

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

AGENDA DATE: July 6, 2022
PUBLIC HEARING DATE: July 6, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Mary Lou Espinoza, Capital Assets Manager,
(915) 867-2629

DISTRICT(S) AFFECTED: ALL

STRATEGIC GOAL: No. 6: Set the Standard for Sound Governance and Fiscal Management

SUBGOAL: No. 6.6: Ensure continued financial stability and accountability through sound financial management, budgeting and reporting

SUBJECT:

A resolution authorizing the City Manager to sign a Retail Lease by and between the City Of El Paso ("Landlord") and UETA of Texas Inc. ("Tenant") for use of the property known as 780 S. Zaragoza Rd., El Paso, Texas for an initial term of ten (10) years with two (2) renewal terms of an additional terms of 10 years each.

BACKGROUND / DISCUSSION:

The City of El Paso desires to enter into a new lease agreement with UETA of Texas, Inc. to continue to lease the property located at 780 S. Zaragoza Rd. The rental fee for the property will include base rent of \$119,700 annually in the initial term with a five (5) percent increase every five (5) years. In addition to the base rent the tenant will pay an annual exclusivity fee in the amount of \$32,083 per year for the duration of the contract. Furthermore, the Tenant will pay the Landlord an annual percentage rent in the sum equivalent to 1% of the Tenant's Gross Sales during each lease year.

PRIOR COUNCIL ACTION:

July 9, 1996; October 12, 1999

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ___ YES x NO

PRIMARY DEPARTMENT: N/A

SECONDARY DEPARTMENT: N/A

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

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RESOLUTION

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

That the City Manager be authorized to sign a Retail Lease by and between the **CITY OF EL PASO** (“Landlord”) and **UETA of Texas Inc.** (“Tenant”) for use of the property known as 780 S. Zaragoza Rd., El Paso, Texas for an initial term of ten (10) years with two (2) renewal terms of an additional terms of 10 years each.

APPROVED this ____ day of _____, 2022.

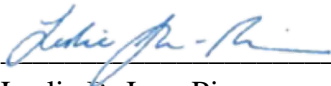
CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

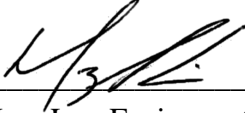
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT



Mary Lou Espinoza, Capital Assets Mgr.
Capital Improvement Department

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

LEASE AGREEMENT
(GROUND LEASE)

This Lease Agreement (“**Agreement**” or “**Lease**”) is made this ____ day of ____, 2022 (“**Effective Date**”) between the City of El Paso, a municipal corporation organized and existing under the laws of the State of Texas, (“**Landlord**” or “**City**”), and UETA of Texas, Inc. , a Delaware Corporation (“**Tenant**”). For the convenience of the parties, all defined terms appear in **bold face** print when first defined.

WHEREAS, on June 22, 1990, the City acquired the property from Frank Alderete Jr through a warranty deed filed under page 0940, volume 2192 of the El Paso County Records (the “**Deed**”); and

WHEREAS, the Deed contained certain use restrictions (the “**Use Restrictions**”); and

WHEREAS, on July 9, 1996, the Landlord entered into a Lease Agreement with EP-ACCA, Inc. for the lease of 3.063 acres of land being a portion of tracts 5A2 and 5A4, Block 41, Ysleta Grant, El Paso, El Paso, County Texas (the “**First Lease**”); and

WHEREAS, on January 28, 1997, the Landlord, Frank Alderete Jr. and EP-ACCA entered into an Agreement Pertaining to the Use Restrictions (“**Use Restriction Agreement**”) to provide for the suspension of all use restrictions as they apply to the designation of right-of way as provided in the First Lease; and

WHEREAS, On July 21, 1998, the Landlord entered into a Memorandum of Lease Consent to Assignment and First Amendment to Lease with the Tenant and EP-ACCA, INC. to agree to the assignment of the lease from EP-ACCA, INC. to the Tenant and to amend the term of the lease to start on October 29, 1996 and terminate October 28, 2008 subject to options to extend for two (2) additional ten (10) year periods (the “**First Amendment**”); and

WHEREAS, on July 29, 1998, EP-ACCA, INC., assigned the First Lease to UETA of Texas, Inc. (the “**Assignment**”);

WHEREAS, on July 29, 1998, EP-ACCA, Inc. and UETA of Texas, Inc. entered into an Assignment of Agreement Pertaining to Use Restrictions and Assumption Agreement where EP-ACCA assigned the Use Restriction Agreement to UETA of Texas Inc. (“**Use Restriction Agreement Assignment Agreement**”); and

WHEREAS, on October 12, 1999, the Landlord and Tenant entered into a Lease agreement of a narrow portion of right-of-way to allow the Tenant to install and maintain a wrought iron fence (the “**Right of Way Lease Agreement**”); and

WHEREAS, on February 4, 2008, the Tenant informed the Landlord of the Tenant’s desire to exercise the first option to extend the First Lease; and

WHEREAS, on July 29, 2010, the Landlord agreed to exercise the option to extend the First Lease such renewal being effective October 29, 2008 and ending October 28, 2018; and

WHEREAS, on March 15, 2018, the Tenant informed the Landlord of the Tenant's desire to exercise the second option to extend the First Lease; and

WHEREAS, the Landlord never concurred to the exercise of the second option as required by the First Lease and therefore, the First Lease expired; and

WHEREAS, in lieu of further extending the First Lease, the Landlord and Tenant wish to enter into a new lease as provided in this Agreement.

The parties agree as follows:

SECTION 1. LEASED PREMISES.

- A. Subject to the provisions of this Agreement, the Landlord leases to the Tenant the following premises ("**Premises**"): 3.062 acres, being a portion of Tracts 5A2 and 5A4, Block 41, Ysleta Grant, El Paso, El Paso County, Texas as more particularly described in Attachment "A" of this Agreement. The lease under this Agreement includes the right to access the Premises in accordance to the provisions of this Agreement.
- B. The parties agree that the improvements currently on the Premises belong to the Tenant and that such improvements will pass to the Landlord as may be provided in this Agreement.
- C. Parties agree that both have complied with all obligations under the First Lease and that no monies are owed by Tenant to Landlord under the First Lease, and the parties release each other from any and all claims under the First Lease. The parties agree that this Agreement supersedes the First Lease.

SECTION 2. TERM.

