RESOLUTION

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

That the City Manager, or designee, is authorized to sign a Ground Lease Agreement by and between the City of El Paso ("Lessor") and ELP Land Holdings I, LLC, ("Lessee") regarding the following described property:

> Parcel 1: A 49.6116 acre parcel of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Section 21 and 22, Block 80, Township 2 Texas and Pacific Railway Company Surveys, except the 37,474.5 square feet well house which is not part of this parcel;
>
> Parcel 2: A 47.4248 acre parcel of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Section 21 and 22, Block 80, Township 2 Texas and Pacific Railway Company Surveys;
>
> Parcel 3: A 49.5435 acre parcel of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as portions of Section 22, Block 80, Township 2 Texas and Pacific Railway Company Surveys except the 7,124.416 well house and the 5,266.786 square foot well collector which is not part of this parcel;
>
> Parcel 4: A 61.0592 acre parcel of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Section 22, Block 80, Township 2 Texas and Pacific Railway Company Surveys

and that City Manager, or designee, is authorized to sign any and all documents related and/or necessary to effectuate the leasing of the property, and administratively approve non-material amendments unrelated to term or rental amount as may be required to administer the Lease.

APPROVED this 28th **day of** MARCH **2023.**

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Samuel Rodriguez, P.E.
Director of Aviation

RESOLUTION
23-485/Aviation/TRAN-489209/Green Point Phased Dev/Reso/JF

Ground Lease

El Paso International Airport
El Paso, Texas

City of El Paso
Lessor

ELP Land Holdings I, LLC
Lessee

March 28, 2023
Effective Date

Ground Lease
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GROUND LEASE

THIS GROUND LEASE ("Lease") is entered into of March 28th, 2023 (the "Effective Date"), by and between the City of El Paso ("Lessor") and ELP Land Holdings I, LLC, a Delaware limited liability company("Lessee").

WHEREAS, Lessor owns and operates El Paso International Airport, located in the County of El Paso, State of Texas, ("Airport"), said Airport being managed by the Director of Aviation, ("Director"); and

WHEREAS, Lessor deems it advantageous to itself and to its operation of the Airport to lease unto Lessee the parcel of land described herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out; and

WHEREAS, Lessee proposes to lease on a net basis from Lessor certain ground area and to avail itself of certain privileges, rights and uses pertaining thereto; and

WHEREAS, Lessee has indicated a willingness and ability to properly keep, maintain and improve said ground in accordance with standards established by Lessor;

NOW THEREFORE, Lessor and Lessee agree as follows:

ARTICLE I - PREMISES AND PRIVILEGES

1.01 Description of Premises Demised.
Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property located in El Paso County, Texas:

> Parcel 1: A 49.6116 acre (2,161,080.8 square feet) parcel of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Section 21 and 22, Block 80, Township 2 Texas and Pacific Railway Company Surveys and being more particularly described by metes and bounds in Exhibit A-1, **provided however that the proposed well house site totaling 37,474.5 square feet depicted in Exhibit A-1 is not part of the leased property.**
>
> Parcel 2: A 47.4248 acre (2,065,823.5 square feet) parcel of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Section 21 and 22, Block 80, Township 2 Texas and Pacific Railway Company Surveys and being more particularly described by metes and bounds in Exhibit A-2.

Parcel 3: A 49.5435 acre (2,158,115.6 square feet) parcel of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as portions of Section 22, Block 80, Township 2 Texas and Pacific Railway Company Surveys and being more particularly described by metes and bounds in Exhibit A-3 **provided however that the Well Site 501 site totaling 7,124.416 square feet (for purposes of rent calculation rounded to 7,124.4 square feet) depicted in Exhibit A-4 and the 30' El Paso Well Collector Corridor C-1 totaling 5,266.786 square feet (for purposes of rent calculation rounded to 5,266.8) depicted in Exhibit A-3 are not part of the leased property.**

Parcel 4: A 61.0592 acre (2,659,738.5 square feet) parcel of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Section 22, Block 80, Township 2 Texas and Pacific Railway Company Surveys and being more particularly described by metes and bounds in Exhibit A-4.

The leased property described above is hereinafter referred to as the "Land". This description of the Land is subject to

Section 10.06 below regarding partial termination of this Lease together with those improvements to be constructed thereon in accordance with the terms of this Lease (the "Premises"). The Land consists of four (4) separate parcels (each, a "Parcel") as shown in Exhibit "D".

1.02 Right to Construct.
Lessee shall have the right and privilege to construct, maintain, and remove improvements upon the Premises subject to the terms, covenants, and conditions herein contained. Lessee shall submit all plans and specifications to the Director and shall not commence construction until the Director has reviewed and approved the relevant construction plans and applicable governmental permits have been issued. Lessor shall not unreasonably withhold any approval required by this Lease regarding improvements or alterations made by Lessee as long as the same comply with applicable law, code and the design requirements set forth in the Declaration of Restrictions and Covenants attached hereto as Exhibit B (the "Declaration").

1.03 Restriction of Privileges, Uses and Rights.
The rights and privileges granted Lessee hereunder are subject and expressly limited to the terms and conditions described in this Lease including all attachments to this Lease; provided, however, that if there is a conflict between this Lease and the Declaration, this Lease shall prevail. Modification of the Declaration will comply with the notice requirements thereof.

1.04 Conditions of Granting Lease.
The granting of this Lease and its acceptance by Lessee is conditioned upon the following covenants:

A. That no functional exterior alteration of the Premises shown on Exhibit "A" or functional change in the uses of such Premises, except as reflected in this Agreement including all attachments, shall be made without the prior written consent of Lessor.

B. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority and all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law and which rules, regulations and/or ordinances apply equally to all property owned by the El Paso International Airport.

