

THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

AGREEMENT FOR USE OF PROPERTY  
SUN METRO BUS STOP RELOCATION

This Agreement (“*Agreement*”) is made this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of El Paso, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as “City” and Housing Authority of the City of El Paso d/b/a Housing Opportunity Management Enterprises, a Texas municipal housing authority pursuant to Chapter 392 of the Texas Local Government Code (“*HOME*”).

**WITNESSETH**

**WHEREAS**, HOME owns the real property located at the street address of 201 Cortez Dr., El Paso, Texas 79905, situated in El Paso County, Texas and being more specifically defined by the property description attached hereto as Exhibit A (the “*Property*”); and

**WHEREAS**, HOME, through an affiliate (EP Cielo Tower, LP), maintains and operates a low income apartment complex formerly called the Pooley Apartments, which is planned to be re-opened, following a period of construction renovation, as the Cielo Tower Apartments on the Property (the “*Apartment Complex*”); and

**WHEREAS**, the City through its Mass Transit Department (“Sun Metro”) operates buses for public transportation that confer a benefit upon the general public; and

**WHEREAS**, City had an existing bus stop with a bus stop shelter that was recently decommissioned located on the sidewalk along Cortez Dr. in front of the Apartment Complex on the Property; and

**WHEREAS**, City and HOME agreed, in order to better serve the community that uses public transportation in the area, that the bus stop and bus stop shelter shall remain along Cortez Dr. near the Apartment complex but should be moved and re-located to the approximate position noted on the documentation provided by HOME, labeled as Exhibit B and attached hereto (the “*Parcel*”); and

**WHEREAS**, the Parcel where the bus stop and bus stop shelter is proposed to be relocated to is real property owned by HOME; and

**WHEREAS**, City and HOME desire to enter into an agreement whereby City may access and use the Parcel noted on Exhibit B for the construction, installation, operation, and maintenance of a Sun Metro Bus Stop and Bus Stop Shelter

Now, therefore, in consideration of the promises and of the mutual covenants herein contained, HOME, insofar as HOME’s rights are concerned, hereby authorizes City access, ingress and egress to construct, operate, monitor, repair, and maintain the Bus Stop within the Parcel upon the following terms and conditions:

1. City is hereby granted access by HOME for City to use and to occupy the Parcel, noted on Exhibit B, in order to construct, erect, install, maintain, inspect, repair, replace, remove, use and operate the Bus Stop, the Bus Shelter, trash receptacle, and any improvements and signage related thereto that are at the sole discretion of the City (collectively referred to as the "Bus Stop") Other than what is authorized herein, City shall not alter, modify, expand, or add to the Bus Stop in any way without receiving prior written consent from HOME. HOME will coordinate with the City for the location of the bus stop as approximately indicated in Exhibit B. The size and specifications of the Bus Stop will follow Sun Metro's latest standards. The City will follow Sun Metro's latest standards in the construction, operation and maintenance of the Bus Stop, to include compliance with federal, state and local laws and regulations.
2. **TERM.** This Agreement shall be for a term of 25 years from the execution date of this Agreement. So long as the bus stop is still in use, thereafter the term shall be automatically extended for another twenty-five (25) year period. Notwithstanding the foregoing, and in the absence of written notice by either party, after the Bus Stop is initially constructed and operational, this Agreement will terminate 180 days after the City either (a) removes the Bus Stop without erecting a new one, or (b) no longer uses the Bus Stop.
3. **CONSIDERATION.** The consideration for this Agreement is the operation of the Bus Stop at the site of HOME's property that will be used by the general public including the tenants of the Apartment Complex.
4. **UTILITIES.** HOME has utilities and/or facilities (e.g., Electrical, Gas, Telephone/Internet/Data, Water, Irrigation, Sidewalks, Landscaping) located proximate to and/or buried at the site of or in the vicinity of the Parcel. City and its contractors, subcontracts, agents, and employees shall exercise diligence to avoid damaging any such utilities and/or facilities, will notify HOME immediately in writing if any damage does occur, and reimburse HOME for the costs of any repairs made necessary by such damage.
5. **PERSONAL PROPERTY, SIGNAGE AND EQUIPMENT.** The City shall furnish and install, at its sole cost and expense, any personal property, furniture, signage and equipment for the operation of the Bus Stop. HOME agrees that in no event shall HOME obtain any interest in the Bus Stop or assert that any of the Bus Stop has become part of the Parcel. City retains the right to at any time remove all or any part of the Bus Stop.
6. **CONDITION OF PREMISES AND IMPROVEMENTS.** City accepts the Parcel "as is" in its present condition and state of repair. The foregoing does not limit the rights of the City to modify the Parcel as described in Section 1 above.
7. **MAINTENANCE.** City shall be responsible for all maintenance of the Bus Shelter at the City's sole cost and expense. HOME may contact City in the event that maintenance is needed for the Bus Stop.

