

Staff Summary Report



Council Meeting Date: August 14, 2008

Agenda Item Number: _____

SUBJECT: Second public hearing to approve Ordinance 2008.34 authorizing the Mayor to execute documents to terminate a Lease with, and convey property to, Mark and Lynn Irby.

DOCUMENT NAME: 20080814cdcm01 **COMM DEV/REDEVELOPMENT ADM (0403-01) ORDINANCE NO. 2008.34**

SUPPORTING DOCS: No

PREPARED BY: Chris Messer, Principal Planner (350-8562)

REVIEWED BY: Chris Salomone, Community Development Manager (350-8294)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (350-2187)

FISCAL NOTE: Per the Lease Dated May 1, 1998 the property is to be conveyed at no charge.

RECOMMENDATION: Authorize the Mayor to execute the Agreement to Convey Premises and Terminate the Lease and other documents as needed.

ADDITIONAL INFO: On January 8, 1986, the City entered into a Redevelopment and Disposition Agreement with U.H.B. Plaza Limited Partnership (Developer) for the Redevelopment of Centerpoint Plaza. As part of the Agreement, the developer was to preserve the historic Brown/Strong/Reeves house located at 605 South Ash Avenue. The City currently owns the property. The Developer assigned their rights and responsibilities for that property to Mark and Lynn Irby. In 1998, the City Council approved resolution No. 98.29 authorizing an eight year abatement of the Government Property Lease Excise Tax (GPLET) to assist with the historic restoration of the Brown/Strong/Reeves house. The abatement was conditioned on the Irbys entering into a lease of the property. Per the Lease, at the end of the abatement period, the City is required to contribute the property to the Irbys with no additional consideration to be paid. With this action, the process will begin to transfer the property to the Irbys and return the property to the property tax rolls.

To effectuate this transaction, staff has prepared a Notice of Lease Termination, and a Quit Claim Deed. Once executed, these documents will be recorded in Maricopa County and the property will be placed on the property tax rolls effective with the recordation.

ORDINANCE NO. 2008.34

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS TRANSFERRING OWNERSHIP OF PROPERTY OWNED BY THE CITY AND KNOWN AS THE BROWN/STRONG/REEVES HOUSE TO MARK AND LYNN IRBY AND ACKNOWLEDGING TERMINATION OF A LEASE ALLOWING FOR THE PROPERTY TO BE PLACED BACK ON THE TAX ROLLS.

WHEREAS, The City of Tempe owns the property at 605 South Ash Avenue in Tempe Arizona, more particularly described in **Exhibit A (the “Premises”)**; and

WHEREAS, on May 1, 1998, Centerpoint Plaza Limited Partnership, an Arizona Limited Partnership assigned all of its rights and obligations under that certain Redevelopment and Disposition Agreement, recorded on January 8, 1986 as Instrument No 860095532 of the records of the Maricopa County Recorder, to Mark and Lynn Irby, Husband and Wife, as recorded on August 5, 1998 as Instrument 98-0680105 of the records of Maricopa County Recorder; and

WHEREAS, on May 1, 1998 the City of Tempe entered into a lease with Mark and Lynn Irby; and

WHEREAS, on May 14, 1998, the City of Tempe passed Resolution No. 98.29 allowing for an eight year abatement of the Government Property Lease Excise Tax; and

WHEREAS, the GPLET abatement period expired on November 1 2007, and the parties desire to provide for conveyance of the property to Mark and Lynn Irby.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. The Mayor or his designee is authorized to execute any documents that may be necessary to carry out the provisions of this Ordinance, including but not limited to the Notice of Lease Termination and Deed in substantially the forms attached hereto as **Exhibit B**.