ARTICLE II - TERM OF LEASEHOLD

2.01 Term.

The "Term" of this Lease will be the Initial Term and any properly exercised Option Period, as provided below. This Lease shall be for an initial term of forty (40) years ("Initial Term"), commencing on March 28, 2023 the Effective Date and ending forty (40) years thereafter.

2.02 Option to Extend.

If the Lessee is not in default of any terms of this Lease, this Lease may be renewed for additional term of nine (9) years. Written notice of intent to renew must be given by Lessee to Lessor at least one hundred eighty (180) days prior to the expiration date of the Initial Term.

2.03 Holding Over.

It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent of one and one-half times the current monthly rent, unless the hold over is caused by the City staff not placing a new agreement with Lessee regarding the Premises at the end of the term of the present Lease on the City Council Agenda on a timely basis in which case the monthly rental rate in effect prior to the hold over shall continue until the new agreement is executed. Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

2.04 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, war, national emergency, the act of any government or authority, pandemic, epidemic or quarantine, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances

whatsoever beyond either party's reasonable control ("Force Majeure Event"). If the responsibilities of either party are affected by a Force Majeure Event, the parties shall meet to discuss, in good faith, modifications to this Lease. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved. No waiver or delay of rental payments will be deemed to exist by reason of a Force Majeure Event unless authorized in writing by the Lessor. In the event the rights and privileges hereunder are suspended by reason of a Force Majeure Event, the term of this Lease shall be extended by the amount of the period of time of such suspension. For the avoidance of doubt, the Parties stipulate that Force Majeure shall not include the novel coronavirus Covid-19 pandemic (whether considered a pandemic, epidemic or endemic), which is ongoing as of the date of the execution of this Agreement.

ARTICLE III – RENT

3.01 Rent.

For the purpose of computing the rent payments ("Rent"), Lessor and Lessee agree that the Premises comprise 8,994,892.7 square feet of land. The initial Rent for the Premises will be calculated on the basis of 8,994,892.7 square feet at $0.1969 per square foot per annum. The initial annual Rent for the first five (5) years of the Initial Term shall be $1,771,094.37 or $147,591.20 monthly. The Lessee will pay the Rent in twelve (12) equal monthly installments of $147,591.20. Rent payments shall be paid in advance on or before the first day of each and every month during the term of this Lease. The Rent is subject to readjustment of Rent as addressed in Section 3.04 below and subject to the commencement of Rent pertaining to the phased Parcels as provided in Section 3.02 below.

3.01.01 Initial Rent in the Event of a Partial Termination of the Lease.

If the Lease is partially terminated as provided in Section 10.06 below, then the initial Rent for the Premises will be calculated as follows:

Only Parcel 1 remains under the Lease: 2,123,606.3 square feet at $0.3000per square foot per annum.

Only Parcels 1 and 2 remain under the Lease: 4,189,429.8 square feet at $0.2625per square foot per annum.

Only Parcels 1, 2, and 3 remain under the Lease: 6,335,154.2 square feet at $0.2250 per square foot per annum.

If the Lease is partially terminated, as provided in Section 10.06 below, after the fifth (5th) anniversary of the Rent Commencement Date, then the rental amounts identified in this Section above will be adjusted in accordance to Section 3.04 below.

3.02 Commencement of Rent and Time of Payment.

For purposes of this Section, the initial Rent, as identified in Section 3.01, can be broken down by parcel as follows:

Parcel "1" (2,123,606.3 square feet @ $0.1969) = $418,138.08 annual, $34,844.84 monthly

Parcel "2" (2,065,823.5 square feet @ $0.1969) = $406,760.65 annual, $33,896.72 monthly

Parcel "3" (2,145,724.4 square feet @ $0.1969) = $422,493.13 annual, $35,207.76 monthly

Parcel "4" (2,659,738.5 square feet @ $0.1969) = $523,702.51 annual, $43,641.88 monthly

Total (8,994,892.7 square feet @ $0.1969) = $1,771,094.37 annual, $147,591.20 monthly)

Payment of Rent by Lessee to Lessor as aforesaid shall commence as follows: Payment of Rent for the area marked as Parcel "1" on Exhibit "D" will commence April 6, 2025 or on the date of the issuance of the first certificate of occupancy, whichever occurs first (the "Rent Commencement Date"). Payment of Rent for the area marked as Parcel "2" on Exhibit "D" will commence May 26, 2027 or on the date of the issuance of the first certificate of occupancy, whichever occurs first. Payment of Rent for the area marked as Parcel "3" on Exhibit "D" will commence June 4, 2029 or on the date of the issuance of the first certificate of occupancy, whichever occurs first. Payment of Rent for the area marked as Parcel "4" on Exhibit "D" will commence June 14, 2031, or on the date of the issuance of the first certificate of occupancy, whichever occurs first.

3.03 Security Deposit.

Prior to the commencement of this Lease, Lessee shall tender to Lessor an irrevocable letter of credit, or other surety acceptable to the Director ("Security Deposit") in an amount equal to three (3) months of Rent per phase as indicated in Section 3.02 above, to guarantee the faithful performance of Lessee of its obligations under this Lease and the payment of all Rent due hereunder. Lessee shall be obligated to maintain such Security Deposit in effect until the expiration of eighteen (18) consecutive months from the Rent Commencement Date during which Lessee commits no Event of Default under this Lease. Such Security Deposit shall be in such form as shall be acceptable to Lessor in its reasonable discretion. Within twenty (20) days after expiration of such eighteen (18) month period and if no Event of Default by Lessee has occurred, Lessor shall return the Security Deposit to Lessee. Lessor's rights under this Section shall be in addition to all other rights and remedies provided to Lessor under this Agreement.