- A. **INITIAL TERM.** The initial term of this Agreement is ten (10) years commencing on the Effective Date ("**Initial Term**").
- B. **RENEWAL TERM.** The Tenant may extend the Initial Term of this Agreement as provided in this subsection. The Tenant may exercise up to two (2) options to extend the term of this Agreement for ten (10) years each option (individually "**Option**"). If the Tenant wishes to extend the term of this Agreement, then the Tenant will notify the Landlord in writing that the Tenant wishes to exercise an Option at least 180 days before the expiration of the Initial Term or previous Option under this Agreement. The term of this Agreement will automatically be extended upon notification from the Tenant to the Landlord that the Tenant wishes to exercise an Option. The terms of this Agreement apply to all Options exercised by the Tenant.

SECTION 3. RENTAL AND FEES.

- A. **BASE RENT.** Subject to the periodic increases below, the Tenant will pay a monthly base rent of \$9,975 (“**Base Rental Fee**”) starting on the Effective Date and every month thereafter during the term of this Agreement and any extensions. The Tenant will pay the Landlord the Base Rental Fee no later than first (1st) day of every calendar month. The Base Rental Fee will be paid to the Landlord in the form of a check or wire transfer. If the Initial Term begins or ends on a day that is neither the first or the last day of the month, then the Base Rent for that month will be prorated. The Base Rental Fee is in addition to the Percentage Rent and the Exclusivity Fee.
- B. **BASE RENT ADJUSTMENT.** The Base Rental Fee will automatically increase by five (5) percent every five (5) years after the Effective Date during the Initial Term and any Option periods exercised by the Tenant. The Tenant is responsible for paying the rent increase regardless of whether the Landlord notifies the Tenant of the increase in the Base Rental Fee.
- C. **PERCENTAGE RENT.** In addition to the Base Rental Fee and the Exclusivity Fee, the Tenant will pay the Landlord an annual percentage rent in the sum equivalent to 1 percent of Tenant’s Gross Sales made in and from the Premises during each Lease Year (the “**Percentage Rent**”). The Tenant will pay the Landlord the Percentage Rent at the end of each Lease Year during the term of this Agreement and any extensions. The term “**Lease Year**” as used in this Agreement means the period of twelve consecutive calendar months, the first Lease Year Commencing on the Effective Date and ending 365 calendar days after. The term “**Gross Sales**” as used in this Agreement means the dollar aggregate of the revenue for the applicable Lease Year from the sale of goods/merchandise from the duty-free store situated on the Premises, excluding (i) the exchange of goods and supplies between stores of Tenant; (ii) customer refunds allowed on transactions included as sales; (iii) returns to shippers or suppliers; (iv) the amount of any employee discounts on sales; and (v) the amount of any city, state, county, or federal sales, luxury or excise tax on such sales which have been added to the selling price and paid to the taxing authority by Tenant. Tenant will prepare and deliver to the Landlord, no later than 45 days after the end of each Lease Year, a report drafted in accordance with modern and standard accounting practices, showing the amount of Gross Sales made by the Tenant from the Premises during the preceding Lease Year (the “**Gross Sales Report**”) together with a check in payment of the Percentage Rent shown to be due; such Gross Sales Report to be certified by a duly authorized officer of the Tenant to be true and correct. The Tenant will include the following items and amounts in the Gross Sales Report clearly: (i) the exchange of goods and supplies between stores of Tenant; (ii) customer refunds allowed on transactions included as sales; (iii) returns to shippers or suppliers; (iv) the amount of any employee discounts on sales; and (v) the amount of any city, state, county, or federal sales, luxury or excise tax on such sales which have been added to the selling price and paid to the taxing authority by Tenant. Upon 10 days advance notice to Tenant, Landlord, or its duly authorized representative, may inspect any and all of Tenant’s records which relate to Gross Sales made from or at the Premises, including copies of any sales tax reports that Tenant may be required to furnish to any governmental agency, at any time during normal

working hours and on normal working days. Landlord will conduct such examination in a manner which does not unreasonably interfere with Tenant's business at the Premises. Within 3 business days from a request from the Landlord, the Tenant will provide the Landlord any reports or documents used by the Tenant to generate the Gross Sales Report. In the event that Landlord is not satisfied with any Gross Sales Report submitted by Tenant, Landlord shall have the right within 3 years after the end of the Lease Year for which such Gross Sales Report is made to commence a special audit of Tenant's books and records pertaining to Gross Sales. If such audit discloses that Tenant's Gross Sales Report is at a variance to the extent of three percent (3%) or more, Tenant shall pay the Landlord within 10 calendar days after demand the reasonable cost of the audit in addition to the deficiency shown to be due as a result of such audit. The obligation of Tenant to pay Landlord Percentage Rent based on a percentage of Gross Sales of Tenant's business at the Premises shall not give nor be deemed to give Landlord any interest, control, or discretion whatsoever in the conduct of such business and nothing contained herein shall be construed to be or create a partnership or a joint venture between the Landlord and the Tenant.

- D. **Minimum Annual Guarantee.** For the purpose of computing the Minimum Annual Guarantee, Landlord and Tenant agree that the Premises comprise of 6300 square feet. The Minimum Annual Guarantee for the first Lease Year shall be calculated on the basis of square feet at \$19.00 per square foot. For the second Lease Year and each succeeding Lease Year thereafter, including any extension or Option Period of this Lease, the Minimum Annual Guarantee shall be increased by two (2) percent of the immediately preceding Lease Year's Minimum Annual Guarantee Amount.
- E. **EXCLUSIVITY FEE.** Beginning on the Effective Date, the Tenant will pay the Landlord every year for the term of this Agreement and any extensions to the Agreement an Exclusivity Fee in the amount of \$32,083 per year ("**Exclusivity Fee**"). The Exclusivity Fee is in addition to the Base Rental Fee and the Percentage Rent. The Tenant will pay the Landlord the Exclusivity Fee on the Effective Date and thereafter every year on the anniversary of the Effective Date. During the term of this Agreement and any extensions to this Agreement, Landlord agrees not to use itself or to sell or lease to any person or entity any of its real properties located within a radius of three (3) miles of the Premises for the operation of a duty-free store, or any other type of operations offering for sale duty-free items customarily sold in duty-free businesses. In furtherance of the foregoing, with respect to any lease or conveyance subsequent to the Effective Date of any Landlord owned real property located within three (3) miles of the Premises throughout the balance of the term of this Agreement, and any extensions of this Agreement, Landlord shall include a restriction in the lease or other conveyance instrument restricting the use of any such Landlord owned property being leased or conveyed so as to preclude the use of such property as a duty-free store or any other type of operation offering for sale duty-free items customarily sold in a duty-free business.
- F. **HOLDOVER.** If there is any holdover of the Premises by the Tenant at the expiration of this Agreement without Landlord's consent, then this Agreement will function as a month-to-month tenancy. During any such holdover without Landlord's consent, the Tenant will pay the Landlord two times the amount of the most recent Base Rental Fee, and the Tenant