Section 2. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE,
ARIZONA, this _____ day of _____, 2008.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A
the “Premises”

That portion of the Southwest Quarter of the Southwest Quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, more particularly described as follows:

Commencing at the intersection of 5th Street and Ash Avenue Marked by a Brass Cap monument;

Thence bearing N.89°58'28"W., a distance of 40 feet;

Thence S.00°10'37"W., a distance of 49.5 feet to a point marking the intersection of the south right-of-way line 5th Street and the east right-of-way line of Ash Avenue;

Thence S.00°10'37"W., along the east right-of-way line of Ash Avenue a distance of 177.34 feet to a point marking the beginning of a curve concave to the east, said curve having a central angle of 23°13'38" and a radius of 620.00 feet;

Thence along said curve a distance of 251.34 feet to the TRUE POINT OF BEGINNING;

Thence S.89°59'24"E., a distance of 167.2 feet;

Thence S.00°00'36"W., a distance of 100.0 feet;

Thence N.89°59'24"W., a distance of 114.19 feet to a point on the east right-of-way line of Ash Avenue being a curve concave to the east having a central angle of 23°13'38" and a radius of 620.00 feet;

Thence northwesterly along said curve a distance of 113.75 feet to the TRUE POINT OF BEGINNING.

Exhibit B

WHEN RECORDED, MAIL TO:

Tempe Basket

NOTICE OF LEASE TERMINATION

THIS NOTICE OF LEASE TERMINATION is made and entered into to be effective this ____ day of _____, 2008 by and between the CITY OF TEMPE, an Arizona municipal corporation (“Lessor”) and Mark and Lynn Irby, Husband and Wife (“Lessee”) and is as follows:

1. Lessor and Mark and Lynn Irby, Husband and Wife (“Lessee”) previously executed that certain Lease dated May 1, 1998 (the “Lease”) with respect to the real property described on Exhibit A (the “Premises”).
2. The parties now desire to terminate the Lease and give constructive notice thereof to all persons dealing with the Premises.

IN WITNESS WHEREOF, the parties have executed this Notice of Lease Termination to give constructive notice to all persons dealing with the Premises that the Lease has expired for all purposes.

{Signature Pages Follow}

CITY OF TEMPE, an Arizona municipal corporation

By _____

Its _____

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008 by _____ the _____ of THE CITY OF TEMPE, an Arizona municipal corporation, for and on behalf of said City.

Notary Public

My Commission Expires:

LESSEE, Mark and Lynn Irby, Husband and Wife

By _____
Mark Irby

By _____
Lynn Irby

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2008, before me, the undersigned officer, personally appeared Mark Irby:

_____ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
_____ whose identity I verified on the basis of his/her _____,

and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this ____ day of _____, 2008, before me, the undersigned officer, personally appeared Lynn Irby:

____ whom I know personally;
____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
____ whose identity I verified on the basis of his/her _____,

and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

Exhibit B

WHEN RECORDED, RETURN TO:

Mark and Lynn Irby
3350 South Beverly Place
Chandler, AZ 85281

EXEMPT from the
requirement for an
Affidavit per
11-1134A3

DEED AND BILL OF SALE FOR IMPROVEMENTS

For consideration of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the undersigned, **CITY OF TEMPE**, as Arizona municipal corporation ("**Grantor**") does hereby convey to **Mark and Lynn Irby**, husband and wife ("**Grantee**"), the real property described on the attached Exhibit A which is incorporated herein by this reference and all improvements thereon (the "**Premises**").

Grantor warrants to Grantee that it is conveying the Premises subject only to: (i) matters of record as of the date of commencement of that certain Lease dated May 1, 1998 between Grantor and Grantee, and (ii) matters created by or with the consent of Grantee or at the sufferance of Grantee; and (iii) all other matters that may have arisen as a result of the acts or omissions of Grantee. Grantor conveys the Premises in their "as-is" condition without representation or warranty whatsoever.

{Signature Page Follows}

Effective _____, 2008.

CITY OF TEMPE, an Arizona municipal corporation

By _____
Its _____

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008 by _____ the _____ of **THE CITY OF TEMPE**, an Arizona municipal corporation, for and on behalf of said City.

Notary Public

My Commission Expires:

EXHIBIT A
the “**Premises**”

That portion of the Southwest Quarter of the Southwest Quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, more particularly described as follows:

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