3.04 Readjustment of Rent.

For the purpose of computing adjustments to rental payments, Lessor and Lessee agree as follows, with each adjustment effective as of the appropriate anniversary date, regardless of the date the actual adjustment is made:

A. Except as provided in Subsection B below, Rent shall be adjusted on the first of the month following each fifth (5th) anniversary of the Effective Date of this Lease thereafter during the Initial Term and any Lessee's Option Period. Lessor and Lessee agree that, except as provided for in paragraph B to this Section, percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U) shall govern the rent readjustment for these anniversary dates. The parties further agree that for the purposes of computing such percentage increase during the Initial Term, the Base Year CPI-U shall be established as that rate in place ninety (90) calendar days prior to the Effective Date of this Lease. Rent shall be adjusted pursuant to

the percentage increase in the CPI-U from the Base Year CPI-U to the rate in place ninety (90) days prior to the applicable date of readjustment (i.e. the fifth (5th) anniversary date of the Effective Date of this Lease).

In the event the CPI-U is not yet published or is otherwise unavailable for the month in which this Lease is effective, the price index used will be that price index for the closest preceding month for which the price index is available. In the event that the CPI-U is no longer published by the Bureau of Labor Statistics, Department of Labor at a time when an adjustment is to be made, Lessor and Lessee agree to use the consumer price index published by the Department of Labor that replaces the CPI-U or, if no replacement is available, but a reasonably comparable consumer price index exists, to use the method set forth in paragraph B below to adjust rent.

All readjustments shall be effective as of the fifth (5th) anniversary date, without regard to the date the actual adjustment is made; provided, however, that in no event shall the readjusted Rent be less than the rate in place immediately prior to such readjustment nor more than fourteen percent (14%) more than the Rent established at the beginning of the immediately preceding five-year period.

B. Rent shall be adjusted by appraisal on the first of the month following each tenth (10th) anniversary of the Effective Date of this Lease thereafter during the Initial Term and any Lessee's Option Period. Every 10 years, the Rent shall be adjusted to a rate equal to one of the following: eight percent (8%) of the then fair market value of the Land (excluding any improvements located on the Land) established by an appraisal if the Land is less than 50 acres; seven percent (7%) of the then fair market value of the Land (excluding any improvements located on the Land) established by an appraisal if the Land is greater than or equal to 50 acres but less than 100 acres; six percent (6%) of the then fair market value of the Land (excluding any improvements located on the Land) established by an appraisal if the Land is greater than or equal to 100 acres but less than 125 acres; 5.25% of the then fair market value of the Land (excluding any improvements located on the Land) is established by an appraisal if the Land is equal to or greater than 125 acres. All adjustments shall disregard the value of any Lessee-owned improvements located on the Land, established as set forth in this Lease. In no event however, shall the Rent for the Option Period be less than the Rent established at the beginning of the immediately preceding five (5) year period nor more than fourteen percent (14%) more than the Rent established at the beginning of the immediately preceding five-year period. The Rent shall become effective as of the Option Period, regardless of the date the actual adjustment is made. Fair market value for purposes of this adjustment under this subsection shall be as determined by an appraisal as provided in subsection C below.

C. **Appraisal.** The fair market value of each Parcel shall be determined on a per square foot of Land basis by a new appraisal of the Parcel. Lessor will

select an appraiser from its list of qualified appraisers to establish the fair market value of the Parcel, disregarding the value of any Lessee-owned improvements located on the Parcel. This appraisal shall be known as the "First Appraisal."

Upon completion of the First Appraisal, Lessor shall notify Lessee in writing of the rental rate, which shall be calculated as described in Section 3.04B. If Lessee agrees with the First Appraisal, or does not respond to Lessor in writing within fifteen (15) calendar days after receipt of the written notice as required herein, or it does not produce a Second Appraisal (as defined below) within 30 calendar days from Lessee's notice to proceed with said Second Appraisal, the First Appraisal and its resulting rent shall be deemed to be accepted by Lessee. The cost of the First Appraisal shall be paid by Lessor

If Lessee disagrees with the rental rate resulting from the First Appraisal, Lessee, within fifteen (15) calendar days after receipt of said notice, shall notify Lessor in writing of Lessee's request for a qualified second appraisal ("Second Appraisal"). The second appraiser must be the next appraiser appearing on Lessor's list of qualified appraisers. The cost of the Second Appraisal shall be paid by the Lessee. The rental rate resulting from the Second Appraisal shall be calculated as described in Section 3.04B.

After the Lessee provides Lessor with the Second Appraisal, both parties have a 15 business day review period to consider same. If, by the 15th day, either the Lessor or Lessee disagrees with the rental rate resulting from the Second Appraisal, and a third appraisal ("Third Appraisal") is necessary, the Lessor and Lessee shall agree to the next appraiser appearing on the Lessor's list of qualified appraisers. The cost of the Third Appraisal shall be paid equally by the Lessor and Lessee, and the Third Appraisal shall be the final determinant of the rental rate. There shall be no further appraisals beyond the Third Appraisal, regardless of whether either the Lessor or Lessee disagrees with the rental rate resulting from the Third Appraisal.

Lessee shall pay the Rent as determined by the First Appraisal under protest until there is a final determination of the fair market value for the Parcel for which the Rent is determined. Should the final determination of the fair market value of the Parcel be a lower rate than the fair market value of the Parcel determined by the First Appraisal, Lessee's account will be credited by Lessor accordingly.