will be liable to the Landlord for any loss or damage caused by the Tenant's unauthorized holdover of the Premises. The Landlord may retake possession of the Premises during any holdover after providing a 30-day notice of such to the Tenant. Subject to the Base Rental Fee adjustment above, the terms of this Agreement apply during any holdover periods and Tenant is required to return the property as described in this Agreement. The Tenant will not construe action or lack thereof on the part of the Landlord as waiver of the right of the Landlord to retake the possession of the Premises or as a reinstatement or extension of this Agreement. Both parties will be subject to the terms of this Agreement during any holdover period.

G. UNPAID BASE RENTAL FEE. If the Tenant has not paid the Base Rental Fee to the Tenant by the tenth (10th) day of the month, then the Tenant will pay the Landlord a fifteen (15)% interest fee on the amount that is due for every month the amount is due. The late charge fee will not be construed as liquidated damages or limiting the Landlord's remedies in any manner.

H. PAYMENT AND PERFORMANCE BONDS. Within ten (10) days following the Effective Date, Tenant will, at its sole cost and expense, provide Landlord with a bond issued by a surety authorized to do business in Texas and reasonably satisfactory to Landlord in the amount of \$130,000 to ensure that Tenant complies with all of its obligations under this Agreement (the "**Performance Bond**"). The Performance Bond must be in effect at all times during the term of this Agreement including any holdover periods. If the Performance Bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to Landlord thirty (30) days prior to the termination date of the existing Performance Bond. The Performance Bond shall provide that, upon the occurrence and continuance of an event of default hereunder by Tenant beyond applicable notice and cure periods, Landlord may use the Performance Bond to recover any or all amounts due and payable from Tenant to Landlord in accordance with this Lease. Landlord shall not be required to exhaust its remedies against Tenant or the Performance Bond before having recourse to Tenant or the Performance Bond, or before exercising any right or remedy hereunder. Should Tenant make any additional improvements to the Premises that would result in an increase in demolition expenses, Landlord will increase the amount of the Performance Bond to equal the value of the demolition expenses. Tenant remains responsible for any amounts owed to Landlord under this Agreement that are not covered by the Performance Bond.

I. AUTHORIZED INSURANCE AND SURETY COMPANIES. All required policies of insurance and bonds shall be written by insurance and surety companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld. Certificates of insurance shall be delivered to Lessor at least ten (10) calendar days prior to the effective date of the insurance policy for which the certificate is issued and prior to the Effective Date of this Lease. Each insurance policy shall contain:

- 1.. a statement of the coverage provided by the policy;
2. a statement certifying the Lessor to be listed as an additional insured in the policy;

3. a statement of the period during which the policy is in effect;
4. a statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
5. an agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days prior written notice to Landlord.

J. NET LEASE. This lease is an absolute net lease. Tenant will pay all expenses of every kind and nature whatsoever relating to or arising from the Premises, including any property taxes and other assessments of any kind on the Premises and/or improvements located on the Premises and all expenses arising from the leasing, operation, management, construction, maintenance, repair, use, and occupancy of the Premises, except as otherwise expressly provided in this Lease. Notwithstanding the foregoing, Landlord agrees to pay the following expenses: (a) any expenses expressly agreed to be paid by Landlord in this Lease; (b) expenses incurred by Landlord to monitor and administer this Lease; (c) expenses incurred by Landlord prior to the Effective Date; (d) expenses that are personal to Landlord.

SECTION 4. USE OF THE PREMISES.

- A. PURPOSE.** The Tenant will only use the premises for the following purpose (“**Purpose**”): Tenant will operate a Duty Free Americas or UETA duty free retail store selling consumer goods to international travelers customarily sold in duty-free stores. Tenant will not provide any goods or services that are not customarily sold in duty-free stores without the Landlord’s prior written consent, which consent shall not be unreasonably withheld. All other uses of the Premises are strictly prohibited. The Tenant must operate a Duty Free Americas or UETA duty free retail store throughout the term of this Agreement and any extensions. Failure to operate a Duty Free Americas or UETA duty free retail store is a material breach of this Agreement.
- B. USE POLICIES.** The Tenant will abide by the policies established by the Landlord for the use of the Premises and building where the Premises are located.

SECTION 5. CONDITION OF THE PREMISES AND WARRANTIES.

- A. CONDITION OF THE PREMISES.** Tenant accepts the Premises in their present condition, including any existing easements of record or apparent on the ground, and the proximity to loud noises and other aspects associated with the Premises. Relying on the Tenant’s own inspection and judgment, the Tenant agrees that the Premises are suitable for the Tenant’s proposed Purpose to be conducted on the Premises. Landlord has not made any warranties expressed or implied with regard to the condition of the Premises or improvements or their suitability for a particular use. Tenant accepts the Premises and its surroundings “as is”, including any improvements made by the Landlord as agreed upon by the Tenant and the Landlord as described in this Agreement, if any, with all faults, relying on the Tenant’s own inspection and judgment and not in reliance on any representations of the Landlord. Landlord assumes no responsibility as to the condition of the Premises and assumes no

responsibility for the maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition. Tenant is responsible for ensuring that all utility connections, utility services, and other services required by the Tenant are available on the Premises.

- B. QUIET ENJOYMENT. Provided that the Tenant performs all obligations under this Agreement, the Landlord warrants that the Tenant may have quiet enjoyment of the Premises.
- C. NO WARRANTIES. The Landlord makes no warranties to the Tenant regarding the condition of the Premises or the suitability of the Premises for use as intended by the Tenant. This disclaimer of warranty applies, but is not limited to, any issues of zoning and platting as well as utility service connections. It is up to the Tenant to verify that all zoning and platting requirements needed to use the Premises for the Purpose stated in this Agreement are in place. It is the responsibility of the Tenant to ensure that all utilities can be extended to any Improvements on the Premises by the Tenant.

