee has conducted or caused to be conducted any and all tests and investigations of or with respect to the Leased Premises that Lessee has desired to conduct in order to determine the suitability of the Leased Premises for Lessee's intended use thereof and Lessee, in entering into this Lease Agreement, has not relied upon, and is not relying upon, any representations or warranties of Lessor, except as expressly set forth in Paragraphs 20 and 21 below.

19. Landlord's Lien. In addition to the statutory landlord's lien, Lessor shall have, at all times, a valid security interest to secure payment of all rent and other sums of money becoming due hereunder from Lessee, and to secure payment of any damages or loss which Lessor may suffer by reason of the breach by Lessee of any covenant, agreement or condition contained herein, upon all goods, wares, equipment, fixtures, furniture, improvements, accounts, contract rights, chattel paper and other personal property of Lessee presently or which may hereafter be situated on the Leased Premises, and all proceeds therefrom, and such property shall not be removed therefrom without the consent of Lessor until all arrearages in rent as well as any and all other sums of money then due to Lessor hereunder shall first have been paid and discharged and all of the covenants, agreements and conditions hereof have been fully complied with and performed by Lessee. Upon the occurrence of an event of default by Lessee which is not cured within any applicable curative period, Lessor may, in addition to any other remedies provided herein, enter upon the Leased Premises and take

possession of any and all goods, wares, equipment, fixtures, furniture, improvements, accounts, contract rights, chattel paper and other personal property of Lessee situated on the Leased Premises, and sell the same at public or private sale, with or without having such property at the sale, after giving Lessee reasonable notice of the time and place of any public sale or the time after which any private sale is to be made, at which sale the Lessor or its assigns may purchase unless otherwise prohibited by law. Any requirements of law pertaining to notice of any such sale shall be satisfied if such notice is given in the manner prescribed in this Lease Agreement at least ten (10) days before the time of such sale. Upon request by Lessor, Lessee agrees to execute and deliver to Lessor a financing statement in form sufficient to perfect the security interest of Lessor in the aforementioned property and the proceeds thereof under the provisions of the Uniform Commercial Code enforced in the State of Texas. The statutory lien for rent is not hereby waived, and the security interest herein granted is in addition and supplementary thereto.

20. Authority. Lessor and Lessee each represent and warrant to the other that each has the authority to enter into this Lease Agreement and to perform their respective obligations hereunder.

21. Quiet Enjoyment. Lessor represents, warrants and covenants that it is possessed of fee simple title to the Leased Premises, subject to all matters of public record and all unrecorded easements which may affect the Leased Premises. Provided Lessee has performed all of the terms, covenants, agreements and conditions of this Lease Agreement, including the payment of rent, to be performed by Lessee, Lessee shall peaceably and quietly hold and enjoy the Leased Premises without hindrance from Lessor, or those who claim under him, subject to the terms and conditions of this Lease Agreement.

22. Cumulative Remedies. Pursuit of any of the remedies provided in this Lease Agreement by either Lessor or Lessee shall not preclude pursuit of any other remedies provided in this Lease Agreement. Pursuit of any remedy provided in this Lease Agreement or by law by either party shall not constitute a forfeiture or waiver of any damages accruing to either party by reason of the violation of any of the terms, provisions, and covenants contained in this Lease Agreement, nor shall pursuit of any remedies provided in this Lease Agreement by Lessor constitute a waiver or forfeiture of any rent due to Lessor under this Lease Agreement.

23. Waiver of Default. No waiver by either party of any default or violation or breach of any of the terms, provisions, and covenants contained in this Lease Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants of this Lease Agreement. Forbearance by either party to enforce one or more of the remedies provided in this Lease Agreement or by law upon an event of default shall not be deemed or construed to constitute a waiver of such default. Lessor's acceptance of rent following an event of default under this Lease Agreement shall not be construed as Lessor's waiver of the default.

24. Surrender of Premises. No act or thing done by Lessor or its agents, employees, officers, or representatives during the lease term shall be deemed an acceptance of a surrender of the Leased Premises, and no agreement to accept a surrender of the Leased Premises shall be valid unless the same is in writing and signed by Lessor.

25. Notices and Addresses. All notices to be given under this Lease Agreement shall be given by certified mail or registered mail, addressed to the proper party at the following addresses:

Lessor: ELIZABETH LOU PFLUGER WHITE
AMY LIN PFLUGER ROWLAND
C/O ADDISON LEE PFLUGER
2133 Office Park Drive
San Angelo, Texas 76904

Lessee: THE CITY OF EDEN, TEXAS
P. O. Box 915
Eden, Texas 76837
ATTENTION: MAYOR

Either party may change the address to which notices are to be sent by giving the other party notice of the new address in the manner provided in this paragraph. All notices given hereunder shall be deemed received three (3) business days after being deposited in the U.S. Mail, postage prepaid and otherwise in compliance with this Paragraph.