3.05 Unpaid Rent, Fees and Charges.

Any installment of Rent, fees, or other charges or monies accruing under any provisions of this Lease that are not received by Lessor by the 20th day of the month in which payment is due, shall bear interest from the date such Rent or other amount was due at the lesser of the rate of eighteen percent (18%) per year or the then maximum nonusurious rate under applicable law, (the lesser of said amounts being herein referred to as the "Maximum Rate"). In the event the late charge is ever

deemed to be "interest" the amount of interest on past due amounts shall be automatically reduced so that the combination of said late charge and the interest on past due amounts, if any, does not exceed the Maximum Rate. Any amount collected which exceeds the Maximum Rate will be deemed credited to other amounts owed by Lessee to Lessor under this Lease, and any remaining excess after such credit shall be refunded to Lessee. It is the intent of both Lessor and Lessee to at all times comply with the applicable law regarding the maximum nonusurious amount or rate of interest which may be contracted for, charged, taken, reserved or received by Lessor.

3.06 Place of Payment.
All rent payments provided herein shall be paid to Lessor at the following address:

Accounting Division
El Paso International Airport
P.O. Box 971278
El Paso, Texas 79997-1278

In lieu of payments being mailed to the above address, electronic payments may be made via any electronic payment system acceptable to Lessor.

ARTICLE IV - OBLIGATIONS OF LESSOR

4.01 Quiet Enjoyment.
Lessor agrees that upon Lessee's paying rent and performing all of the covenants, conditions, and agreements set forth in this Lease, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises. Lessor has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder. This Lease is subject to termination of undeveloped Land as set forth in Section 10.06. In addition, this Lease is subject to the encumbrances of record running with the Land. Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

4.02 Site Plan Approval.
The El Paso International Airport has approved the initial site plan for Parcel 1 attached hereto as Exhibit "F", provided that such approval does not constitute an approval for purposes of building permitting which is subject to the review and approval of the City's Planning Department. The Lessee will obtain the Lessor's approval prior to making any changes to the site plan.

4.03 Foreign Trade Zone.
Lessor will cause the Land to be included in foreign trade zone prior to the start of the rent commencement period for Parcel 1. Unless provided otherwise by law or action of the federal government, the Land shall remain in a foreign trade zone throughout the Lease term, as it may be extended. In the event that the Land is not included in the foreign trade zone by the start of the rent commencement period for Parcel 1, then the rent commencement period for Parcel 1 will be delayed until either the Lessee finds a subtenant evidenced by a certificate of occupancy or one year from the start of the rent commencement period for Parcel 1 whichever occurs first. Notwithstanding anything to the contrary, if the Land is not included in the foreign trade zone by

the Effective Date, the security deposit requirements in Section 3.03 of this Lease will be deferred until either the Land is included in the foreign trade zone or Lessee obtains a certificate of completion for the first building in Parcel 1 whichever occurs first. Unless otherwise stated in this Lease, this section does not waive or modify any development/construction deadlines included in this Lease.

ARTICLE V – OBLIGATIONS AND RIGHTS OF LESSEE

5.01 Net Lease.
This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth in Article IV above and elsewhere in this Lease Agreement. Lessee shall:

A. Keep and maintain the Premises and improvements located thereon in a good state of repair at all times;

B. Pay any and all taxes assessed against the Premises, improvements located on the Premises, Lessee's interest in the Premises and improvements, and all of Lessee's personal property located on the Premises; and

C. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

5.02 Condition of Premises.
Subject to Section 5.11 and Exhibit "C", Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Lessor 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. Lessee accepts the Premises "As Is", "Where Is", with all faults, relying on Lessee's own inspection and judgment and not in reliance on any representations of Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

5.03 Design, Construction, Operation, Maintenance, and Removal.
Lessee, at Lessee's expense, agrees that it will design, construct, operate, maintain, and remove improvements on the Premises in accordance with this Lease including all Attachments to this Lease and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon. In addition, Lessee agrees, if required, it will remove all improvements, in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the

requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990 and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

Lessee shall, at Lessee's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Lessee's use, operation, occupation or alteration of the Premises including any improvements thereon.

A. Definitions.

(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" shall mean 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) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

(1) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises and the Master Drainage Site (as defined in Exhibit "C"), or transported to and from the Premises and the Master Drainage Site, by Lessee, its sublessees, agents, employees, contractors, invitees, licensees, or a third party in violation of any Environmental Law. **Lessee shall indemnify, defend and hold harmless Lessor, 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 Law 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 and/or Master Drainage Site caused by the act or omission of Lessee, it 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 and/or Master Drainage Site, improvements, land, soil, underground or surface water to the extent required under Environmental Laws. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon or the Master Drainage Site. This indemnification of Lessor by Lessee 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, to the extent caused by Lessee, the Master Drainage Site, or present in the soil or ground water on, under or about the Premises or, to the extent caused by Lessee, the Master Drainage Site. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

(2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or, to the extent caused by Lessee, the Master Drainage Site or permitted by Lessee results in any contamination of the Premises or any improvements thereon, or, to the extent caused by Lessee, the Master Drainage Site or any surrounding property, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon or, to the extent caused by Lessee, the Master Drainage Site 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 or the Master Drainage Site; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon or the Master Drainage Site or the

surrounding property. In no event shall Lessee be responsible for the cost of remediating Hazardous Materials that are introduced by Lessor or another tenant under a separate lease with Lessor.

(3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine 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, to the extent caused by Lessee, the Master Drainage Site or on surrounding property to comply with applicable Environmental Laws, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or, to the extent Lessee has such information, the Master Drainage Site 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 Master Drainage Site or the surrounding property.

(4) Lessee shall, within twenty-four (24) hours, notify Lessor promptly after Lessee 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 Lessee's operation on the Premises or the Master Drainage Site, and (b) any change in Lessee's operation on the Premises or the Master Drainage Site that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws. Lessee shall notify the Lessor immediately upon discovering any condition or learning of an event on the Premises or the Master Drainage Site that contaminates the Land or surrounding properties or poses a risk of environmental harm to the Land or surrounding properties.