SECTION 6. IMPROVEMENTS TO THE PREMISES.

- A. Except for any improvements authorized in Attachment “B” of this Agreement, the Tenant will not make any improvements to the Premises without the prior written authorization from the City. The City may deny any requests to make additional improvements to the Premises in the City’s sole but reasonable discretion. The City may require the Tenant to increase the amount of the Performance Bond to accommodate any new improvements.
- B. If the Landlord approves any improvements on the Premises, then the Tenant will perform all improvements in accordance with all applicable federal, state, and local laws. Upon completion of the improvements, the Tenant will deliver to the Landlord “as-built” records of the construction signed by a professional engineer or architect licensed in Texas.
- C. If the City, either through this Agreement or separately, authorizes the Tenant to make any improvements to the Premises, then the Tenant or the Tenant’s contractors will not start any construction until the Landlord determines, in the Landlord’s reasonable discretion, that the Tenant has complied with the following requirements:
 - 1. If Tenant is obtaining financing for the construction of any improvements, then Tenant will provide to the Landlord: (i) a copy of a financing commitment letter from a leasehold mortgagee; and (ii) a written certification from Tenant that the financing commitment is in full force and effect.
 - 2. Tenant will provide to Landlord written evidence that Tenant has sufficient funds available to complete the construction of any improvements.
 - 3. Tenant will provide final plans to Landlord.
 - 4. Tenant increased the amounts of the Performance Bond, if required by the City in accordance with this Agreement.
 - 5. Tenant will require all contractors to have Commercial General Liability Insurance in the minimum amount of \$1,000,000 per occurrence for bodily injury and

property damage \$2,000,000 aggregate and Vehicle liability in a minimum amount of \$1,000,000 per occurrence.

6. Tenant will require all contractors to have Workers Compensation Insurance as required by law.
 7. Tenant will require all contractors to have Builder's Risk Insurance (Fire and extended coverage) for 100% of the completed value of the improvements.
 8. Tenant will require all contractors to have a performance bond in an amount at least equal to 100% of the contract price for the construction of any improvements on the Premises.
 9. Tenant will require all contractors to have a payment bond in an amount not less than 100% of the contract price for the construction of any improvements on the Premises.
 10. Professional Liability for architects, engineers, and surveyors.
 11. Tenant will require all contractors to add the Landlord as an additional insured in all insurance policies and to have an endorsement requiring the insurance companies to notify the City at least thirty days in advance in the event the policy or policies are canceled and ten days in advance for non-payment of policy premiums.
 12. Landlord will require all insurance policies to remain in effect until all improvements on the Premises have been completed and final payment has been made to all contractors and subcontractors.
- D. Prior to constructing any improvements on the Premises, the Tenant will obtain a Phase I Environmental Site Assessment that complies with ASTM standards ("Phase I") on the Premises. If the Phase I requires or recommends a Phase II Environmental Site Assessment ("Phase II"), then the Tenant will obtain a Phase II assessment on the Premises. If the Phase II requires any remediation to be done on the Premises, then the Tenant may terminate this Agreement or elect to perform the remediation prior to the start of any construction. The Tenant will provide the Landlord with copies of the Phase I and Phase II assessments as soon as the Tenant receives the assessments.
- E. Tenant will not create or permit to be created or to remain, and shall promptly discharge, any lien, encumbrance, or charge levied on account of any mechanic's, laborer's, or materialman's lien which might or does constitute a lien, encumbrance, or charge upon the Premises, or any part thereof, or the income therefrom, having a priority or preference over or ranking on a parity with the estate, rights, or interest of Landlord in the Premises or any part thereof, or the income therefrom. Nothing in this lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to the filing of any lien against the Premises by any contractor, subcontractor, laborer, materialman, architect, engineer, or other Person for the performance of any labor or the furnishing of any materials or services for or in connection with the Premises or any part thereof.
- F. Tenant agrees that the title to all improvements made by the Tenant to the Premises, now or hereafter located on the Premises, shall be vested in Tenant until either the termination or expiration of this Agreement, at which time all title to and ownership of the

improvements made by the Tenant to the Premises shall automatically and immediately vest (without the necessity of any further action being taken by Tenant or Landlord or any instrument being executed and delivered by Tenant to Landlord) in Landlord, and Tenant shall have no rights pertaining to such improvements. Notwithstanding anything to the contrary, nothing in this subsection relieves the Tenant from any duties under this Agreement, including but not limited to the removal of the improvements and the restoration of the Premises. Notwithstanding anything contained in this Agreement to the contrary, all machinery, equipment, appliances, furniture, merchandise, and any other personal property of any kind or description owned or leased by Tenant located on the Premises and used in the operation of the Premises shall be and remain the property of Tenant and shall be removed by Tenant upon the termination or expiration of this Agreement to the extent that it does not cause structural or cosmetic damage to the Premises. Tenants failure to remove personal property 30 days after termination or expiration of this Agreement shall result in the Landlord taking ownership of any remaining personal property on the Premises.

SECTION 7. TENANT OBLIGATIONS

- A. Separate from any rent amounts, Tenant will pay on time all taxes and assessments on the Premises, improvements made by the Tenant on the Premises, activities conducted by the Tenant on the Premises, and all personal property of the Tenant that is located on the Premises. Tenant will make all tax/assessment payments on time and directly to the governmental authority charged with the collection of such taxes or assessment. Tenant will, within seven calendar days following the due date for the payment of taxes and assessments, furnish to Landlord official receipts of the appropriate governmental authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment of such taxes or assessments. If the Tenant fails to pay on time any taxes or assessments as provided in this provision, then the Landlord may pay such taxes and assessments and recover such amounts from the Tenant. Tenant will pay to the Landlord within 30 calendar days of receipt of a request from the Landlord, any taxes or assessments paid by the Landlord pursuant to this provision.
- B. Tenant will maintain the Premises and all improvements on the Premises in a good state of repair and in a clean and attractive condition at all times during the term of this Agreement.
- C. Tenant may not place any signs on the Premises without the advance written approval of the Landlord, which approval shall not be unreasonably withheld.
- D. Tenant will allow access to any part of the Premises to the Landlord with 24 hours' notice from the Landlord to allow the Landlord to inspect and to make repairs or alterations to the Premises during normal business hours. If the Landlord gives 24 hours' notice to the Tenant, then the Tenant will allow the Landlord to access the Premises during normal business hours to show it to any prospective purchasers or tenants, or for any other purpose that the Landlord deems necessary. The Landlord entering the Premises for the purposes under this Section do not constitute an eviction or disturbance of the Tenant's rights under this Agreement.

