

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Aviation

AGENDA DATE: March 16, 2021

CONTACT PERSON NAME AND PHONE NUMBER: Samuel Rodriguez, Aviation Director (915) 212-7301

DISTRICT(S) AFFECTED: 2

CITY STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

That the City Manager be authorized to sign a First Amendment and a Lessor's Approval of Assignment for a General Aviation Commercial Ground Lease between the City of El Paso ("Lessor") and TJW Aviation, LLC ("Lessee") for the property described as Parcel 2D being a portion of Lot 2, Block 4, El Paso International Airport Tract Unit 10, City of El Paso, El Paso County, Texas, municipally known and numbered as 1740 American Drive, El Paso Texas.

The First Amendment adds three (3) additional ten (10) year options.

The Lessor's Approval of Assignment consents to the Assignment of the lease from TJW Aviation, LLC to Elite Medical Air Transport, LLC.

BACKGROUND / DISCUSSION:

TJW Aviation, LLC requests the additional options and the Approval of the Assignment of the lease to enable Elite Medical Air Transport, LLC to purchase the building at 1740 American Drive from TJW Aviation, LLC.

PRIOR COUNCIL ACTION:

Lease - September 1, 2008

Approval of Assignment - May 8, 2012

AMOUNT AND SOURCE OF FUNDING:

N/A This is a revenue – generating item.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Samuel Rodriguez

**Samuel Rodriguez, P.E.
Aviation Director**

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager is authorized to sign a First Amendment to General Aviation Commercial Ground Lease – El Paso International Airport, and Lessor’s Approval of Assignment by and between the City of El Paso (“Lessor”), TJW Aviation, LLC (“Assignor”), and Elite Medical Air Transport, LLC (“Assignee”) for the following described property:

Parcel 2D being a portion of Lot 2, Block 4, El Paso International Airport Tract Unit 10, consisting of approximately 50,608 square feet of land, El Paso, El Paso County, Texas, municipally known and numbered as 1740 American Drive, El Paso, Texas

Dated this ____ day of _____ 2021.


CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:


Laura D. Prine, City Clerk

APPROVED AS TO FORM:



Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

STATE OF TEXAS)
)
COUNTY OF EL PASO) **FIRST AMENDMENT TO GENERAL AVIATION
COMMERCIAL GROUND LEASE -
EL PASO INTERNATIONAL AIRPORT**

This First Amendment to the General Aviation Commercial Ground Lease (the "Amendment") is made and entered into this _____ day _____, 2021, by and between the City of El Paso, a municipal corporation existing under the laws of the State of Texas (the "Lessor"), and TJW Aviation, LLC, a limited liability company organized under the laws of the State of Texas (the "Lessee").

WHEREAS, Lessor and Lessee entered into a Lessor's Approval of Assignment (the "Lease"), between El Paso Air Limited ("Assignor") and TJW Aviation, LLC ("Assignee") with an effective date of May 8, 2012, for the following described property:

Parcel 2D being a portion of Lot 2, Block 4, El Paso International Airport, Tract Unit 10, City of El Paso, El Paso County, Texas, commonly known as 1740 American Drive, El Paso, Texas, containing approximately 50,608 square feet, more or less, and being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof ("Property");

WHEREAS, Lessee desires to add (three) 3 additional ten (10) year extensions to the Lease; and

WHEREAS, the parties wish to update the language required by the U.S. Federal Aviation Administration ("FAA")

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to amend the Lease as follows:

1. Section 5.02, Option, of the Lease is amended to read as follows:

In the event that Lessee is not in default of any terms of this Lease, Lessee shall have the option to extend this Lease for (three) 3-ten (10) additional years ("Option Period") by notifying Lessor in writing at least one hundred and twenty (120) days prior to the expiration of the Initial Term or the then current Option Period. In the event the election is so exercised, the Lease shall be extended for an additional ten (10) years on the same terms and conditions, except that the Ground Rental shall be adjusted in accordance with Section 6.03 below. In no event, however, shall the adjusted Ground Rental during the current Option Period be less than the Ground Rental in place for the lease period immediately preceding the commencement of the Option Period.

2. **Section 12.07, Nondiscrimination Covenant**, of the Lease is deleted and replaced in its entirety to read as follows:

Section 12.07 Compliance with Nondiscrimination Requirements.

