

STATE OF TEXAS

COUNTY OF EL PASO

LEASE NO. 694F-53-02-El Paso

## LEASE AGREEMENT

### 1. PARTIES

This agreement is between BAM Joint Venture, hereafter called Lessor and the State of Texas by and through and for the use and benefit of the Texas Youth Commission (TYC), an agency of the State of Texas, hereafter called Lessee.

### 2. PROPERTY LEASED

Lessor promises, in return for the consideration described herein to be paid by the Lessee and the covenants set out herein to be kept by Lessee, to hereby lease unto the Lessee the following described property and premises, to-wit:

A ONE ACRE PORTION OF TRACT 6A, SECTION 33, BLOCK 79, TOWNSHIP 2 TEXAS & PACIFIC RAILROAD COMPANY SURVEYS, EL PASO COUNTY, TEXAS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FOR REFERENCE AT THE COMMON CORNER FOR SECTIONS 27, 28, 33, AND 34, BLOCK 79, TOWNSHIP 2 TEXAS & PACIFIC RAILROAD COMPANY SURVEYS, EL PASO COUNTY, TEXAS; THENCE, SOUTH 00°32'02" EAST A DISTANCE OF 30.00 FEET ALONG THE EASTERLY LINE OF SAID SECTION 33, TO A POINT; THENCE, NORTH 90°00'00" WEST A DISTANCE OF 1740.77 FEET TO A POINT, MARKING THE NORTHEAST CORNER OF TRACT 6A, SECTION 33; THENCE, ALONG A TRACTS 6A AND 6A3, SECTION 33 SOUTH 00°32'02" EAST A DISTANCE OF 591.78 FEET TO THE **POINT OF BEGINNING** OF THIS DESCRIPTION.

THENCE SOUTH 89°18'36" EAST A DISTANCE OF 200.00 FEET TO A POINT FOR A CORNER OF THIS PARCEL;

THENCE NORTH 00°14'07" WEST A DISTANCE OF 217.80 FEET TO A POINT FOR A CORNER OF THIS PARCEL;

THENCE NORTH 89°18'36" WEST A DISTANCE OF 200.00 FEET TO A POINT FOR A CORNER OF this parcel;

THENCE SOUTH 00°41'07" EAST A DISTANCE OF 217.80 FEET TO THE **POINT OF BEGINNING** OF THIS DESCRIPTION, CONTAINING 1.00 ACRES OF LAND, MORE OR LESS.

### 3. MONTHLY RENTAL

(A) Rental Amount. The Lessee agrees to pay Lessor no less than Eleven Thousand Eight Hundred Fifty and no/100 dollars (\$11,850.00) per month, which shall be due and payable by Lessee in advance on the first day of the month for which said rentals are due.

(B) <sup>To year</sup> CPI Escalation. Each ~~September~~ 1st of the lease beginning in 2004, the total monthly rent of the resulting contract may be adjusted by changes in the Consumer Price Index reflecting percentage increases or decreases. The Lessor must request by letter any increase in rent no earlier than sixty (60) days prior to and no later than thirty (30) days after the renewal date. The CPI Escalation Clause (25%), as provided in Attachment "A", is made a part hereof.

### 4. TERM OF THE LEASE

(A) The initial term of this lease shall be ten years, commencing on December 1, 2002 and ending on <sup>Jan 31</sup> December 31, 2012, unless sooner terminated as hereafter provided. *Jan. 14* 

(B) Renewal of this lease for an additional ten-year term will be made upon notification by Lessee in writing of its intent to do so no later than one (1) year prior to the termination date described in the preceding paragraph.

(C) If, during the initial term of this lease, the Lessee does not intend to renew this lease, Lessee must notify Lessor in writing at least one (1) year prior to the expiration of the initial term or the first renewal term.