- E. For the term of this Agreement the Tenant will provide maintenance to the wrought iron fence (the “**Fence**”) directly abutting the Premises. For purposes of this provision only, maintenance of the fence refers to painting, trash collection, and repairs.

SECTION 8. LANDLORD’S OBLIGATIONS

- A. Other than as specifically stated in this Agreement, the Landlord has no obligations under this lease.

SECTION 9. ENVIRONMENTAL LAWS.

- A. For purposes of this Agreement:

1. “**Environmental Laws**” means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
2. “**Hazardous Material**” means all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like.
3. “**Releasing**” means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

- B. COMPLIANCE.

1. Tenant will not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Tenant, its sublessees, agents, employees, contractors, invitees, licensees, or a third party in violation of any Environmental Laws. **Tenant will indemnify, defend and hold harmless the Landlord, its successors and assigns, its officers, directors, employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination**

of, or adverse effects on, the environment or violation of any Environmental Laws or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon caused by the act or omission of the Tenant, its sublessees, agents, employees, contractors, licensees or invitees. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, Improvements, land, soil, underground or surface water to the extent required under Environmental Laws. Tenant's obligations and liabilities under this paragraph shall continue so long as the Landlord bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any Improvements thereon. This indemnification of the Landlord by the Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work to the extent required by any federal, state or local governmental agency or political subdivision having authority to enforce Environmental Laws because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that the Landlord's right to enforce the Tenant's promise to indemnify is not an adequate remedy at law for the Tenant's violation of any provision of this Section. Landlord will also have all other rights and remedies provided by law or otherwise provided in this Agreement.

2. Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any Improvements thereon or permitted by the Tenant results in any contamination of the Premises or any Improvements thereon, or any surrounding property, the Tenant will promptly take all actions at its sole cost and expense as are necessary to return the Premises or any Improvements thereon or the surrounding property to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon or the surrounding property; provided that the Landlord's approval of such actions shall first be obtained.
3. Tenant will, at the Tenant's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority ("**Government**") under the Environmental Laws. If the Government determines that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any Improvements thereon or on surrounding property to comply with applicable Environmental Laws, then the Tenant will, at the Tenant's own expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no expense to the Landlord, the Tenant will promptly provide all information requested by the Landlord to determine the applicability of the Environmental Laws to the Premises to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination of the Premises or the Improvements thereon or the surrounding property.

4. Tenant will notify the Landlord promptly after the Tenant becomes aware of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or the Tenant's Purpose on the Premises, and (b) any change in the Tenant's Purpose on the Premises that will change or has the potential to change the Tenant's or Landlord's obligations or liabilities under the Environmental Laws.

C. RELEASING HAZARDOUS MATERIAL.

1. In the event of a Release of Hazardous Materials in violation of Environmental Laws on the Premises that presents an immediate threat of injury to persons or property that is not immediately remediated to the satisfaction of the Landlord or the expiration of cure periods provided for in this Agreement, then notwithstanding any other provision in this Agreement to the contrary, Landlord may "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of any law on, under or about the Premises. The Tenant will be responsible for the cost of the Landlord's "self-help" in this Section, which can include but are not limited to attorneys' fees. Landlord will use its best efforts to notify the Tenant prior to its exercise of such self-help rights.
2. Tenant's failure or the failure of its agents, employees, contractors, licensees, invitees, or a third party to comply with any of the requirements and obligations of this section is a material default of this Agreement. As such, Landlord may pursue the remedies as set forth in this Agreement, in addition to all other rights and remedies provided by law.

D. REPORTING.

1. At any time that the Tenant submits any filing or response pertaining to its property, operations, or presence on City property with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the EPA or the TCEQ, or any successor agencies, the Tenant shall provide duplicate copies to Landlord of such filing(s) and response(s) with any related documents at the time same are made.

SECTION 10. MUTUAL COVENANTS.

A. FIRE OR OTHER CASUALTY.

1. If all or any part of the Premises or any improvements made on the Premises by the Tenant are destroyed or damaged by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, Tenant will give to Landlord notice of such within 10 calendar days after such casualty occurs. The Tenant will, whether or not such damage or destruction has been insured and whether or not the insurance proceeds, if any, are sufficient for the purpose of restoring the Premises and Tenant improvements on the Premises, with

reasonable diligence repair, restore, replace, and rebuild the Premises and/or Tenant improvements on the Premises to the same condition and value as nearly as possible to such condition and value prior to such casualty. Landlord is not obligated to restore the Premises or any portion of the Premises. Landlord may send a notice to the Tenant if Tenant has failed to restore the Premises or Tenant improvements within a reasonable amount of time. If the Tenant fails to complete the restoration within 30 calendar days of such notice, then the Landlord may elect to terminate this Agreement. If the Landlord terminates this Agreement for failure of the Tenant to restore the Premises or Tenant improvements, then the Landlord may (1) restore the Premises and/or Tenant improvements at Tenant's expense, or (2) at the Tenant's expense, remove all improvements and restore the Premises to the original condition of the Premises on the Effective Date. Tenant will pay all expenses incurred by the Landlord within 30 calendar days of receipt of a request for payment from the Landlord.

B. CONDEMNATION AND LOSS OR DAMAGE.

1. If the Premises are condemned leaving the Premises untenable, then either party may terminate this Agreement, with the date of termination being the condemnation date.
2. If any improvements by the Tenant are condemned, but the Premises remains tenable, then either party may terminate this Agreement, with the termination date being the date of the condemnation. If this Agreement is not terminated then the Tenant will be responsible for paying the Base Rental Fee.
3. If the Premises are only partially condemned, then either party may terminate this Agreement with the termination date being the date of condemnation. If this Agreement is not terminated, then the Tenant will only be responsible for paying the Base Rental Fee.