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (for purposes of this Section 12.07 hereinafter referred to as the "Contractor"), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Lessor (for purposes of this Section 12.07 hereinafter referred to as the "sponsor") or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of

equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

3. **Section 12.21, FAA Order 1400.11** is hereby added to the Lease, to read as follows:

Section 12.21, FAA Order 1400.11. Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

1. A. Tenant for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in Pertinent List of Nondiscrimination Authorities (Federal Aviation Administration Order 1400.11, Appendix 4) as same may be amended from time to time (the "Acts and Regulations") such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Landlord will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix C]

2. A. The Tenant for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the listed acts and authorities appearing in the Acts and Regulations.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Landlord will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix D]

3. A. During the term of this Lease, Tenant for itself, its assignees, and successors in interest, as a part of the consideration hereof, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination

includes discrimination because of limited English proficiency (LEP). Grantee shall take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 USC 1681 *et seq.*).

B. In the event of breach of any of the covenants in this section 3, Landlord shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E]

4. **Section 12.22 General Civil Rights Provision**, is hereby added to the Lease, to read as follows:

Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the transferor.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

5. **Section 12.23 Effective Date**. Regardless of the date signed, this Lease shall be effective as of the date first noted on the title page.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

EXECUTED this ____ day of _____, 2021.

LESSOR: CITY OF EL PASO


Tomás González
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Leslie B. Jean-Pierre
Assistant City Attorney



Samuel Rodriguez, P.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

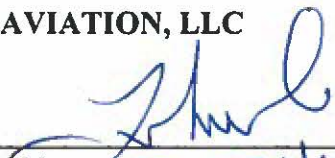
This instrument was acknowledged before me on this ____ day of _____, 2021, by **Tomás González** as **City Manager** of the City of El Paso, Texas (Lessor).

Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

LESSEE

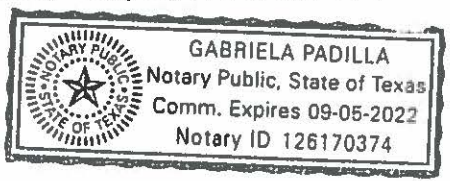
TJW AVIATION, LLC

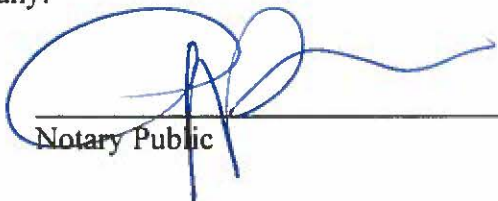
By: 
 Printed Name: Tim Wilson
 Title: member

ACKNOWLEDGMENT

THE STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

This instrument was acknowledged before me on this 3rd day of March, 2021, by Tim Wilson, as member of **TJW Aviation, LLC** (Lessee), a Texas limited liability company, on behalf of said company.




 Notary Public

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LESSOR'S APPROVAL OF ASSIGNMENT

WHEREAS, the City of El Paso ("Lessor") entered into a Lessor's Approval of Assignemnt, with an Effective Date of May 8, 2012 (the "Lease"), between the Lessor and TJW Aviation, LLC, a Texas limited liability company ("Assignor"), for the following described property:

Parcel 2D being a portion of Lot 2, Block 4, El Paso International Airport, Tract Unit 10, City of El Paso, El Paso County, Texas, commonly known as 1740 American Drive, El Paso, Texas, containing approximately 50,608 square feet, more or less, and being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof ("Property");

WHEREAS, Assignor has requested the Lessor's approval and consent to an assignment of the Lease to Elite Medical Air Transport, LLC.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to Elite Medical Air Transport, LLC. ("Assignee"), on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under the terms of the Lease from and after the effective date of the assignment of the Lease to Assignee, and upon the further condition that Assignee agrees to accept and abide by all the terms, covenants, and conditions of the Lease.

Assignee does hereby assume and agrees to be liable to pay any and all sums owing or becoming due Lessor under the terms of the Lease from and after the effective date of the assignment of the Lease to Assignee, and Assignee agrees to accept and abide by all the terms, covenants, and conditions of the Lease.

2. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly agrees to be bound by the indemnification provisions contained in the Lease.
3. **RELEASE.** Assignor is hereby released and discharged by Lessor from all rights, privileges, responsibilities and obligations under the Lease first arising and accruing from and after the effective date of the assignment of the Lease and Lessor and Assignee each hereby acknowledges that, as of the effective date of the assignment, Assignee enjoys all such rights and privileges and is responsible for satisfying all such obligations the same as if the Lease had originally been executed between Lessor and Assignee.