(D) This lease agreement is made and entered into in accordance with the provisions of Title 3, Human Resources Code, and is made contingent upon the continuation of federally funded programs, or upon the availability of state funds appropriated by the Legislature, to cover the full term and cost of this lease. In the event a curtailment of federally funded programs occurs, or in the event state appropriated funds are unavailable, Lessee upon written notice to the Lessor, may either terminate this lease or amend it in accordance with provisions of the lease.

(E) Should the Lessor be unable to give possession of the demised premises on the date of commencement of the term hereof, payment hereunder shall not begin until possession of the premises is given to Lessee or the premises are available for full occupancy by the Lessee.

## **5. LESSOR AGREES:**

(A) to pay all taxes of whatever nature, levied and assessed and to be levied or assessed, on or against the leased property and improvements during the term of the lease.

(B) that hereafter and during the term of this lease, it will not rent, lease or otherwise furnish space in this or any adjacent buildings under its control to any enterprise which, in the usual exercise of its business, could be expected to create noise or odors injurious or disruptive to Lessee's normal governmental activity.

(C) that the Lessee may bring onto the leased premises any and all equipment reasonably necessary for the efficient exercise of Lessee's governmental responsibilities.

(D) to certify that the building was free of materials containing friable asbestos or asbestos containing materials (ACM), on June 5, 1981, and that Lessor has not placed asbestos or ACM in the building since that date.

(E) to make major repairs. A major repair is any repair related to the structural or mechanical infrastructure of the facility, *i.e.*, roof repairs, foundation repairs, plumbing or sewer repairs exceeding One Thousand Dollars (\$1,000.00), electrical repairs, mold remediation, air conditioning and heating repairs exceeding One Thousand Dollars (\$1,000.00), and natural gas line repairs. In addition, Lessor agrees to pay for any damage(s) resulting from negligence or delays in making aforementioned repairs, Five Hundred Dollars (\$500.00), except those described in Paragraphs 6(E) and 6(F), below.

## **6. LESSEE AGREES:**

(A) to pay all utility bills necessary for the proper operation of the duties performed by the Lessee.

(B) to keep the leased premises, property, and buildings in good repair except for major repairs as defined by Paragraph 5(E) above, during the term of the lease.

(C) to provide janitorial services for the space occupied.

(D) to abide by any and all reasonable rules promulgated by Lessor for the proper operation of the subject demised property and appurtenances; provided only that all rules promulgated subsequent to commencement of this lease be submitted to Lessor in writing for consideration and comment at least thirty (30) days prior to implementation.

(E) to repair or replace any part of the leased premises destroyed or damaged by or as a result of students or employees of Lessee or any other employees, agents, representatives, or authorized guests or invitees of Lessee.

(F) to be responsible for repairs related to normal wear and tear of the buildings, including but not limited to, the replacement of carpet, painting, flooring (every forty-two (42) months), and repairs not noted in item 5. E., above.

(G) to not make or allow to be made any alterations or physical additions to the premises without first obtaining the written consent of Lessor, which consent shall not be unreasonably withheld, and upon termination of this lease, by lapse of time or otherwise, all such alterations, physical additions or improvements furnished and installed by Lessee that are permanently attached to the premises shall, at Lessee's option, become the property of Lessor and in consideration for the alteration or improvement, Lessor accepts full responsibility for the physical additions or improvements that become the property of Lessor.

(H) to permit Lessor, or its agent(s) or representative(s), the right of entry into and upon any part of the premises at all reasonable hours to inspect same, provided that Lessor notifies Lessee of Lessor's intent to enter the premises at least twenty-four hours prior to entry, except in cases of emergency.

(I) to adhere to all applicable statutes, ordinances, codes, rules, and regulations relating to the public health, safety and welfare.