C. SUBORDINATION, NON-DISTURBANCE, ATTORNMEN, AND ESTOPPEL.

1. The Tenant will sign a Subordination, Nondisturbance, and Attornment agreement ("**SNDA**") at the request of the Landlord. The Tenant agrees to the following which will also be included in the SNDA:
 - a. **SUBORDINATION.** The Tenant's interest under this Agreement is, at all times, subordinate to other present and future liens on the Premises and any modifications, supplements, extensions, amendments, renewals, consolidations, and replacements of said liens.
 - b. **NON-DISTURBANCE.** If the ownership of the Building or Premises changes in any way, then the Tenant's right to quiet enjoyment and other rights under this Agreement will not be disturbed or terminated, provided that this Agreement is in full force and effect and that there are no defaults by the Tenant.

- c. ATTORNMENT. By signing this Agreement, the Tenant agrees to recognize any future owners of the Building or Premises as the Landlord and will continue to perform the obligations outlined in this Agreement until the termination or expiration of this Agreement to the full effect as with the original Landlord of this Agreement.
- d. ESTOPPEL. Landlord and Tenant will execute, upon request by either party, an estoppel certificate that confirms the following: that the Agreement is unmodified and is in full force and effect, the Effective Date and expiration date of this Agreement, the amounts that are to be paid under this Agreement, and that no notice has been given by Landlord to Tenant of any default under this Lease that has not been cured and to the best of the certifying party's knowledge and belief no default exists (or, if there has been any notice given or a default exists, describing the same).

D. ENCUMBRANCES

1. As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiaries under deeds of trust, whether one or more. Tenant may encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage. The Mortgagee of any such Mortgage may deliver to Landlord a written notice specifying:

- a. The amount of the obligation secured by the Mortgage;
- b. The date of the maturity or maturities thereof; and
- c. The name and mailing address of the Mortgagee.

After receipt of such notice, Landlord shall serve such Mortgagee by certified mail at the latest address furnished by such Mortgagee a copy of every notice of default or demand served by the Landlord upon Tenant under the terms and provisions of this Agreement so long as such Mortgage is in effect.

2. Upon receipt of a notice or demand as described above, Mortgagee shall have 30 days after receipt of such notice within which, at Mortgagee's election, either:

- a. To cure the default if it can be cured by the payment or expenditure of money;
- b. To perform such other action as may be necessary to cure the default;
- c. If the default cannot be cured within 30 days, to commence performance within such 30 day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- d. To institute foreclosure proceedings and prosecute same diligently to conclusion.

- e. No notice of a default by Tenant hereunder given by Landlord shall be effective against a Mortgagee that has provided the Landlord the information specified above unless the Landlord has given a copy of it to such Mortgagee.
 - f. No Mortgagee shall have any personal liability under this Lease unless and until it becomes the tenant under this Lease.
 - g. The City will, upon request by any Mortgagee, certify in writing that this Agreement is in full force and effect, whether this Agreement has been amended, that to Landlord's knowledge Tenant is not in default, and the date through which rent has been paid.
 - h. If this Agreement and the fee estate in the Premises are ever commonly held as a result of a default by Tenant, then they shall remain separate and distinct estates and shall not merge until such time as all cure periods for Mortgagee specified in this Lease have expired.
 - i. This Agreement may not be amended, modified, changed, cancelled, waived, or terminated without prior written notice to all Mortgagees. Landlord shall not accept a voluntary surrender of the Premises without consent by all Mortgagees.
3. In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Tenant's interest in lieu of foreclosure shall succeed to all of Tenant's rights, interests, duties and obligations under this Agreement.
4. Nothing in this Agreement prevents the Landlord from encumbering the Premises.

SECTION 11. EXPIRATION AND TERMINATION.

- A. Expiration of Term. This Agreement will automatically terminate at the end of the Initial Term of this Agreement or if exercised by the Tenant, at the end of any Options exercised by the Tenant under this Agreement.
- B. Termination under the El Paso City Charter. In accordance to the El Paso City Charter Section 3.18, the City may terminate this Agreement at any time if the City Council, by formal action, determines that the termination of the lease is necessary to secure efficiency of public service at a reasonable rate, or to assure that the property is maintained in good order throughout the life of the grant.
- C. Termination for Default. Either party may terminate this Agreement if one party defaults on any of the obligations set out in this Agreement. Before terminating this Agreement pursuant to this provision, the terminating party will provide written notice of the intent to terminate enumerating the failure for which the termination is being sought and provide at least 30 calendar days to the non-terminating party to cure such failure.

1. If the Landlord terminates this Agreement for a default of the Tenant, then the Tenant will owe the Landlord the remainder of the Base Rental Fee for the remaining Initial Term of the Agreement or the then-current Option term, as applicable.
2. If the Tenant terminates the lease for a default of the Landlord, then the Tenant will only be responsible for paying the Base Rental Fee up until the date of termination.
3. The following items also constitute an event of default by the Tenant under this Agreement : Abandonment of the Premises by the Tenant as provided in Chapter 93 of the Texas Property Code; filing of a petition of bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Tenant's property and such petition is not dismissed within 90 days after filing; a judgment of bankruptcy in involuntary proceedings; or be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Tenant where such receivership is not vacated within ninety (90) days after the appointment of such receiver.

D. This Agreement may be terminated as otherwise provided in other sections of this Agreement.

SECTION 10 RIGHTS AND OBLIGATIONS FOLLOWING EXPIRATION OR TERMINATION.

- A. At the expiration of this Agreement or within 30 calendar days following termination of the Agreement, the Tenant will surrender and return the Premises to the Landlord free and clear of all improvements above and below ground level, free and clear of all personal property, and the Tenant will have the soil on the Premises compacted to Landlord's specifications with no subterranean uses. The Tenant will be responsible for paying the Landlord the Base Rent while occupying the Premises to comply with the obligations under this section. Tenant will perform all obligations under this Section in accordance to all federal, state, and local laws and regulations.
- B. Upon expiration, or within 30 calendar days following termination of this Agreement for any reason, Tenant will provide to the Landlord a Phase I Environmental Site Assessment meeting ASTM standards of the Premises ("**Tenant's Report**") at the Tenant's sole expense. If the Tenant's Report or the Phase I Assessment ordered by the Landlord requires or recommends a Phase II Environmental Site Assessment, then the Tenant will obtain a Phase II assessment on the Premises at the Tenant's sole expense. If the Phase II assessment requires any remediation to be done on the Premises, then the Tenant will perform the remediation on the Premises at the Tenant's sole expense. If the Tenant fails to obtain the Tenant's Report, the Phase II Environmental Site Assessment, or to remediate the Premises as required in this provision, then the Landlord may perform all assessments and remediation and recover the costs from Tenant. The Tenant will provide the Landlord copies of all assessments done on the Premises under this provision as soon as such reports become available to the Tenant.
- C. The City may elect to relieve the Tenant from the obligation to remove all improvements on the Premises as provided in this Section by sending written notification to the Tenant 180 calendar days before expiration of this Agreement or by informing the Tenant in any notice of early termination of this Agreement.

