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**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 12 Ordinance/Resolution# 09-303 Council District: 4

For Meeting of June 15, 2009  
 (Adoption Date)

**TITLE:** A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A SUBORDINATION OF LIEN IN FAVOR OF CITIZENS BANK OF LAS CRUCES, FOR LEASE PARCEL 37 AT THE LAS CRUCES INTERNATIONAL AIRPORT.

**PURPOSE(S) OF ACTION:** To have the Mayor sign a subordination of lien for Parcel 37 at the Las Cruces International Airport. This parcel is presently leased by Glenn Porter.

<b>Name of Drafter:</b> Lisa Murphy, LM Airport Administrator		<b>Department:</b> Facilities/Airport		<b>Phone:</b> 541-2471	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Facilities		541-2651	Budget		2300
			Assistant City Manager		2271
Legal		2129	City Manager		2076

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:** Glenn Porter (Picacho Valley Group, LLC) holds a land lease for property known as Parcel 37 at the Las Cruces International Airport. This lease is in effect until the year 2029. Glenn Porter has requested that the City subordinate its lien in favor of Citizens Bank of Las Cruces, the bank that has provided financing for his purchase of the hangar currently located on the parcel.

The subordination of lien is only for the improvements on the parcel, not the land itself, which is and will remain the property of the City. This is stated in the Landlord's Consent to Assignment, which is attached.

**SUPPORT INFORMATION:**

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Resolution
2. Letter from Glenn Porter
3. Landlord's Consent to Assignment
4. Exhibit "A", Legal Description of Parcel 37
5. Parcel location map

(Continue on additional sheets as required)

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes" and approve the Resolution. This will allow the Mayor to sign the subordination of lien for the improvements on Parcel 37 in favor of Citizens Bank of Las Cruces.
2. Vote "No" and do not approve the Resolution, thus not allowing the subordination of lien for the improvements on Parcel 37 in favor of Citizens Bank of Las Cruces.
3. Vote to Amend.

**RESOLUTION NO. 09-303**

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A SUBORDINATION OF LIEN IN FAVOR OF CITIZENS BANK OF LAS CRUCES, FOR LEASE PARCEL 37 AT THE LAS CRUCES INTERNATIONAL AIRPORT.**

The City Council is informed that:

**WHEREAS**, Glenn Porter (Picacho Valley Group, LLC), holds a lease for property known as Parcel 37 at the Las Cruces International Airport; and

**WHEREAS**, Glenn Porter has asked that the City subordinate its lien in favor of Citizens Bank of Las Cruces, a lending institution; and

**WHEREAS**, the subordination of lien only covers the improvements on the property, not the land, which is the property of the City.

**NOW THEREFORE**, be it resolved by the governing body of the City of Las Cruces:

**(I)**

**THAT** the Mayor of the City of Las Cruces is hereby authorized to sign any documents necessary for the subordination of lien in favor of Citizens Bank of Las Cruces for the improvements to Parcel 37 at the Las Cruces International Airport.

**(II)**

**THAT** City staff are hereby authorized to do all deeds necessary in the accomplishment of the herein above.

Resolution No. 09- 303, cont.

DONE AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

APPROVED:

\_\_\_\_\_  
Mayor

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Archuleta:	_____
Councillor Small:	_____
Councillor Jones:	_____
Councillor Thomas:	_____

ATTEST:

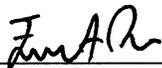
\_\_\_\_\_  
City Clerk

(SEAL)

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

Approved as to Form:

  
\_\_\_\_\_  
City Attorney

April 2, 2009

Attention: City of Las Cruces Council

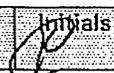
In regards to my recent loan for Picacho Valley Group, LLC through Citizens Bank of Las Cruces for the airplane hanger located at the Las Cruces Airport on Lot # 37, I would like to request a subordination of lien by the City of Las Cruces to Citizens Bank in order for Citizens Bank of Las Cruces to be able to perfect their lien for this collateral.

Please feel free to contact me at 575-621-4320.

Sincerely,

  
Glen Porter

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**LANDLORD'S CONSENT TO ASSIGNMENT**

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
	02-17-2009	02-17-2014	94184962	53112 / 133	45136	10	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.							