(J) to meet or exceed the requirements for accessibility for persons with disabilities for those privately owned buildings and facilities leased by state agencies under the provisions of Tex. Rev. Civ. Stat. Ann. art. 9102 (Vernon Supp. 2002). The Texas Department of Licensing and Regulation(TDLR) is required to inspect the lease space before the building or facility is occupied in whole or in part by the state for compliance with all accessibility standards and specifications adopted under this article (Tex. Rev. Civ. Stat. Ann. Art. 9102, §5(q)). Lessor will be responsible for payment of all fees required by TDLR for performing its functions under Article 9102, *supra*.

(K) to comply with all applicable provisions of the Americans with Disabilities Act of 1990, Public Law 101-336, 42 U.S.C. Section 12181, et seq.

(L) to re-imburse the Lessor for water/waste water utility bills during the period of Lessee's actual occupancy during the two year period referenced in Paragraph 5(F), above, and to do all that is necessary to transfer the water/waste water service to the Lessee at the end of that period.

## **7. GENERAL TERMS AND CONDITIONS**

(A) Lessor further covenants that it has good and sufficient title to the said premises, and has full power and authority to execute this lease and to place Lessee in possession of the premises in full satisfaction of and compliance with the terms and conditions herein. Lessor also agrees that it will not attempt to impose upon Lessee any requirements of other legal instruments related to these premises not referred to herein or made a part hereof. Lessor warrants and defends unto Lessee against the claims of all persons to the leasehold interests of the Lessee. Any person or entity executing this lease

as agent for the Lessor shall attach to this lease sufficient evidence or authority to act in the capacity shown.

(B) Lessor warrants that the operation of the Lessee on the demised premises is not in violation of any city ordinance or statute or any restriction imposed against the demised premises and that said Lessor will indemnify said Lessee for any direct or indirect loss sustained by Lessee as a result of the existence of such restriction, ordinance or statute.

(C) Any signs necessary to indicate Lessee's name, location and governmental purpose shall be prepared and installed in accordance with Lessor's applicable rules and regulations and in keeping with building decor. Any special requirements of Lessee contrary to the above must be agreed to in writing by Lessor.

(D) On termination of this lease, by lapse of time or otherwise, Lessee may, within a reasonable time thereafter, at its option and expense, remove from said premises any and all equipment, appliances or other property placed or owned by it thereon; and shall deliver up said premises and property to Lessor in as good order and condition as they now are, or may be put by the Lessor; provided, however, that reasonable use, ordinary wear and tear, depreciation, damages, or destruction by fire or the elements or unavoidable casualty and repairs, and replacements, for which the Lessor is obligated, are excepted.

(E) If during the term of this lease, said premises, or any portion thereof, shall be condemned for any public purpose, either party hereto shall have the option of terminating and canceling this lease upon thirty (30) days written notice to the other party of its election to so do.

(F) It is mutually agreed between the Lessor and the Lessee that if said building and premises shall, during the term of this lease or extensions thereof, be slightly damaged by fire or any other cause or causes, the same shall be promptly repaired by the Lessee. During the time of such repair, if the space cannot be fully utilized by Lessee, lease payments due hereunder shall be either reduced or withheld in accordance with the degree or duration of non-use. However, if said building and premises be so damaged as to render said premises unfit for occupancy, then, and from the date of such damage, this lease shall cease and be void; and rent and other obligations hereunder shall be due and payable only to the date of such damage. If the Lessor has available under his control space which will meet Lessee's needs and offers same to Lessee, the Lessee may, at its option, occupy that space under the same terms and conditions of this lease.

(G) Lessee reserves the right to assign any agency of state government to occupy all or any part of the space described herein, but covenants and agrees that it will not assign or sublet all or any part of the leased premises to any private parties (persons or corporations), except to maintain the responsibilities presently maintained by Lessee.

(H) In the event Lessee shall be in default in the payment of rentals or other charges hereunder or shall otherwise breach its covenants or obligations hereunder, and shall be and remain in default for a period of thirty (30) days after written notice from Lessor to it of such default, Lessor shall have the right and privilege of terminating this lease and declaring the same at an end, and of entering upon and taking possession of said premises, and shall have the remedies now or hereafter provided by law for recovery of rent, repossession of the premises and damages occasioned by such default.