(5) Lessee shall insert the provisions of this Section 5.03 in any lease, agreement, license, or contract by which it grants a right or privilege to any person, firm or corporation under this Lease, but only with respect to those leases, agreements, licenses or contracts executed after the Effective Date of this Lease.

(6) Lessee shall not remove any soils from the Airport without advance written consent of Lessor.

C. Fuel Storage Tanks.
Fuel storage tanks are not allowed on the Premises except as expressly provided herein.

Lessee'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 shall constitute a material default of this Lease and shall permit Lessor to pursue the remedies as set forth in Article X hereinbelow, in addition to all other rights and remedies provided by law or otherwise provided in the Lease, to which Lessor may resort cumulatively. Notwithstanding the above, an exception is made permitting Lessee to store portable liquid propane tanks not to exceed 23 gallons (per tank), in a standard size cage on site for powering forklifts, generators, and other equipment. Lessee will not sell or permit the sale of any LPG or any type of fuel at the Premises. Lessee will comply with all safety and El Paso City Code requirements regarding the use and storage of LPG. Except as provided herein, Lessee will not install or allow any underground, aboveground, or permanent storage tanks on the Land. The Director of the El Paso International Airport (the "Director") may grant additional exceptions to this section provided that such exceptions must be provided in writing and remain at the sole discretion of the Director.

D. Reporting.

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

(2) Upon expiration, termination or cessation of this Lease for any reason (other than a termination of this Lease on or before the end of the Due Diligence Period under Section 5.11 below), Lessee shall provide to Lessor a Phase I Environmental Site Assessment meeting ASTM standards of the Premises ("Lessee's Report"); and if, in the opinion of Lessor, if Lessee's Report indicates that the Premises is in violation of applicable Environmental Laws in violation of the terms of this Lease, then Lessee shall perform work as is necessary to cause the Premises to be in compliance with applicable Environmental Laws.

5.04 Certificate of Completion Deadlines.

Lessee will obtain a certificate of completion (including structure, electrical, fire protection, plumbing, and mechanical) for each building to be located on the Land as shown on Exhibit "D" by the deadlines provided in Exhibit "E" – Phased Development Improvements and Additional Requirements. Failure by the Lessee to obtain a certificate of completion by the established deadlines is a material breach of this Lease and the Lessor may terminate this Lease in whole or in part as it pertains to the undeveloped Parcels by sending written notification to the Lessee after the expiration of the deadlines described in the attachments, and Lessee's failure to cure such default within ninety (90) days after receipt of such notice. The notice sent by the Lessor to the Lessee for termination is sufficient evidence to the termination of this Lease and no other signed documents by the Lessee are required. Lessee will remain responsible for removing all improvements from the Lease Premises as provided in this Lease. Unless allowed by the Director

in writing (such permission not to be unreasonably withheld, delayed or conditioned), the Lessee will not commence construction of any buildings on any Parcel until the Lessee has obtained all certificates of completion for the buildings constructed on the previous Parcel(s).

5.05 Lessor's Approval of Plans.

Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of improvements or any plans, specifications and working drawings for Lessee's removal of improvements shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities. It is specifically understood that the Department of Aviation is only one of numerous departments of the Lessor and that, in addition to obtaining approval of the Director, Lessee shall be required to obtain the approval of other City departments. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to the Director one (1) complete set of the Final Plans as approved by the governmental agencies exercising jurisdiction thereover, and copies of all issued permits. Upon completion of construction, Lessee shall deliver to Director a complete set of record (as-built) drawings of the construction signed and sealed by a professional engineer or architect licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises.

5.06 Landscaping and Maintenance of Improvements.

Lessee shall landscape the Premises and keep the improvements on the Premises and sidewalks and parkways directly abutting the Leased Premises in a good state of repair and condition and in a presentable condition. The exterior finish on the improvements shall be repainted and refinished as reasonably necessary to maintain the appearance of such improvements. Notwithstanding anything to the contrary in the Declaration, Lessor agrees that attractive, low water usage landscaping is a desirable goal and agrees to consider and approve appropriate low water usage landscaping plans as a part of the architectural review process.

Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform reasonable maintenance Lessor reasonably deems necessary in order to cause the exterior finish to be in a good condition. If said maintenance is not commenced by Lessee within forty-five (45) days after receipt of written notice, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which plus ten percent (10%) shall be borne by Lessee.

5.07 Utilities.

Lessee shall pay for all costs or charges for utility services furnished to Lessee during the term hereof. Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense.

5.08 Trash, Garbage, and Other Refuse.

Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises. Lessee shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

5.09 Permitted Uses.
Lessee will not enter into any business activity on the Premises other than those permitted in the Lease. Lessee will not use the Premises for any uses not specifically listed in Exhibit "C" - Allowed Uses and Additional Use Requirements and Restrictions.

Notwithstanding anything to the contrary, Lessee shall not install or allow any fuel storage tanks on the Premises except as permitted in Section 5.03.C.

5.10 Penalties Assessed by Federal Agencies.
Lessee understands and agrees that in the event any federal agency assesses a civil penalty against Lessor or the Airport for any violation, including but not limited to any security violation, as a result of or related to any act or failure to act on the part of Lessee, its sublessees, agents, employees contractors, licensees or invitees, Lessee shall reimburse Lessor in the amount of the civil penalty assessed. Failure to reimburse Lessor within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.