8. **TERMINATION.** The City shall have the unilateral right to terminate this Agreement if the legal title to the Parcel is clouded in the City Attorney's sole legal judgment or it becomes too costly to modify the Parcel in order to construct the Bus Shelter on it or on the right of way next to the Parcel. Each party has the option of terminating this Agreement by giving 90 days written notice to the other party.
9. **TORT CLAIMS ACT:** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement within the State of Texas is subject to the immunities and limitations of the Texas Tort Claims Act. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the Texas Tort Claims Acts. City and its "public employees" as defined in the Texas Tort Claims Act, and the City and its "public employees" as defined in the Texas Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the Texas Tort Claims Act.

This Agreement is not intended by any of the provisions of any part of the Agreement to create in the public, or any member thereof, a third-party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit for wrongful death, bodily and/or personal injury to persons, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.
10. **TAXES.** HOME is a political subdivision of the State of Texas and is exempt from paying ad valorem taxes on the real property that includes the Parcel.
11. **GOVERNING LAW.** This License Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.
12. **VENUE.** This Agreement is entered in the City and County of El Paso, Texas. Venue for any dispute pertaining to this Agreement is in El Paso County, Texas.
13. **AMENDMENTS:** This Agreement shall not be altered except by an instrument in writing executed by the parties.
14. **MERGER OF PRIOR AGREEMENTS:** This Agreement includes all of the conditions, agreements, and understandings between the parties concerning the subject matter of this License Agreement, and all such conditions, understandings and agreements have been merged into this written License Agreement. No prior condition, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written License Agreement.
15. **SUCCESSORS AND ASSIGNS.** All of the terms, provisions, covenants and conditions of this Agreement shall be binding on HOME and its successors and assigns.

16. **WAIVER.** Any waiver by either party of any breach of the other's obligations shall not be deemed a continuing waiver, and shall not prevent a party from exercising any remedy it may have for any succeeding breach of the same or another obligation.

17. **NOTICE.** All notices relating to this Agreement shall be in writing via United States Postal Service first-class mail, or by electronic mail, where specified.

18. **ADDRESS FOR NOTICES:** Notices required under this Agreement shall be made at the following addresses, except as changed by written notice to the opposite party:

City of El Paso:                      City of El Paso Mass Transit Department – Sun Metro  
Attn: Director  
10151 Montana Ave.  
El Paso, Texas 79925

Copy to:                                City of El Paso – Real Estate Division  
Attn: Real Estate Manager  
PO Box 1890  
El Paso, Texas 79950-1890

HOME:                                    Housing Authority of the City of El Paso d/b/a  
Housing Opportunity Management Enterprises  
Attn: Gerald Cichon, CEO  
304 Texas Ave Suite 1600  
El Paso, Texas 79901

19. **ENTIRE AGREEMENT.** This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

20. **SEVERABILITY.** The invalidity or illegality of any provision hereof shall not affect the remaining provisions hereof.

21. **GOVERNMENTAL FUNCTION.** Both parties are entering into this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that they are entering into this Agreement as governmental entities performing a governmental function,

22. **SUBORDINATION.** This Agreement and the City's rights hereunder are and shall be subject and subordinate to any existing or future ground lease, mortgage, deed of trust, sale/leaseback transaction or any other hypothecation for security now or hereafter placed by HOME or its affiliated entity(ies) (including but not limited to EP Cielo Tower, LP) upon the Property, and the rights of any assignee of HOME as ground lessor, or any party under any mortgagee, trustee, beneficiary or leaseback lessor under any of the foregoing, and to any and all advances made on the security thereof and to all renewals, modifications,

consolidations, replacements and extensions thereof. This Agreement and the City's rights hereunder are further subject and subordinate to any use agreement or restriction entered into between HOME and/or EP Cielo Tower, LP and the United States Department of Housing and Urban Development ("HUD") and/or Texas Department of Housing and Community Affairs ("TDHCA") in regards to the Property (with such use agreement or restriction collectively referred to as a "Affordable Housing Use Restriction"). This Agreement shall be in all respects subordinate to such Affordable Housing Use Restriction including any amendment, extension, renewal, or other modification thereof. Furthermore, if any provision of this Agreement conflicts with an Affordable Housing Use Restriction, the Affordable Housing Use Restriction shall control. This subordination provision is required in this Agreement and may not be amended without HUD's or TDHCA's approval. Notwithstanding any other contract, document or other arrangement, upon termination of this Agreement, title to any real property leased herein shall remain vested in HOME and title to any of the buildings, fixtures, improvements, trade fixtures and equipment that may belong to City shall vest in HOME subject to exceptions, limitations and requirements imposed by the federal government, including but not limited to the Federal Transit Administration ("FTA") and the Department of Transportation ("DOT"), for buildings, fixtures, improvements, trade fixtures and equipment funded with federal funds.