4. **SECURITY DEPOSIT.** No Security Deposit is required as a condition to this Approval.
5. **RATIFICATION OF LEASE.** Except as expressly set forth herein, no provision of this Approval alters or modifies any of the terms and conditions of the Lease, and all other terms and conditions of the Lease shall remain in full force and effect.
6. **ADDRESS FOR NOTICE.** Notices to Assignee and Assignor shall be sufficient if sent by certified mail, postage prepaid, addressed to:

 ASSIGNOR: TJW Aviation, LLC
 420 S. Kenazo
 Horizon, Texas 79925
 Attn: Timothy J. Wilson

 ASSIGNEE: Elite Medical Air Transport, LLC
 7201 Boeing
 El Paso, Texas 79925
 Attn: _____
7. **AUTHORIZED REPRESENTATIVE.** The persons signing this Lessor's Approval of Assignment on behalf of the Assignee and Assignor represent and warrant that they have the legal authority to bind the Assignee and Assignor, respectively, to the provisions of this Lessor's Approval of Assignment.
8. **NON-WAIVER.** The Lessor's Approval of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments.
9. **EFFECTIVE DATE.** The Effective Date of this Lessor's Approval of Assignment will be the date this document is approved by the El Paso City Council.
10. **COUNTERPARTS.** This Lessor's Approval of Assignment may be executed in any number of counterparts, each of which shall be deemed an original for all purposes, and all of which shall constitute one and the same instrument as if all parties had signed the same signature page.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

APPROVED THIS _____ day of _____, 2021.

LESSOR: CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:

Samuel Rodriguez, P.E.
Director of Aviation

LESSOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ___ day of _____, 2021, by Tomás González as City Manager of the City of El Paso, Texas (Lessor).

Notary Public, State of Texas

My Commission Expires:

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

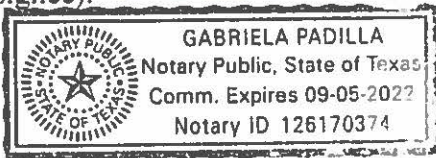
ASSIGNOR: TJW AVITION, LLC

By: [Signature]
Its: member
Tim J Wilson

ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF Texas
COUNTY OF El Paso

This instrument was acknowledged before me on this 3rd day of March, 2021,
by Tim J. Wilson, its member of TJW Aviation, LLC
(Assignee).



[Signature]
Notary Public, State of _____

My Commission Expires:

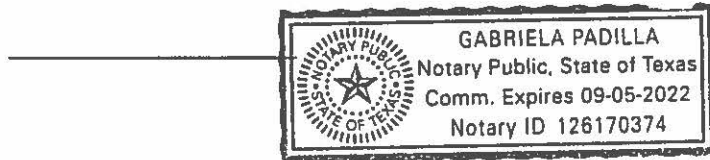


EXHIBIT A

PREPARED FOR: El Paso International Airport
Being a Portion of Lot 2, Block 4,
El Paso International Tracts Unit 10

PARCEL 2D

PROPERTY DESCRIPTION

Description of a parcel of land being a portion of Lot 2, Block 4, El Paso International Airport Tracts, Unit 10, El Paso County, Texas and being more particularly described by metes and bounds as follows:

Beginning at a City Monument located at the intersection of centerlines of American Drive and Piper Court, El Paso International Airport Tracts, Unit 10, El Paso County, Texas; thence South $1^{\circ} 01' 53''$ East along the centerline of American Drive, a distance of 200.00 feet; thence North $88^{\circ} 58' 07''$ East a distance of 34.00 feet to a point in the easterly right-of-way of said American Drive; thence along said right-of-way, 93.61 feet along the arc of a curve to the left whose interior angle is $7^{\circ} 07' 23''$, whose radius is 752.96 feet and whose chord bears South $4^{\circ} 35' 34''$ East a distance of 93.55 feet to THE POINT OF BEGINNING;


Thence South $89^{\circ} 19' 17''$ East, a distance of 256.14 feet;

Thence 161.20 feet along the arc of a curve to the left whose interior angle is $24^{\circ} 14' 14''$, whose radius is 381.07 feet and whose chord bears South $11^{\circ} 26' 24''$ East a distance of 160.00 feet;

Thence South $66^{\circ} 26' 30''$ West a distance of 228.24 to a point in the easterly right of way of said American Drive;

Thence along said right of way North $22^{\circ} 32' 14''$ West a distance of 75.01 feet;

