

510-63-1454

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CONSENT TO ENCROACH

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF HARRIS §

THAT THIS CONSENT TO ENCROACH (this "Consent") is made and entered into by and between the CITY OF HOUSTON, a Municipal Corporation situated in Harris, Fort Bend and Montgomery Counties, Texas (hereinafter called "City") and 1111 Rusk Realty Partners, a Texas General Partnership (hereinafter called "Owner").

WHEREAS, Owner has requested permission for their permanent improvements (the "Improvements") to encroach 2,610 square feet into the street rights-of-way of Capitol Avenue, Rusk Avenue and San Jacinto Street ("Encroachments"); and

WHEREAS, the Director of Public Works and Engineering has recommended that the City give its permission for this Consent; and

WHEREAS, the City Council of the City has found and determined that at the present time the Encroachments do not interfere with the public use of the subject rights-of-way and do not create a hazardous or dangerous condition thereof; and

WHEREAS, the City Council of the City desires to permit the Encroachments of the Improvements in accordance with Article 1085b, Revised Civil Statutes of Texas by authorizing the following:

NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein contained and subject to the terms and provisions of this Consent, the City hereby consents to the Encroachments of the Improvements into the street rights-of-way described herein, and the City and Owner further agree as follows:

Section 1. TERM

This Consent shall be for a term of thirty (30) years, commencing on the date this Consent is executed by the Mayor on behalf of the City and ending on the earlier to occur of (i) the date which is thirty (30) years after the commencement date or (ii) the date the existing Improvements within the Encroachments are destroyed or removed therefrom; provided, however, this Consent may be terminated at any time during the term hereof by the City Council of the City on its affirmative finding that the Encroachments may reasonably interfere with the public use of the right-of-way or will constitute a hazardous or dangerous condition thereon. Upon any termination of this Consent, however such termination may be brought about, Owner shall remove the Improvements from the City's right-of-way at Owner's sole cost and expense, within ninety (90) days after a written request to remove same is made by the Director of Public Works and Engineering. In the event the Owner fails to remove the Improvements within ninety

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(90) days of such request, the City shall have the right to (i) demolish and remove the Improvements located within the rights-of-way at Owner's expense, payable immediately upon demand by the City, or (ii) retain the Improvements located within the rights-of-way for the City's benefit, without any compensation to Owner and without liability or other obligations. Owner agrees for itself, its successors and assigns that no material alterations will be made to the Improvements encroaching into the City's rights-of-way without the prior written consent of the Director of Public Works and Engineering.

Section 2. ENCROACHMENT AREA

The locations of the Encroachments within the rights-of-way are those certain tracts or parcels of land situated in the City of Houston, Harris County, Texas and being 15 square feet into the street right-of-way of Capitol Avenue and 2,595 square feet into the street rights-of-way of Rusk Avenue and San Jacinto Street, being more particularly described by metes and bounds in Exhibit "A" and Exhibit "B", each consisting of one (1) page, and attached hereto and made a part hereof.

Owner agrees for itself, its successors and assigns that if the City shall at any time, in the exercise of its sole discretion, determine that it is reasonable or necessary for the purposes of properly maintaining, adding to, substituting, altering, removing, repairing and/or replacing any of its facilities now or hereafter located within the rights-of-way, the City shall have the right and option to require Owner to immediately remove, relocate and/or alter such portion of the Improvements as are reasonable and necessary, in the sole discretion of the City, for the City to make or perform such maintenance, additions, substitutions, alterations, removals, repairs or replacements of its facilities. In the event that Owner fails to perform such removals, relocations or alterations within thirty (30) days after written demand from the Director of Public Works and Engineering of the City, the City shall have the right and option to perform such removal, relocation or alteration at the expense of Owner and Owner shall be obligated to reimburse the City for all costs and expenses incurred by the City in connection therewith, immediately upon demand. **OWNER, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY RELEASES THE CITY FROM ANY AND ALL LIABILITY FOR ANY DAMAGES TO THE IMPROVEMENTS CAUSED BY ANY SUCH REMOVAL, RELOCATION OR ALTERATION.**

ADDITIONALLY, OWNER, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY FURTHER AGREES TO RELEASE THE CITY FROM ANY AND ALL LIABILITIES FOR LOSS OR DAMAGE TO THE IMPROVEMENTS CAUSED BY, RESULTING FROM OR RELATED TO THE PRESENCE OR MALFUNCTIONING OF OR THE MAINTENANCE, ADDITIONS TO, SUBSTITUTIONS FOR, ALTERATIONS OF, REMOVAL, REPAIR OR REPLACEMENT OF THE CITY'S FACILITIES WITHIN THE RIGHTS-OF-WAY, WITHOUT REGARD TO WHETHER THE CITY'S NEGLIGENCE MAY HAVE CONTRIBUTED TO ANY SUCH LOSS OR DAMAGE.