**Borrower:** PICACHO VALLEY GROUP, LLC  
 2185 W AMADOR STE 1  
 LAS CRUCES, NM 88005

**Lender:** CITIZENS BANK OF LAS CRUCES  
 LORETTO TOWN CENTER  
 P.O. BOX 2108  
 505 S. MAIN STREET  
 LAS CRUCES, NM 88001

THIS LANDLORD'S CONSENT TO ASSIGNMENT is entered into among PICACHO VALLEY GROUP, LLC ("Borrower"), whose address is 2185 W AMADOR STE 1, LAS CRUCES, NM 88005; CITIZENS BANK OF LAS CRUCES ("Lender"), whose address is LORETTO TOWN CENTER, P.O. BOX 2108, 505 S. MAIN STREET, LAS CRUCES, NM 88001; and CITY OF LAS CRUCES NEW MEXICO ("Landlord"), whose address is P.O. Box 20000, LAS CRUCES, NM 88004. Borrower and Lender have entered into, or are about to enter into, an agreement whereby Lender has acquired or will acquire a security interest or other interest in the Collateral. Some or all of the Collateral may be affixed or otherwise become located on the Premises. To induce Lender to extend the Loan to Borrower against such security interest in the Collateral and for other valuable consideration, Landlord hereby agrees with Lender and Borrower as follows.

**COLLATERAL DESCRIPTION.** The word "Collateral" means certain of Borrower's personal property in which Lender has acquired or will acquire a security interest, including without limitation the following specific property:

Assignment of Land Lease attached to include exhibit A for legal description.

**BORROWER'S ASSIGNMENT OF LEASE.** Borrower hereby assigns to Lender all of Borrower's rights in the Lease, as partial security for the Loan. The parties intend that this assignment will be a present transfer to Lender of all of Borrower's rights under the Lease, subject to Borrower's rights to use the Premises and enjoy the benefits of the Lease while not in default on the Loan or Lease. Upon full performance by Borrower under the Loan, this assignment shall be ended, without the necessity of any further action by any of the parties. This assignment includes all renewals of and amendments to the Lease or the Loan, until the Loan is paid in full. No amendments may be made to the Lease without Lender's prior written consent, which shall not be unreasonably withheld or delayed.

**CONSENT OF LANDLORD.** Landlord consents to the above assignment. If Borrower defaults under the Loan or the Lease, Lender may reassign the Lease, and Landlord agrees that Landlord's consent to any such reassignment will not be unreasonably withheld or delayed. So long as Lender has not entered the Premises for the purpose of operating a business, Lender will have no liability under the Lease, including without limitation liability for rent. Whether or not Lender enters into possession of the Premises for any purpose, Borrower will remain fully liable for all obligations of Borrower as lessee under the Lease. While Lender is in possession of the Premises, Lender will cause all payments due under the Lease and attributable to that period of time to be made to Landlord. If Lender later reassigns the Lease or vacates the Premises, Lender will have no further obligation to Landlord.

**LEASE DEFAULTS.** Both Borrower and Landlord agree and represent to Lender that, to the best of their knowledge, there is no breach or offset existing under the Lease or under any other agreement between Borrower and Landlord. Landlord agrees not to terminate the Lease, despite any default by Borrower, without giving Lender written notice of the default and an opportunity to cure the default within a period of sixty (60) days from the receipt of the notice. If the default is one that cannot reasonably be cured by Lender (such as insolvency, bankruptcy, or other judicial proceedings against Borrower), then Landlord will not terminate the Lease so long as Landlord receives all sums due under the Lease for the period during which Lender is in possession of the Premises, or so long as Lender reassigns the Lease to a new lessee reasonably satisfactory to Landlord.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement: This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement. The covenants of Borrower and Landlord respecting subordination of the claim or claims of Landlord in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any claim or claims to which this Agreement shall apply. Lender need not accept this Agreement in writing or otherwise to make it effective. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. If Landlord is other than an individual, any agent or other person executing this Agreement on behalf of Landlord represents and warrants to Lender that he or she has full power and authority to execute this Agreement on Landlord's behalf. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is in writing and signed by Lender. Without notice to Landlord and without affecting the validity of this Consent, Lender may do or not do anything it deems appropriate or necessary with respect to the Loan, any obligors on the Loan, or any Collateral for the Loan; including without limitation extending, renewing, rearranging, or accelerating any of the Loan indebtedness.

**AMENDMENTS.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**NO WAIVER BY LENDER.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Landlord, shall constitute a waiver of any of Lender's rights or of any of Landlord's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise

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LANDLORD'S CONSENT TO ASSIGNMENT  
(Continued)

Loan No: 94184962

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defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Agreement.** The word "Agreement" means this Landlord's Consent to Assignment, as this Landlord's Consent to Assignment may be amended or modified from time to time, together with all exhibits and schedules attached to this Landlord's Consent to Assignment from time to time.