5.11 Due Diligence.
The Lessee may conduct due diligence on the property for 180 calendar days starting on the Effective Date of this Lease (the "Due Diligence Period"). The Lessee may terminate the Lease during the Due Diligence Period for any or no reason following notice to the Lessor as provided below. If the Lessee elects to terminate the Lease during the Due Diligence Period, then the Lessee will send written notification to the Lessor. The Lease will be considered terminated as of the date of the receipt of the termination notice and there will be no need for any other action. The Lessor may file any documents in in the Official Records of El Paso County to evidence the termination of the Lease. Unless otherwise provided in this Lease, the Lessee may not terminate the Lease following the expiration of the Due Diligence Period. No refund of payments will be made if the rent payments commenced on the Effective Date of the Lease and Lessee terminates during the Due Diligence Period.

5.12 Pre-Construction Requirements.
Lessee will not commence construction on the Premises until Lessee has provided Lessor the following items and Lessor has approved the sufficiency of each of the following in the Lessor's discretion:

a. Copy of a financing commitment letter from lender (if Lessee will be obtaining a loan to pay for construction of improvements on the Premises)
b. Written certification from Lessee that the financing commitment is in full force and effect (if Lessee will be obtaining a loan to pay for construction of improvements on the Premises)
c. Letter or document from Lessee's banking institution showing proof of available funds for construction
d. Proof of required insurance coverages as provided in this Lease
e. Conceptual plans for development
f. Payment and performance bonds as required under this Lease

Failure by Lessee to provide each of these items to Lessor prior to the start of construction, and failure to cure such default within 30 days of written notice from Lessor, constitutes a material

breach of this Lease.

ARTICLE VI -
INSURANCE AND INDEMNIFICATION

6.01 Insurance.

Prior to the start of construction, Lessee shall obtain, provide proof of, and shall maintain for the term of this Agreement, the types and amounts of insurance coverage listed below, in amounts not less than:

Commercial General Liability Insurance, including automobile liability, in amounts not less than One Million Dollars ($1,000,000.00) for bodily injury and property damage for each occurrence,

Two Million Dollars ($2,000,000.00) aggregate for bodily injuries to more than one person arising out of each occurrence,

Three Million Dollars ($3,000,000.00) for Pollution Liability insurance arising out of 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, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions provided for under the Texas Tort Claims Act, whichever is greater (which pollution liability insurance may be provided by Lessee's general contractor during the construction phase for a Parcel and after completion of such construction, Lessee shall provide such policy of insurance).

During construction, these requirements may be satisfied as provided in Section 6.09.

Commercial General Liability coverage requirements may be satisfied through a combination of individual policy limits and umbrella/excess liability coverage (which umbrella/excess liability coverage shall be no less than $1,000,000 per occurrence).

6.02 Additional Insured.

Lessor shall be named as an Additional Insured on all insurance policies required under this Lease, except workers compensation, either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

All policies shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the Lessor or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

6.03 Property/Fire and Other Risks Insurance.

Lessee, at its sole cost and expense, shall throughout the term of this Lease, for each Parcel upon completion of construction of improvements for each Parcel, keep or cause to be kept all improvements now or hereafter located upon the Premises insured for the mutual benefit of Lessor and Lessee 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 (hereinafter called "Full Insurable Value"). In the event a dispute arises as to the Full Insurable Value which cannot be resolved by agreement of the Parties, an appraisal of the Premises and improvements thereon shall be made by an appraiser selected by Lessee and reasonably acceptable to Lessor to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser Lessee selected be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee, unless the value claimed by Lessee is confirmed through such an appraisal, in which case the Lessor shall reimburse the Lessee for the cost of such appraisal.

6.04 Payment and Performance Bonds.

Prior to commencement of any construction work for buildings located on the Premises (but excluding any tenant finish out construction work), the total cost of which will exceed Fifty Thousand Dollars ($50,000.00), Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

A. Prior to the date of commencement of any construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded.

   Said bond shall guarantee the faithful performance of all necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work described as herein provided.

B. Prior to the date of commencement of any construction, a payment bond with Lessee's contractor or contractors as principal in a sum equal to the full amount of the construction contract project.

   Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction project.

In accordance with Article 3503.004 of the Texas Insurance Code, if a Performance or Payment bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital

and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas.

In lieu of the payment and performance bonds described in Paragraph A and B, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable Letter of Credit, in a form acceptable to the Director in her/his reasonable discretion and approved by the City Attorney, in an amount equal to the full amount of the construction contract awarded. Such Letter of Credit shall be issued by a national banking association, shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvement contemplated by the construction contract.

6.05 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:

A. a statement of the coverage provided by the policy;

B. a statement certifying the Lessor to be listed as an additional insured in the policy; and

C. a statement of the period during which the policy is in effect

6.06 Workers Compensation / Employer's Liability Insurance.
To the extent required by applicable law, the Lessee shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of Lessee's employees to be engaged in work under this Agreement. Lessee shall provide the following endorsement:

> "The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the City of El Paso, its partners, agents and employees by reason of any payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured."

6.07 Builder's Risk.
During the construction of any improvements, the Lessee (or its general contractor) will obtain builder's risk insurance.

Builder's risk insurance (fire and extended coverage). This insurance shall be required for this building project for each Parcel. Until the project is completed and accepted in accordance with all

the terms and conditions of this Lease for each Parcel, Contractor is required to maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) completed value basis on the insurable portion of the project for the benefit of Owner, Contractor, and subcontractor(s), as their interests may appear. This provision shall not release Contractor from his obligation to complete, according to plans and specifications, the project covered by this Contract, and Contractor and his Surety shall be obligated to full performance of Contractor's undertaking.

6.08 Comprehensive Pollution Liability and Storage Tank Liability Insurance.
[Intentionally Deleted.]

6.09 Contractors, Subcontractors, Operators.
Lessee will require the contractors, or subcontractors, or operators to have commercial general liability, builder's risk insurance (general contractor only), pollution liability insurance (general contractor only), and workers compensation insurance as provided in this Lease. Lessor may waive in writing any insurance requirements provided in this Section.