Owner agrees for itself, its successors and assigns, that if the construction, replacement, maintenance, operation, alteration or removal of the Improvements by Owner, its successors or assigns, cause any damage to or harm to the City's facilities located within the rights-of-way,

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Owner shall pay the costs of repairs or replacements to said facilities immediately upon demand by the City.

Section 3. ASSIGNMENT

Owner shall not, wholly or in part, by law or otherwise, transfer, assign or otherwise dispose of any of its rights or interests in this Consent, without the prior written permission of the City, which permission may be withheld with or without cause. If assigned or transferred, each provision of this Consent shall be binding upon and inure to the benefit of the transferee or assignee and shall not be effective unless or until any such transferee or assignee signs and delivers to the City an assumption agreement, in recordable form, setting forth all of the terms and provisions of such assumption and otherwise in a form and with such content as the City may require.

Section 4. INDEMNIFICATION AND RELEASE OF CITY

(A) OWNER, FOR ITSELF AND ITS PREDECESSORS, SUCCESSORS AND ASSIGNS HEREBY RELEASES, RELINQUISHES AND DISCHARGES THE CITY AND ITS PREDECESSORS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES AND ITS FORMER, PRESENT AND FUTURE AGENTS, EMPLOYEES AND OFFICERS FROM ANY AND ALL LIABILITIES, CLAIMS, LOSSES, DAMAGES OR INJURIES TO PERSONS OR PROPERTY, COSTS OR EXPENSES (COLLECTIVELY "CLAIMS") ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY OF THE RIGHTS OR OBLIGATIONS ARISING HEREUNDER, INCLUDING, WITHOUT LIMITATION, CLAIMS CAUSED BY OR ARISING FROM THE SOLE AND/OR CONCURRENT NEGLIGENCE OF THE CITY.

(B) OWNER FOR ITSELF AND ITS PREDECESSORS, SUCCESSORS AND ASSIGNS, SHALL PROTECT, DEFEND, INDEMNIFY AND HOLD THE CITY, ITS PREDECESSORS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES AND ITS FORMER, PRESENT AND FUTURE OFFICERS, AGENTS AND EMPLOYEES COMPLETELY HARMLESS FROM AND AGAINST; (i) ANY AND ALL LIABILITIES, LAWSUITS, CAUSES OF ACTION, LOSSES, CLAIMS, JUDGMENTS, DAMAGES, FINES OR DEMANDS ARISING BY REASON OF OR IN CONNECTION WITH THE ACTUAL OR ALLEGED ERRORS, OMISSIONS, OR NEGLIGENT ACTS OF THE CITY IN CONNECTION WITH THIS CONSENT; AND (ii) ALL COSTS FOR THE INVESTIGATION AND DEFENSE OF ANY AND ALL LIABILITIES, LAWSUITS, CAUSES OF ACTIONS, LOSSES, CLAIMS, JUDGMENTS, DAMAGES, FINES OR DEMANDS REFERRED TO IN THE PRECEDING CLAUSE (i) (INCLUDING, BUT NOT LIMITED TO, ATTORNEY FEES, COURT COSTS, DISCOVERY COSTS AND EXPERT FEES). OWNER'S PLEDGE TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS PREDECESSORS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES AND ITS FORMER, PRESENT AND FUTURE AGENTS, EMPLOYEES AND OFFICERS EXPRESSLY EXTENDS TO THE ACTUAL OR ALLEGED JOINT OR CONCURRENT NEGLIGENCE OF THE CITY, ITS PREDECESSORS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES AND ITS FORMER, PRESENT AND FUTURE AGENTS, EMPLOYEES AND OFFICERS AND

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OWNER, ITS PREDECESSORS, SUCCESSORS AND ASSIGNS; AND ALSO EXPRESSLY EXTENDS TO THE ACTUAL OR ALLEGED SOLE NEGLIGENCE OF THE CITY, ITS PREDECESSORS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES AND ITS FORMER, PRESENT AND FUTURE OFFICERS, AGENTS AND EMPLOYEES.