23. **EFFECTIVE DATE.** The effective date of this Agreement is the date signed by both parties.

***[SIGNATURES BEGIN ON FOLLOWING PAGE]***


EXECUTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.


**CITY OF EL PASO, TEXAS:**

\_\_\_\_\_  
Cary Westin, Interim City Manager

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Joyce Garcia  
Assistant City Attorney

  
\_\_\_\_\_  
Anthony R. Dekeyzer, Director  
Sun Metro/Mass Transit Department

**ACKNOWLEDGMENT**

THE STATE OF TEXAS )  
  )  
COUNTY OF EL PASO )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_, by Cary Westin, as Interim City Manager for the City of El Paso.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]**

EXECUTED THIS 20 DAY OF June, 2023.

HOME:

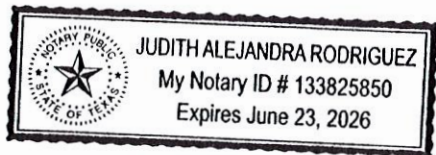
\_\_\_\_\_  
\_\_\_\_\_

By: [Signature]  
Name: Gerald Cichon  
Title: CEO

**ACKNOWLEDGMENT**

THE STATE OF Texas )  
  )  
COUNTY OF El Paso )

This instrument was acknowledged before me on this 20 day of June, 2023,  
by Gerald Cichon, CEO of HOME, \_\_\_\_\_  
\_\_\_\_\_.



[Signature]  
Notary Public, State of Texas

*[Remainder of Page Left Intentionally Blank]*

**EXHIBIT A**

**LEGAL DESCRIPTION**

PIC Development No: TX003000014

Address: 201 Cortez Dr, El Paso, TX 79905

A portion of Block 41 and Block 46, Clardy-Fox Subdivision, Unit V, a subdivision in the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 01, Page 26, Plat Records, and being more particularly described by metes and bounds as follows:

Commencing at a point lying on the centerline intersection of Cortez Drive (a 70' wide public right-of-way) and Blanco Avenue (a 60' wide public right-of-way); Thence, leaving said intersection and along Blanco Avenue centerline, North 89' 38' 00 " West, a distance of 175.00 feet to a point; Thence, leaving said centerline, North 00' 22' 00 " East, a distance of 180.92 feet to a point and being the TRUE POINT OF BEGINNING of this metes and bounds description;

THENCE, North 00' 22' 00" East, a distance of 173.27 feet to a point for a boundary corner;

THENCE, North 89' 38' 00" West, a distance of 61.56 feet to a point for a boundary corner;

THENCE, North 35' 28' 15" West, a distance of 132.49 feet to a point for a boundary corner;

THENCE, South 89' 36' 00" East, a distance of 139.13 feet to a point for a boundary corner;

THENCE, North 00' 22' 00" East, a distance of 64.05 feet to a point for a boundary corner;

THENCE, South 89' 38' 00" East, a distance of 140.00 feet to a point for a boundary corner;