Commercial General Liability coverage requirements may be satisfied through a combination of individual policy limits and umbrella/excess liability coverage (which umbrella/excess liability coverage shall be no less than $5,000,000 per occurrence).

6.10 INDEMNIFICATION.
LESSEE AGREES TO INDEMNIFY, DEFEND, AND HOLD LESSOR HARMLESS AGAINST ANY AND ALL CLAIMS (INCLUDING BUT NOT LIMITED TO MATERIALS AND/OR MECHANICS LIENS), DEMANDS, DAMAGES, COSTS, 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 LESSEE'S BUSINESS ON THE PREMISES AND/OR MASTER DRAINAGE SITE (AS DEFINED IN EXHIBIT "C"), ITS USE OF THE PREMISES AND/OR MASTER DRAINAGE SITE, THE WORK OF LESSEE'S CONTRACTORS OR SUBCONTRACTORS, OR FROM ANY BREACH ON THE PART OF LESSEE OF ANY TERMS OF THIS LEASE, OR FROM ANY ACT OR NEGLIGENCE OF LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES AND/OR MASTER DRAINAGE SITE INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF LESSOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LESSOR BY REASON OF ANY SUCH CLAIM, LESSEE, UPON NOTICE FROM LESSOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LESSOR. THE FORGOING OBLIGATIONS OF LESSEE SHALL NOT BE APPLICABLE TO ANY CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF GROUND LESSOR,

GROUND LESSOR'S OTHER TENANTS, OR ANY OF THEIR RESPECTIVE SUBTENANTS, CONTRACTORS OR AGENTS.

ARTICLE VII - DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY

7.01 Obligations of Lessee.

During the term hereof, except as provided in Section 7.03 below, should the improvements constructed by Lessee upon the Premises be damaged or destroyed in whole or in part by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessee, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessee as aforesaid and subject to and in accordance with the following terms and conditions:

A. Prior to commencing such work, Lessee shall deliver to Lessor a set of the preliminary construction plans and specifications in accordance with the terms and provisions of the Declaration. Lessor shall not unreasonably withhold or delay any approval as long as the same comply with applicable law and code and the design requirements set forth in the Declaration. In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto. In accordance with Section 6.04 above and provided such is allowed by law, Lessee shall have the absolute right to restore or rebuild such improvements to the same size as existed prior to the casualty.

B. Upon approval of the preliminary plans and specifications, as herein provided, Lessee shall prepare, or cause to be prepared, final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover and copies of all issued permits for the Premises. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.

C. Prior to commencing construction, Lessor may require Lessee to furnish a performance and payment bond in accordance with Section 6.04 and, if requested, builder's risk insurance.

D. Upon compliance with the foregoing, Lessee's obligation to repair, replace or rebuild shall be subject to settlement occurring with the insurance company or companies and said proceeds of such insurance policy or policies having been paid to Lessee. After actual receipt of such insurance proceeds, Lessee shall commence

such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.

E. Upon completion of the construction, Lessee shall deliver to Lessor, a complete set of record (as-built) drawings of the construction signed and sealed by a professional engineer licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises.

7.02 Insurance Proceeds.

Upon receipt by Lessee of the proceeds of the insurance policy or policies, Lessee shall disburse such proceeds during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Lessee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Lessee.

7.03 Cancellation of Lease.

Should fifty percent or more of the improvements on the Land be damaged or destroyed in whole by fire or other casualty during the last seven (7) years of the initial term or last five (5) years of any renewal term of this Lease, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and Lessee shall have the right to cancel this Lease by giving Lessor written notice of such election within sixty (60) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessor, unless Lessor has elected to have the Premises returned to it clear of all improvements in accordance with Section 10.06 hereinbelow, in which case Lessee shall be entitled to such insurance proceeds. All rents payable under this Lease shall be prorated and paid to the date of such cancellation. The receipt of insurance proceeds by Lessor will relieve Lessee from any responsibility to restore the Premises to their former condition or to clear the Land of the improvements.

ARTICLE VIII - CONDEMNATION

8.01 Definitions.

The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.

B. "Total Taking" means the taking of the fee title to all of the Premises and improvements thereon, or complete limitation of use of the Premises for its Allowed Use pursuant to the Lease in a manner that constitutes a taking under law.

C. "Substantial Taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:

1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;

2. The conduct of Lessee's business on the Premises would be substantially prevented or impaired;

3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Lease.

D. "Partial Taking" means the taking of a fee title that is not either a Total or Substantial Taking.

E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.

F. "Notice of Intended Taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a written notice of intent to take containing a description or map reasonably defining the extent of the Taking.

G. "Award" means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.

H. "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

8.02 Notice of Condemnation.

The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

A. Notice of Intended Taking;

B. Service of any legal process relating to condemnation of the Premises or improvements; or

C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

8.03 Rights of Parties during Condemnation Proceeding.
Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or Intended Taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

8.04 Taking of Leasehold.
Upon a Total Taking, Lessee's obligation to pay Rent and other charges hereunder shall terminate on the Date of Taking, but Lessee's interest in the leasehold shall continue until the Taking is completed by deed, contract or final order of condemnation. If the Taking is a Substantial Taking under the aforementioned definition, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives notice of the Intended Taking, elect to treat the Taking as a Total Taking. If Lessee does not so notify Lessor, the Taking shall be deemed a Partial Taking. Upon a Partial Taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the Rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

8.05 Total Taking.
All of Lessee's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Premises, as unencumbered by any Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

8.06 Partial Taking.
Upon a Partial Taking, all Awards shall be disbursed as follows:

A. To the cost of restoring the improvements on the Premises; and

B. The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all sums awarded for Lessee-owned improvements and the Leasehold estate. Lessor shall receive all sums awarded for the Premises, as unencumbered by the Lessee-owned improvements but subject to the Lease.