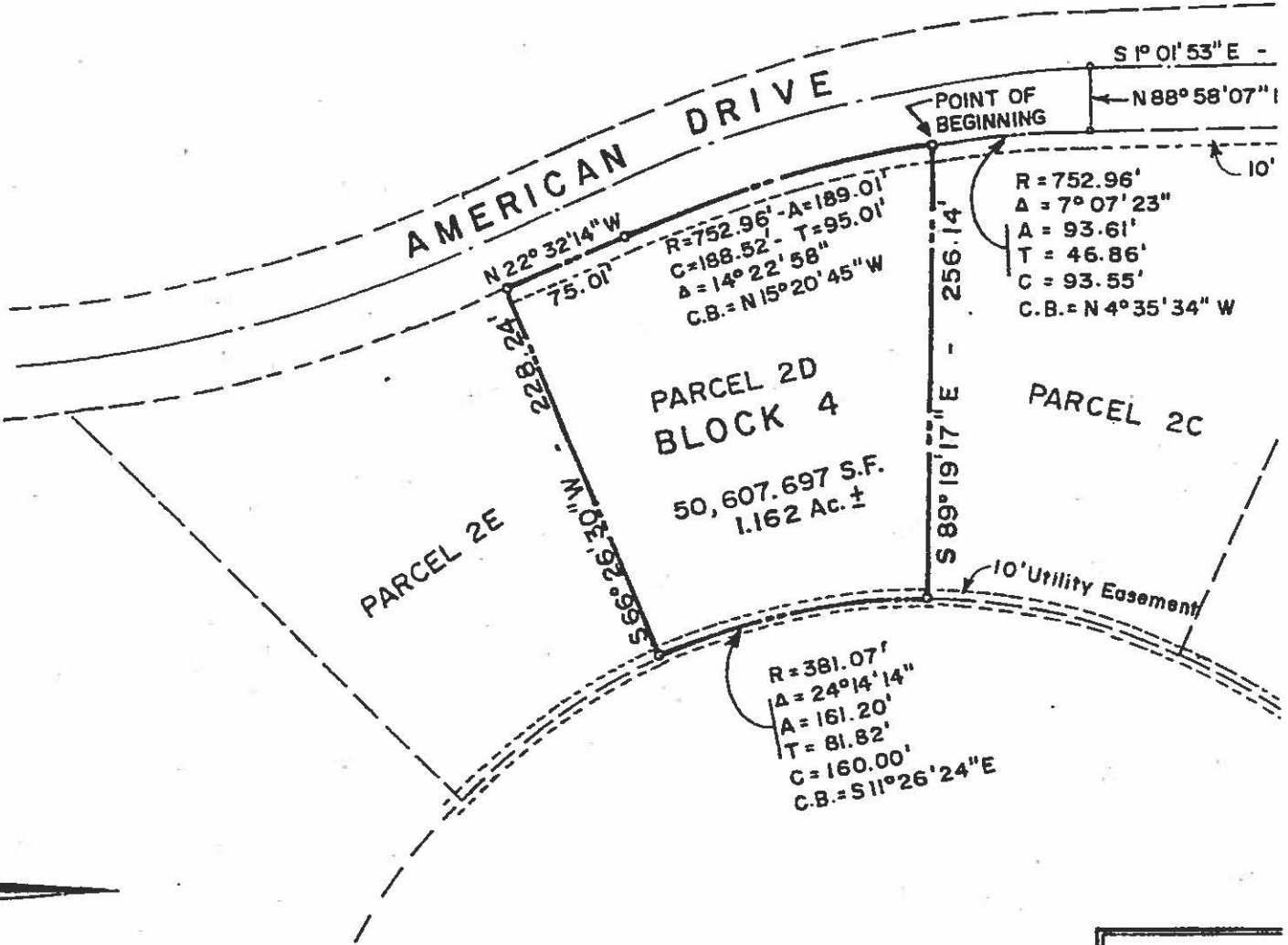
Thence along said right of way, 189.01 feet along the arc of a curve to the right whose interior angle is $14^{\circ} 22' 58''$, whose radius is 752.96 feet and whose chord bears North $15^{\circ} 20' 45''$ West a distance of 188.52 feet to THE POINT OF BEGINNING and containing in all 50,607.697 square feet or 1.162 acres of land more or less.



Donald T. Cremans, P.E.
CREMANS, INC.



BOEING DR.



PARCEL 2D; E
EL PASO INTL
EI
DATE: OCT. 17,