- D. In the event of default by Tenant under this Agreement, following all required notifications, the Landlord may:
- a. Enter into and upon the Premises or any part thereof and repossess the same, change the locks on the Premises, install fences and gates, expelling therefrom Tenant and all personal property of Tenant (which property may be removed and stored at the cost of and for the account of Tenant), using such force as may be necessary; and/or
 - b. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Landlord. If Landlord shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Tenant during such month or part thereof under the terms of this Lease, Landlord shall pay such deficiency to Landlord immediately upon calculation thereof, provided Landlord has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.
- E. In the event of a default by the Tenant the Landlord may perform all of Tenant's obligations which the Tenant failed to fulfill under this Agreement. The Landlord may deduct from any deposits paid by the Tenant any expenses incurred by the Landlord for performing obligations of the Tenant and/or the Landlord may invoice the Tenant for the costs incurred by the Landlord for performing the Tenant's obligations. The Tenant will pay any invoices received from the Landlord within 30 calendar days of receipt.

SECTION 11. INDEMNIFICATION.

- A. WITHOUT LIMITING THE GENERALITY OF ANY OTHER INDEMNITY CONTAINED IN THIS AGREEMENT, TENANT AGREES TO INDEMNIFY, DEFEND, AND HOLD LANDLORD AND ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF TENANT'S ACTIVITIES ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF TENANT OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF TENANT, ITS AGENTS, CONTRACTORS, EMPLOYEES, CONCESSIONAIRES, SUBTENANTS OR LICENSEES IN OR ABOUT THE PREMISES. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST THE LANDLORD BY REASON OF ANY SUCH CLAIM, TENANT, UPON RECEIPT OF WRITTEN NOTICE FROM THE LANDLORD, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO THE LANDLORD. THE OBLIGATIONS OF TENANT UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THE LEASE.**

SECTION 12. INSURANCE.

A. **LIABILITY INSURANCE.** Tenant shall obtain, provide proof of, and maintain for the term or any holdover of this Agreement:

1. Comprehensive General Liability Insurance in amounts not less than \$1,000,000 for bodily injury to one person for each occurrence, \$2,000,000 for bodily injury to more than one person for each occurrence, and \$1,000,000 for property damage for each occurrence.
2. Comprehensive Pollution Liability Insurance in amounts not less than \$1,000,000 for each occurrence, which insurance shall cover, at a minimum, bodily injury, property damage, including natural resource damage, loss of use of damaged property or of property that has not been physically injured or destroyed, cleanup costs, removal, storage, disposal, and or use of the pollutant, and defense costs, including costs and expenses incurred in the investigation, defense, or settlement of claims, all covering the Premises and surrounding the Landlord's property.

B. **FIRE AND OTHER RISKS INSURANCE.** Tenant, at the Tenant's sole cost and expense, will insure all improvements made on the Premises against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief in an amount equal to the actual replacement cost of such improvements, including costs of replacing excavations and foundation, but without deduction for depreciation ("**Full Insurable Value**") throughout the term of this Agreement. If a dispute arises as to the Full Insurable Value and cannot be resolved by the Tenant and the Landlord, then the Tenant will conduct an appraisal of the Premises and Improvements at the Tenant's own expense. The Tenant will ensure the appraiser is approved by the Landlord.

C. Tenant will maintain the insurance policies described above throughout the Initial Term, the Option term, and any holdover period of this Agreement. The Tenant will ensure that all policies comply with the following:

1. The Tenant may provide the insurances required in this section in more policies of insurance, the form of which must be approved by the City's Risk Manager.
2. Prior to taking possession of the Premises, the Tenant will provide the City copies of all insurance policies along with all endorsements and certificates of insurance. If the Tenant is providing insurance policies to the Landlord for Improvements made after taking possession of the Premises, then the Tenant will provide the insurance policies along with all endorsements and certificates of insurance to the Landlord before the Improvements are completed. All policies will provide through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without 30 calendar days prior written notice to the Landlord.

3. The Tenant will provide the City all certificates evidencing renewal of replacement of said policies of insurance at least 15 calendar days prior to the expiration or cancellation of any such policies.
4. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. The City may reject an issuer of an insurance policy in the City's sole discretion.
5. Each policy, must name the City of El Paso (and their elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.
6. Tenant will obtain the prior written approval of the City's Risk Manager for any deductibles, aggregate caps, and endorsements on any insurance policy required under this Agreement.
7. Tenant's insurance hereunder may be maintained by Tenant under a blanket or umbrella policy covering the Premises as well as other premises of Tenant.

SECTION 13. GENERAL PROVISIONS

- A. **NO WAIVER.** Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- B. **INDEPENDENT CONTRACTOR RELATIONSHIP.** This Agreement does not create an employee-employer relationship between the Tenant and the Landlord. As such, the Landlord is not subject to the liabilities or obligations the Tenant obtains under the performance of this Agreement.
- C. **TIME IS OF THE ESSENCE.** The times and dates specified in this contract are material to this Agreement. For the purpose of this agreement "**business days**" means Monday through Friday excluding City of El Paso holidays and "**calendar days**" means Monday through Sunday excluding City of El Paso holidays.
- D. **NOTICES.** The parties will send all notices required by this Agreement either in person, overnight courier, e-mail, or in writing postmarked and delivered by certified mail. All notices that are mailed are considered received 3 business days after the postmark date. All notices that are delivered in person or by e-mail are considered received on the date sent to the addresses or persons listed below. Parties may change their addresses or designated persons by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address the notified party will send all further notifications to the new address. Parties will address notices as follows:

To the City: The City of El Paso
Attn: Real Estate Division
P. O. Box 1890
El Paso, Texas 79950-1890
E-mail: realestate@elpasotexas.gov

With a Copy to: The City of El Paso
Attn: City Manager
P. O. Box 1890
El Paso, Texas 79950-1890

To the Tenant: UETA OF texas, inc
Attn: David Taney, General Counsel
6100 Hollywood Blvd., 7th Floor
Hollywood, FL 33024
E-mail: jcruthirds@dutyfreeamericas.com
and dtaney@dutyfreeamericas.com

- E. CONFIDENTIALITY. The Tenant acknowledges that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act).
- F. GOVERNING LAW. This Agreement is governed by Texas law.
- G. VENUE. The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.
- H. SEVERABILITY. A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- I. HEADINGS. The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- J. GOVERNMENTAL FUNCTIONS. The parties agree that the Landlord is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.
- K. COMPLIANCE WITH THE LAWS. The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement. If applicable, then the Tenant will procure all licenses and pay all fees or other charges as required to complete the Work under this agreement.