26. Parties Bound. This Lease Agreement shall be binding upon, and inure to the benefit of, the parties to the Lease Agreement and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns.

27. Texas Law to Apply/Waiver of Jury Trial. This Lease Agreement shall be construed under, and in accordance with, the laws of the State of Texas, and all obligations of the parties hereto are and shall be performable in Eden, Concho County, Texas. Each party hereto waives any right it may otherwise have to a jury trial in any judicial proceeding with respect to this Lease Agreement.

28. Legal Construction. In case any one or more of the provisions contained in this Lease Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Lease Agreement, and this Lease Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been included in this Lease Agreement; provided, however, if any such invalid, illegal or unenforceable provision precludes or hinders Lessor in receiving the full economic benefit of this Lease Agreement, then Lessor shall have the right to terminate this Lease Agreement.

29. Amendments. No amendment, modification, or alteration of the terms of this Lease Agreement shall be binding unless the same is in writing, dated subsequent to the date of this Lease Agreement, and duly executed by all parties to this Lease Agreement.

30. Waiver of Default. No waiver by either party of any default or breach of any term, condition, or covenant of this Lease Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition, or covenant of the Lease Agreement.

31. Attorney's Fees and Costs. If, as a result of a breach of this Lease Agreement by either party, the other party employs an attorney or attorneys to enforce its right under this Lease Agreement, then the breaching or defaulting party agrees to pay the other party the reasonable attorney's fees and costs incurred to enforce same.

32. Force Majeure. Neither Lessor nor Lessee shall be required to perform any term, condition, or covenant in this Lease Agreement so long as such performance is delayed or prevented by force

majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority (other than Lessee), civil riot, floods, and any other similar cause not reasonably within the control of Lessor or Lessee and which by the exercise of due diligence Lessor or Lessee is unable wholly or in part, to prevent or overcome; provided, however, in the event the act of force majeure results in the inability of Lessee to cause the Golf Course to be constructed in accordance with the Master Plan within two (2) years from the execution of this Lease Agreement or, if timely completed, prevents same from remaining open to the public for the playing of golf for sixty (60) days, then Lessor shall have the right to terminate this Lease Agreement.

- 33. Time of Essence. Time is of the essence of this Lease Agreement.
- 34. Memorandum of Lease Agreement. Either Lessor or Lessee shall have the right to place of public record a memorandum of this Lease Agreement provided such memorandum shall not include the economic terms hereof.

The Lessor and Lessee have executed this Lease Agreement in multiple copies at Eden, Concho County, County, Texas, on the day, month and year first hereinabove written.

LESSEE:

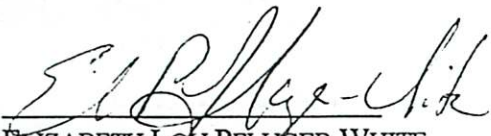
ATTEST:

CITY OF EDEN

By: Rosa L. Schreiber
ROSA L. SCHREIBER
Its: City Secretary

By: Thomas F. Kelso
THOMAS F. KELSO
Its: Mayor

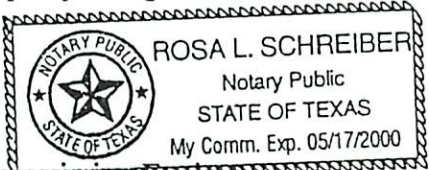
LESSOR:


ELIZABETH LOU PFLUGER WHITE


AMY LEN PFLUGER ROWLAND

STATE OF TEXAS §
 §
COUNTY OF CONCHO §

This instrument was acknowledged before me on the 31st day of March, 1997, by THOMAS F. KELSO, MAYOR OF THE CITY OF EDEN, TEXAS, a municipality doing business under the laws of the State of Texas, on behalf of said municipality.


My Commission Expires:
5-17-2000


Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF Tom Green §

This instrument was acknowledged before me on the 24 day of March, 1997, by ELIZABETH LOU PFLUGER WHITE.


My Commission Expires:
2-8-98


Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF Tom Green §

This instrument was acknowledged before me on the 24 day of March, 1997,
by AMY LIN PFLUGER ROWLAND.