(I) In the event Lessor shall breach or be in default in performance of any of the covenants or obligations imposed upon Lessor by this lease, and shall remain in default for a period of thirty (30) days after written notice from Lessee to it of such default, Lessee shall have the right and privilege of terminating this lease and declaring the same at an end, and shall have the remedies now or hereafter provided by law for recovery of damages occasioned by such default. In lieu of a formal declaration of default and resulting termination as provided above, and in special cases urged by the occupying state agency, the Lessee may withhold payments or rent from Lessor, until such time as the violations have been corrected. If violations of this lease create an emergency situation and threaten the occupying agency's ability to use the premises, the Lessee may correct all or any part of the violations and deduct the cost from rentals due the Lessor. Such extraordinary remedies will only be undertaken in the best interest of the State when a move following termination would be highly disruptive to the occupying agency and detrimental to its statutory functions.

(J) The failure of the Lessee or Lessor to insist in any one or more instances on a strict performance of any of the covenants of this lease shall not be construed as a waiver or relinquishment of such covenants in future instances, but the same shall continue and remain in full force and effect.

(K) The relationship between Lessor and Lessee is solely one of landlord/tenant. Lessee's operations on the premises are independent of Lessor's operations, and Lessor has no interest, rights, management, responsibility, control or liability concerning Lessee's operations beyond those set forth in this lease.

(L) This agreement and each and all of its covenants, obligations and conditions hereof shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of Lessor, and the successor in office of Lessee.

(M) All disputes or claims that arise concerning this lease agreement will be made pursuant to Tex. Gov't Code Ann. § 2260 et. seq. (Vernon Supp. 2002).

(N) Lessor shall maintain insurance coverage for the benefit of Lessee to cover Lessee's losses that arise from fire, flood, structural design or defect or other natural or man-made causes, except those described in Paragraph 6(E), above. Lessor shall provide proof of such coverage on the request of Lessee and shall give Lessee reasonable notice of any change if such coverage is modified or terminated.

**LESSOR - BAM Joint Venture**

By *[Signature]*

David Escobar  
BAM Joint Venture  
8811 Alameda  
El Paso, Texas 79907  
Telephone (915) 859-2233  
Fax (915) 859-3016

6-14-02  
Date

By *Ben Ivey*

Ben Ivey  
BAM Joint Venture  
8811 Alameda  
El Paso, Texas 79907  
Telephone (915) 859-2233  
FAX No. (915) 859-3016

6/14/02  
Date

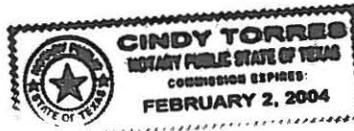
**STATE OF TEXAS  
COUNTY OF EL PASO**

**BEFORE ME**, the undersigned authority, on this day personally appeared David Escobar and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** this the 4 day of June, 2002.

*Cindy Torres*  
Notary Public in and for  
The State of Texas

Cindy Torres  
Printed Name of Notary



My Commission Expires: 2-2-04

**STATE OF TEXAS  
COUNTY OF EL PASO**

**BEFORE ME**, the undersigned authority, on this day personally appeared Ben Ivey and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 14 day of June, 2002.

Cindy Torres  
Notary Public in and for  
The State of Texas

Cindy Torres  
Printed Name of Notary



My Commission Expires: 2-2-04

**LESSEE** - State of Texas acting by and through the  
Texas Youth Commission,  
An Agency of the State of Texas

By Paul W. Reeves  
Paul Reeves  
Director Business Services  
4900 North Lamar  
Austin, Texas 78765  
Telephone (512) 424-6261  
FAX (512) 424-6337

6/18/02  
Date

**Approved as to Form:**

By Harold A. Helm  
TYC Attorney

6/18/02  
Date

**STATE OF TEXAS  
COUNTY OF TRAVIS**

**BEFORE ME**, the undersigned authority, on this day personally appeared Paul Reeves, Director of Business Services of the Texas Youth Commission, an agency of the State of Texas, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

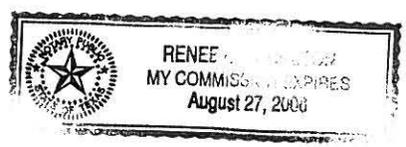
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 18<sup>th</sup> day of June, 2002.