- L. **AUDITING RECORDS FOR THE SPECIFIC PROJECT.** The Tenant will allow the Landlord to inspect and copy all records pertaining to the Purpose to be performed on the Premises as provided in this Agreement.
- M. **FORCE MAJEURE.** There is no breach of contract should either party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, epidemic or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved. Notwithstanding anything to the contrary, the provisions of this Section do not excuse the Tenant from the prompt payment of rent and other amounts under this Agreement and do not operate to extend the term of the Term of this lease. Delays or failures by Tenant to pay rent or other amounts of this Agreement resulting from lack of funds are not deemed delays beyond the reasonable control of a party.
- N. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the Landlord and the Tenant, and the Tenant's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed.
- O. **THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries for this Agreement.
- P. **PROVISIONS SURVIVING THIS AGREEMENT.** Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.
- Q. **REPRESENTATIONS AND WARRANTIES.** The Tenant warrants to the Landlord that the Tenant has all required licenses, permits, and expertise to perform the Purpose of this Agreement. The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- R. **RESTRICTIONS AND RESERVATIONS.** This lease under this Agreement is subject to all rights-of way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land.
- S. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties.

[Signatures begin on the next page]

CITY OF EL PASO


Tomás González
City Manager

APPROVED AS TO FORM:



Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:



Mary Lou Espinoza, Capital Assets Mgr.
Capital Improvement Department

(Acknowledgement)

STATE OF TEXAS)
COUNTY OF EL PASO)

This Instrument was acknowledged before me on the ____ day of _____, 2022, by TOMAS GONZALEZ, as City Manager of the City of El Paso, a municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

Notary's Commission Expires:
Notary's Name (printed)

(Tenant's Signature on following page)

Tenant:

[Signature]
Name: Jerome Falic
Title: CEO

(Acknowledgement)

FLORIDA
STATE OF ~~TEXAS~~)
BROWARD)
COUNTY OF ~~EL PASO~~)

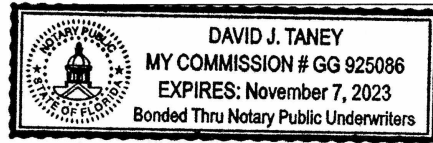
This Instrument was acknowledged before me on the 23rd day of June, 2022, by Jerome Falic, as CEO of the UETA of Texas, Inc., on behalf of UETA of Texas, Inc.

[Signature]
Notary Public, State of Texas Florida

Notary's Commission Expires: 11/7/23

Notary's Name (printed)

David Taney



ATTACHMENT "A"

YSLETA GRANT SURVEY
BLOCK 41, PORTION OF TRACTS 5A2 AND 5A4

Parcel No. 4

Legal description of a parcel of land being a portion of Tracts 5A2 and 5A4, Block 41, Ysleta Grant Survey. Same being a portion of a Quitclaim Deed #007673, State of Texas to the City of El Paso, Texas, Recorded in Volume 2645, Page 0166, Deeds & Records El Paso County, Texas and being, more particularly described as follows:

COMMENCING at a 5/8" rebar being on the United States Levee monument line said rebar being South 20°49'45" East a distance of 968.12 from a Brass Cap. I.B.W.C. monument station 221 + 29.13 on the United States levee monument line, thence South 63°23'44" East a distance of 315.25 feet to the International Boundary Water Commission right-of-way line, same being the TRUE POINT OF BEGINNING of this parcel of land.

THENCE North 20°49'45" West along the International Boundary and Water Commission right-of-way line a distance of 345.50 feet to the westerly right-of-way line of the Chamizal Border Highway Loop 375,

THENCE along the westerly and southerly right-of-way line of the Chamizal Border Highway Loop 375 the following:

South 39°59'50" East a distance of 191.11 feet,

South 53°23'10" East a distance of 208.00 feet,

South 63°24'34" East a distance of 363.08 feet,

THENCE South 18°53'44" East a distance of 51.83 feet to the westerly right-of-way line of Zaragosa Road,

THENCE South 11°36'16" West along the southerly right-of-way line of Zaragosa Road a distance of 172.87 feet,

THENCE North 63°23'44" West a distance of 448.50 feet to the northerly edge of a concrete lined channel,

THENCE South 51°27'29" West along the northerly edge of a concrete lined channel a distance of 11.02 feet,

THENCE South 20°49'45" East a distance of 731.02 feet to the westerly right-of-way line of Zaragosa Road,

THENCE along the westerly right-of-way line of Zaragosa Road being the arc of a curve to the right to the International Water and Boundary Commission right-of-way line, an arc distance of 13.70 feet, having a radius of 418.34 feet, a central angle of 01°52'37", a chord distance of 13.70 feet bearing South 40°19'28" West,

Exhibit A
10/2

Legal/Ysleta Grant Survey
Block 41, Portion of Tracts 5A2 and 5A4
Parcel No. 4
Page Two

THENCE North 20°49'45" West along the International Boundary and Water Commission right-of-way line a distance of 733.80 feet to the POINT OF BEGINNING.

Said parcel of land contains 133,390.10 square feet or 3.062 acres more or less.

By: Antonio Borrego
Reference: 237594
Date: February 19, 1996
1st Revision: February 22, 1996
2nd Revision: March 15, 1996

Approved by: _____
Antonio D. Flores, P.E., R.P.L.S.
Texas State Surveyor Lic. No. 3230

/ac

Exhibit A
20/2

ATTACHMENT “B”

Tenants improvements currently in existence on the Premises as of the Effective Date of this Agreement are allowed. Any other improvements must be approved by the City as provided in this Agreement.