(C) UPON THE FILING BY ANYONE OF ANY TYPE OF CLAIM, CAUSE OF ACTION, OR LAWSUIT AGAINST THE CITY FOR ANY TYPE OF DAMAGES ARISING OUT OF INCIDENTS FOR WHICH OWNER MAY BE LIABLE PURSUANT TO THE PRECEDING PARAGRAPH, THE CITY SHALL NOTIFY OWNER OF SUCH CLAIM, CAUSE OF ACTION OR LAWSUIT. IN THE EVENT THAT OWNER DOES NOT SETTLE OR COMPROMISE SUCH CLAIM, CAUSE OF ACTION OR LAWSUIT AT ITS OWN COST, THEN OWNER SHALL UNDERTAKE THE LEGAL DEFENSE OF SUCH CLAIM, CAUSE OF ACTION OR LAWSUIT AT ITS OWN COST BOTH ON BEHALF OF ITSELF AND ON BEHALF OF THE CITY UNTIL FINAL DISPOSITION, INCLUDING ALL APPEALS. THE CITY MAY PARTICIPATE IN THE LEGAL DEFENSE OF ANY SUCH CLAIM, CAUSE OF ACTION OR LAWSUIT AND IN THE SELECTION OF COUNSEL BY OWNER TO DEFEND AGAINST SUCH CLAIM, CAUSE OF ACTION OR LAWSUIT. ANY FINAL JUDGMENT RENDERED AGAINST THE CITY FOR ANY CAUSE FOR WHICH OWNER IS LIABLE HEREUNDER SHALL BE CONCLUSIVE AGAINST OWNER AS TO LIABILITY AND AMOUNT UPON THE EXPIRATION OF THE TIME FOR ALL APPEALS.

IN WITNESS WHEREOF, the duly authorized officers of the City and Owner have executed this Consent in multiple counterparts, each of which is deemed to be an original, effective on the date that the Mayor of the City signs this Consent.

OWNER:

1111 RUSK REALTY PARTNERS, A TEXAS
GENERAL PARTNERSHIP

Crossway Realty, Ltd., Managing Partner

By: [Signature]

Name: DAVID SALOMON

5415 Sugar Hill, Inc., Managing Partner

By: [Signature]

Name: SAM LUTFAK

510-63-1458

ATTEST:

CITY OF HOUSTON, TEXAS

Bob Lanier

[Signature]
City Secretary

Mayor Bob Lanier

Date:

10-17-96

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on the 9th day of September 1996,
by DAVID SALOMON of Crossway Realty Ltd., Managing Partner of 1111
Rusk Realty Partners, a Texas General Partnership, on behalf of said partnership.

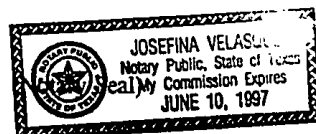


Judith M. Cipolla
Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on the 16th day of September 1996,
by Jon Lutzak of 5415 Sugar Hill, Inc., Managing Partner of 1111
Rusk Realty Partners, a Texas General Partnership, on behalf of said partnership.



Josefina Velazquez
Notary Public, State of Texas

510-63-1459

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on the 1st day of October, 1996,
by **Bob Lanier**, Mayor of the City of Houston, Texas a municipal corporation on behalf of said
municipal corporation.

Darlene M. Nekegajal

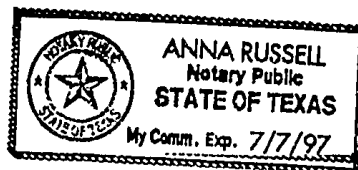
Anna Russell
Notary Public, State of Texas

(Notary Seal)

Approved As to Form:

Charles J. Foerster

Charles J. Foerster
Senior Assistant City Attorney



L.D. File Number: 73-96010-01

R.F. GRAHAM, FRIGHT & SMITH
5428 LBJ Fwy, Suite 300
DALLAS, TX 75240-2384

PARCEL NO. EN96-2A

. M. NO. 95-1441

FIELD NOTE DESCRIPTION DWG. NO. 32,287

Sheet No. 1 of 2

BEING a 15 square foot tract of land situated in the City of Houston, Harris County, Texas and being a portion of Capitol Avenue right-of-way, adjacent to the northeasterly line of Block 79 of SOUTH SIDE BUFFALO BAYOU (SSBB), said 15 square foot tract of land being more particularly described as follows:

COMMENCING at the City of Houston Reference Rod Number 18, a 1 inch brass rod found in the intersection of San Jacinto Street with Capitol Avenue;

THENCE with the City of Houston Reference Line in Capitol Avenue toward Reference Rod Number 17, a 1 inch brass rod found in the intersection of Capitol Street with Main Street at a distance of 669.50 feet. North 55°00'00" West a distance of 292.00 feet to a point for corner;

THENCE South 35°00'00" West a distance of 40.00 feet to the most northerly corner of said Block 79;