**Borrower.** The word "Borrower" means PICACHO VALLEY GROUP, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Collateral.** The word "Collateral" means all of Borrower's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

**Landlord.** The word "Landlord" means CITY OF LAS CRUCES NEW MEXICO, and is used for convenience purposes only. Landlord's interest in the Premises may be that of a fee owner, lessor, sublessor or lienholder, or that of any other holder of an interest in the Premises which may be, or may become, prior to the interest of Lender.

**Lease.** The word "Lease" means that certain lease of the Premises, dated February 17, 2009, between Landlord and Borrower..

**Lender.** The word "Lender" means CITIZENS BANK OF LAS CRUCES, its successors and assigns.

**Loan.** The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced.

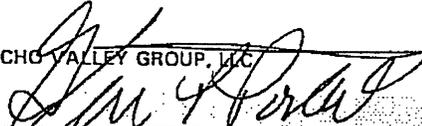
**Note.** The word "Note" means a Promissory Note from Borrower to Lender dated February 17, 2009 in the principal amount of \$130,000.00 together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the Promissory Note or agreement.

**Premises.** The word "Premises" means the real property located in Dona Ana County, State of New Mexico, commonly known as See Exhibit "A", Las Cruces, NM 88001.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

BORROWER AND LANDLORD ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS LANDLORD'S CONSENT TO ASSIGNMENT, AND BORROWER AND LANDLORD AGREE TO ITS TERMS. THIS AGREEMENT IS DATED FEBRUARY 17, 2009.

BORROWER:

PICACHO VALLEY GROUP, LLC  
By:   
GLENN P PORTER, Manager of PICACHO VALLEY GROUP, LLC

LANDLORD:

CITY OF LAS CRUCES NEW MEXICO  
By: \_\_\_\_\_  
Authorized Signer for CITY OF LAS CRUCES NEW MEXICO  
By: \_\_\_\_\_  
Authorized Signer for CITY OF LAS CRUCES NEW MEXICO

LENDER:

CITIZENS BANK OF LAS CRUCES  
X   
Authorized Officer



March 29, 2006  
 Lease Parcel 37  
 05-S-036H

**DESCRIPTION OF A 0.2296 ACRE PARCEL**

A parcel of land situate within the corporate limits of the City of Las Cruces, Dona Ana County, New Mexico. In the NW1/4 of Section 26, T.23S., R.1W., N.M.P.M. of the U.S.G.L.O. Surveys. Being part of the Las Cruces International Airport Reserve and more particularly described as follows, to wit:

**BEGINNING** at a ½ inch rebar with City of Las Cruces identification cap set on the east side of a 35 foot wide road and the south side of a 35 foot wide road for the northwest corner of the lease parcel herein described, whence station CRUCESAIR of the New Mexico High Accuracy Reference Network bears S89°09'25"W a distance of 2,496.83 feet;

**THENCE FROM THE POINT OF BEGINNING** leaving the 35 foot wide road N89°48'33"E – 100.00 feet to a ½ inch rebar with City of Las Cruces identification cap set for the northeast corner of the lease parcel herein described;

**THENCE** S00°11'27"E – 100.00 feet to a ½ rebar with City of Las Cruces identification cap set for the southeast corner of the lease parcel herein described;

**THENCE** S89°48'33"W – 100.00 feet to a ½ inch rebar with City of Las Cruces identification cap set for the southwest corner of the lease parcel herein described;

**THENCE** N00°11'27"W – 100.00 feet to the point of beginning, containing 0.2296 acres of land more or less..

**AUTHORITY STATEMENT:** I, Gilbert Chavez, a New Mexico registered Professional Surveyor certify that I directed and am responsible for this survey, that this survey is true and correct to the best of my knowledge and belief, and that this survey and legal description meets the "Minimum Standards for Land Surveying in New Mexico."

**THIS PROPERTY DESCRIPTION WAS PREPARED SOLELY FOR THE PURPOSE OF NEGOTIATIONS FOR LEASE. A FILED SUBDIVISION WILL BE REQUIRED FOR COMPLIANCE WITH THE CITY OF LAS CRUCES SUBDIVISION CODE.**

Gilbert Chavez  
 NMPS 6832

P.O. BOX 20000  
 LAS CRUCES  
 NEW MEXICO  
 88004-9002  
 505.541.2000

AN EQUAL OPPORTUNITY EMPLOYER