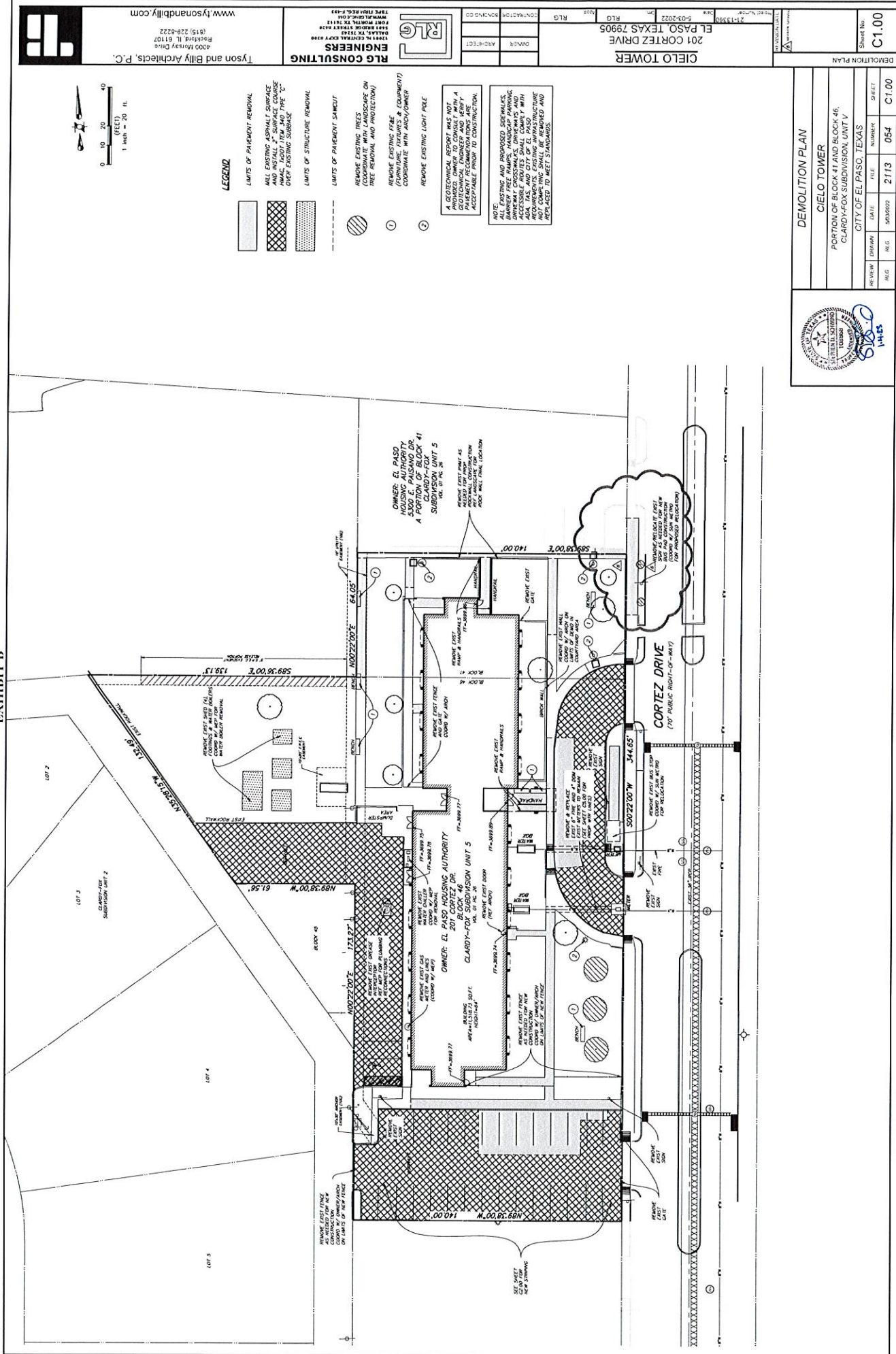
THENCE, South 00' 22' 00 " West, a distance of 344.65 feet to a point for a boundary corner;

THENCE, North 89' 38' 00" West, a distance of 140.00 feet back to the TRUE POINT OF BEGINNING of this description.

Said parcel of land containing 1.36 of an acre (59,002.26 sq. ft.) of land, more or less.

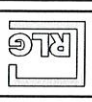


EXHIBIT B



TYSON AND BILLY ARCHITECTS, P.C.  
 4300 MEYER DRIVE  
 ROCKFORD, IL 61107  
 (815) 228-6222  
 www.tysonandbilly.com

RLG CONSULTING  
 ENGINEERS  
 12800 CENTRAL EXP. W.  
 DALLAS, TX 75243  
 (214) 343-8888  
 TYPED PER REG. PLAN



OWNER	ARCHITECT	DATE	SCALE
TYSON AND BILLY ARCHITECTS, P.C.	RLG CONSULTING ENGINEERS	5-03-2022	AS SHOWN

CIELO TOWER  
 201 CORTEZ DRIVE  
 EL PASO, TEXAS 79905



DEMOLITION PLAN			
CIELO TOWER			
PORTION OF BLOCK 41 AND BLOCK 46 CLARDY-FOX SUBDIVISION UNIT V			
CITY OF EL PASO, TEXAS			
REVIEW	DATE	FILE NUMBER	SHEET
REG	3/30/2022	2113 054	C1.00

NOTE: THIS PLAN AND PROPOSED SPECIFICATIONS, DRAWINGS, CROSSINGS, DIMENSIONS AND MATERIALS SHALL BE IN ACCORDANCE WITH THE ADA, T&E, AND CITY OF EL PASO. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND REPLACED TO MEET STANDARDS.

A GEOLOGICAL REPORT WAS NOT OBTAINED FOR THIS PROJECT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND REPLACED TO MEET STANDARDS.