THENCE with the northeasterly line of said Block 79, South 55°00'00" East a distance of 85.27 feet to the most westerly corner of the tract of land described vacating a portion of Capitol Avenue recorded in Volume 3721, Page 617 of the Deed Records of Harris County, Texas;

THENCE with said vacated portion of Capitol Avenue the following:

North 35°00'00" East a distance of 3.28 feet;

South 55°00'00" East a distance of 40.01 feet to the POINT OF BEGINNING of the herein described tract of land;

THENCE along the northeasterly line of an existing building wall, South 55°00'00" East a distance of 6.20 feet;

THENCE with the southeasterly line of said wall, South 35°00'00" West a distance of 2.10 feet;

THENCE with the southwesterly line of said wall, North 55°00'00" West a distance of 4.75 feet;


THENCE with the southeasterly line of said wall, South 35°00'00" West a distance of 1.18 feet to a point on the northeasterly line of said Block 79;

THENCE with the northeasterly line of Block 79, North 55°00'00" West a distance of 1.45 feet to the most southerly corner of said tract of land vacating a portion of Capitol Avenue;

THENCE with the southeasterly of said tract vacating a portion of Capitol Avenue, North 35°00'00" East a distance of 3.28 feet to the POINT OF BEGINNING;

CONTAINING a computed area of 15 square feet of land within this description.

Prepared as a result of an on the ground survey by Bowes & Associates Land Surveyors, Inc.


Gary C. Bowes
Registered Professional Land Surveyor No. 4053

Filename T032-02-5 FND

12/11/95

CHECKED: N.C.S.

DATE: 12-15-95

APPROVED: 

510-631460

EXHIBIT A
Page 1 of 1

PARCEL NO. EN96-2B

C..M. NO. 95-1441

DWG. NO. 32,287

FIELD NOTE DESCRIPTION

Sheet No. 2 of 2

BEING a 2,595 square foot tract of land situated in the City of Houston, Harris County, Texas and being a portion of Rusk Avenue and San Jacinto Street adjacent to Block 79 of SOUTH SIDE BUFFALO BAYOU (SSBB), said 2,595 square foot tract of land being more particularly described as follows:

COMMENCING at the City of Houston Reference Rod Number 788, a 1 inch brass rod found in the intersection of Rusk Avenue with San Jacinto Street;

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THENCE with the City of Houston Reference Line in Rusk Avenue, North 55°00'00" West a distance of 31.30 feet;

THENCE North 35°00'00" East a distance of 37.50 feet to the POINT OF BEGINNING of the herein described tract of land and being the most southerly corner of the tract of land described in the Deed to Texaco, Inc. (The Texas Company) recorded in Volume 195, Page 368 of the Deed Records of Harris County, Texas, also being the present intersection of the northeasterly right-of-way line of Rusk Avenue with the northwesterly right-of-way line of San Jacinto Street;

THENCE with the northwesterly right-of-way line of San Jacinto Street, North 35°00'00" East a distance of 101.60 feet;

THENCE South 54°25'32" East a distance of 9.74 feet;

FILED FOR RECORD
8:00 AM

THENCE South 34°57'23" West a distance of 112.57 feet;

NOV 1 1996

THENCE North 55°04'11" West a distance of 143.54 feet;

Beverly B. Fairman

County Clerk, Harris County, Texas

THENCE North 35°02'40" East a distance of 11.25 feet to a point in the northeasterly right-of-way line of Rusk Avenue;

THENCE with the northeasterly right-of-way line of Rusk Avenue, South 55°00'00" East a distance of 133.70 feet to the POINT OF BEGINNING;

CONTAINING a computed area of 2,595 square feet of land within this description.

Prepared as a result of an on the ground survey by Bowes & Associates Land Surveyors, Inc.


Gary C. Bowes
Registered Professional Land Surveyor No. 4053

Filename T032-02-5 CANOPY 12/11/95

CHECKED: N.C.S.

DATE: 12-15-95

APPROVED: *[Signature]*

EXHIBIT B
Page 1 Of 1

NOT A RECORD
THIS DOCUMENT IS NOT A RECORD
IT IS A COPY OF THE ORIGINAL
AND IS NOT TO BE USED FOR
ANY PURPOSE OTHER THAN
REPRODUCTION OF THE ORIGINAL
FOR ARCHIVAL PURPOSES, ETC.

510-63-1462

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL
PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW
THE STATE OF TEXAS }
COUNTY OF HARRIS }
I hereby certify that this instrument was FILED in File Number
Sequence on the date and at the time stamped hereon by me; and was
duly RECORDED in the Official Public Records of Real Property of
Harris County, Texas on

NOV 1 1996



Beverly B. Hoffman
COUNTY CLERK
HARRIS COUNTY TEXAS