Renee G. Johnston

Notary Public in and for the  
State of Texas

Renee G. Johnston  
Printed Name of Notary

My Commission Expires: 8-27-06



## CPI ESCALATION CLAUSE (25%)

1. On each renewal date of the lease, the total monthly rent of the resulting contract may be adjusted by changes in the Consumer Price Index reflecting percentage increases or decreases. The Lessor must request by letter to the Lessee any increase in rent no earlier than sixty (60) days prior to the renewal date and no later than thirty (30) days after the renewal date.
2. The Formula for determining the amount of escalation allowable in any given contract year shall be:

Base Factor X Percent Escalation Allowable = Amount of Escalation Allowed:

The new monthly rental would be the monthly rental in effect for the previous year of the contract increased by the "Amount of Escalation Allowed."

3. Percent Escalation Allowable will be based on a percent change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W, U.S. City Average) published by the United States Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. Percent changes shall be rounded to the nearest one-tenth of one percent.

For Illustrative Purposes Only:  
January, 1985 = 312.6  
January, 1986 = 324.3 (represents 3.7% increase)

4. Base Factor: Twenty-five percent (25%) of the monthly cost on Bid will be the base factor used to calculate the escalation.

Example:

If the total cost per month for the subject space were Two Thousand Dollars (\$2,000.00), the base factor would be Five Hundred Dollars (\$500.00) (25% of \$2,000.00 = \$500.00). Base factor being \$500.00 and the escalation allowable is 3.7%, then the amount of escalation allowed is \$18.50 (\$500.00 x 3.7% = \$18.50) and the new monthly rental for the new year of the contract would be Two Thousand Eighteen and 50/100 Dollars (\$2,018.50).

5. The first CPI Escalation date would be September 1, 2004, based upon the percent change in the CPI from June 2003 and 2004. Each renewal year, the same procedure as outlined above will be used.

**LEASE AGREEMENT  
(CORRECTED)  
AMENDMENT #1  
694F-53-02 EL PASO**

This lease dated June 18, 2002, between the **Texas Youth Commission**, hereinafter referred to as TYC, and **BAM Joint Venture**, hereinafter referred to as BAM for the Schaeffer House is amended as follows:

Under **Article 3, Paragraph B**, the lease is amended to delete "September" and substitute "January"

Under **Article 4, Paragraph A**, the lease is amended to delete "December 1, 2002," and substitute "January 14, 2003" and to delete "December 31, 2012," and substitute "January 13, 2013"

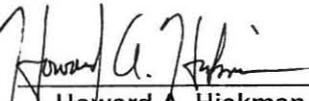
Under **Attachment A, CPI Escalation Clause(25%) Paragraph 5**, the lease is amended to delete "September 1, 2004" and substitute "January 1, 2004" and to delete "June 2003 and 2004" and substitute "October, 2002 and October, 2003"

**TEXAS YOUTH COMMISSION:**

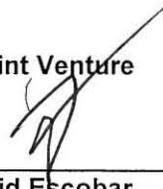
By:   
Paul W. Reeves  
Director of Business Services

Date: 3/20/03

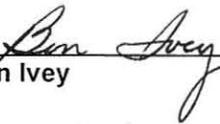
Approved as to form:

  
Howard A. Hickman  
TYC Staff Attorney

**BAM Joint Venture**

By:   
David Escobar

Date: 3/14/03

  
Ben Ivey

Date: 03/14/03