Marilyn T. Flage
Notary Public, State of Texas

My Commission Expires:
2-8-98

FIELD NOTES

2.265 Acres (House Tract)

97-A-69b
March 20, 1997

Being an area of 2.265 acres of land out of B. S. & F. Survey 205, Abstract No. 92, Concho County, Texas and said 2.265 acre tract also being out of that certain 40.403 acre tract (Tract B) described by Warranty Deed recorded in Volume 134, Page 539, Deed Records of said Concho County and said 2.265 acre tract being more particularly described by metes and bounds as follows;

Beginning at the southwest corner of this tract and being 655.29 feet, N. 00° 11' 32" E. and 210.00 feet S. 89° 48' 30" E. from the southwest corner of said 40.403 acre tract and said beginning corner also being in the north line of a certain 1.154 acre tract (proposed road);

Thence with the west line of this tract, N. 00° 11' 30" E. 300.67 feet to the northwest corner of this tract and an angle corner of certain 105.00 acre tract;

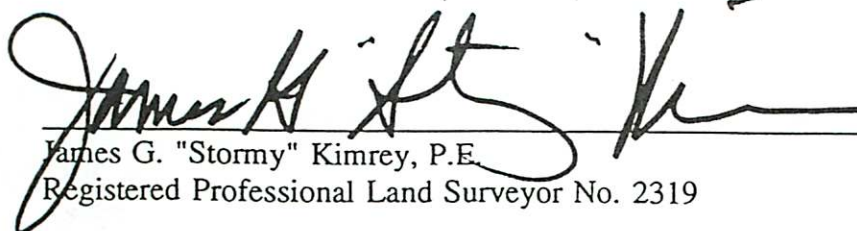
Thence with the north line of this tract and a south line of said 105.00 acre tract, East 328.18 feet to the northeast corner of this tract;

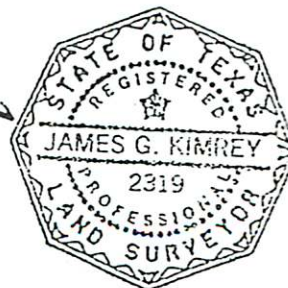
Thence with the east line of this tract S. 00° 11' 30" E. 285.39 feet to the southeast corner of this tract in the north line of said 1.154 acre tract (proposed road);

Thence with the south line of this tract and the north line of said 1.154 acre tract (proposed road) a curve to the right, having a radius of 269.17 feet, central angle of 20° 13' 18", arc length of 95.00 feet and whose long chord bears, S. 80° 04' 51" W. 94.51 feet to the end of this curve;

Thence, N. 89° 48' 30" W. 237.04 feet to the place of beginning and containing an area of 2.265 acres of land.

Above described tract is based on deed descriptions of record and is not an actual on-the-ground survey.


James G. "Stormy" Kimrey, P.E.
Registered Professional Land Surveyor No. 2319



FIELD NOTES

11.000 Acres (Driving Range)

97-A-69d
March 20, 1997

Being an area of 11.000 acres of land out of B. S. & F. Survey 205, Abstract No. 92, Concho County, Texas and said 11.000 acre tract also being out of that certain 40.403 acre tract (Tract B) and 16.514 acre tract (Tract A) described by Warranty Deed recorded in Volume 134, Page 539, Deed Records of said Concho County and said 11.000 acre tract being more particularly described by metes and bounds as follows;

Beginning at the southwest corner of this tract and said 16.514 acre tract;

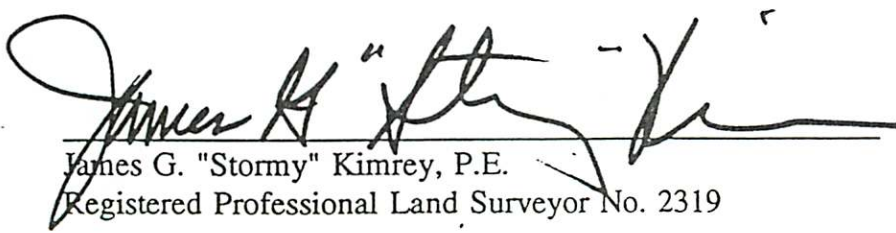
Thence with the west line of this tract, said 16.514 acre tract, N. 00° 11' 32" E. at 602.36 feet pass the northwest corner of said 16.514 acre tract and the southwest corner of said 40.403 acre tract, in all a total distance of 1197.65 feet to the northwest corner of this tract;

Thence with the north line of this tract, S. 89° 48' 30" E., 400.00 feet to the northeast corner of this tract;

Thence with the east line of this tract and across said 40.403 acre and 16.514 acre tract, S. 00° 11' 32" W. 1198.25 feet to the southeast corner of this tract;

Thence with the south line of this tract and said 16.514 acre tract, N. 89° 43' 22" W., 400.00 feet to the place of beginning and containing an area of 11.000 acres of land.

Above described tract is based on deed descriptions of record and is not an actual on-the-ground survey.


James G. "Stormy" Kimrey, P.E.
Registered Professional Land Surveyor No. 2319