8.07 Obligations of Lessee under Partial Taking.
Promptly after any such Partial Taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last two (2)

years of the initial term or any renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect; provided however, that all sums awarded for Lessee owned improvements and the Leasehold estate shall be disbursed to Lessor.

8.08 Taking of Temporary Use of Premises and Improvements.
Upon any Taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the Taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such Taking, Lessee shall receive, hold and disburse the Award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

If any such Taking is for a period extending beyond the expiration date of the term, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings.

ARTICLE IX - ENCUMBRANCES

9.01 Encumbrance.
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. Lessee 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 Lessor 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, Lessor 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 Lessor upon Lessee under the terms and provisions of this Lease so long as such Mortgage is in effect.

9.02 Mortgagee's Rights.
Upon receipt of a notice or demand in accordance with Section 9.01 above, Mortgagee shall have one hundred and twenty (120) 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 one hundred and twenty (120) days, to commence performance within such one hundred twenty (120) 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 Lessee hereunder given by Lessor shall be effective against a Mortgagee that has provided Lessor the information specified in Section 9.01 of this Lease unless Lessor 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 Lessee under this Lease.

G. The Director will, upon request by any Mortgagee, certify in writing that this Lease is in full force and effect, whether this Lease has been amended, that to Lessor's knowledge Lessee is not in default, and the date through which rent has been paid.

H. If this Lease and the fee estate in the Premises are ever commonly held as a result of a default by Lessee, 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 Lease may not be amended, modified, changed, cancelled, waived, or terminated without prior written notice to all Mortgagees. Lessor shall not accept a voluntary surrender of the Lease without consent by all Mortgagees.

9.03 Rights on Foreclosure.
In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Lessee's interest in lieu of foreclosure shall succeed to all of Lessee's rights, interests, duties and obligations under this Lease.

ARTICLE X - EXPIRATION, CANCELLATION/TERMINATION, ASSIGNMENT AND TRANSFER

10.01 Expiration.
This Lease shall expire at the end of the term or any extension thereof.

10.02 Cancellation.
Subject to the provisions of Article IX above, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of thirty (30) days after Lessor has notified Lessee in writing that payment was not received when due.

B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property and such petition is not dismissed within ninety (90) days after filing;

C. Make any general assignment for the benefit of creditors;

D. Abandon the Premises and fail to pay rent for a period of thirty (30) days;

E. Be in violation of any local, state, or federal rules and/or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Lessee, and such violation or default continues for a period of sixty (60) days after receipt of written notice from Lessor to cure such default, unless during such sixty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;

F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or

G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within ninety (90) days after the appointment of such receiver.

In any of the aforesaid events, which shall be events of default, Lessor may terminate this Lease upon five (5) business days written notice to Lessee. Following the effective date of such termination, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Lease canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

This Lease may also be terminated by the parties as otherwise specified in this Lease.

10.03 Repossessing and Reletting.
In the event of default by Lessee hereunder which shall remain uncured after the required notices have been given pursuant to this Lease, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

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 Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and

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 Lessor. If Lessor 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 Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor 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.

10.04 Assignment and Transfer.

Lessee shall have the right and privilege to assign or transfer this Lease subject to the prior written approval of Lessor which shall not be unreasonably withheld, delayed, or conditioned and which response is subject to 45 days prior written notice and request to Lessor, including all necessary documentation showing: (l) assignee's capacity to meet the requirements of this Lease; (2) assignee's authorization to conduct business in the State of Texas; (3) assignee's use at the Premises will not violate the Declaration and applicable law; and (4) that assignee is not indebted (i.e., delinquent on a debt) to Lessor (collectively, the "Required Documentation"). The 45 days required notice will not begin until all necessary information required is provided. During the 45 days, Lessor will process the request to assign, and will diligently work to provide Lessee written approval of Assignment, which shall not be unreasonably withheld. Lessor acknowledges and agrees that if Lessor unreasonably withholds approval to such assignment when the Required Documentation is provided such withholding of approval shall be a breach of the Lease by Lessor and shall entitle Lessee to pursue all available claims, rights and remedies contained in this Lease and in law and equity.

Lessor's prior approval shall not be required in the event of an assignment of this Lease by Lessee to: (1) the first leasehold Mortgagee: (2) any business organization that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with Lessee or Lessee's parent company; (3) any business organization resulting from the consolidation or merger of Lessee with any other business organization or organizations, or (4) any business organization that, alone or together with affiliated business organizations, acquires Lessee and/or all or substantially all of the assets or operations of Lessee. Lessee shall provide prior written notice to Lessor of such an assignment and such assignee will continue to meet all terms of this Lease.

Any person or entity to which this Lease is assigned to pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

Lessor acknowledges that this Lease may be partially assigned with each of Parcel 1, Parcel 2, Parcel 3 and Parcel 4 being assigned separately. Upon a partial assignment of this Lease and at the request of Lessee or its assignee, Lessor will execute an amended and restated version of this Lease applicable to each Parcel. Such amended and restated version of this Lease will be under the same terms of this Lease except as follows: (1) the definition of Land will be restricted to only the applicable Parcels, (2) the Lessee will pay the Lessor in advance for a reappraisal of the land that remains under the Lessee's control, (3) the Lessee will pay the Lessor in advance for a reappraisal of the land that will be assigned, (4) the assigned lease and the Lessee's lease will be amended to set the rental rates at the percentage of fair market value as shown in the reappraisal, that corresponds to the number of acres as shown in the table below, (5) the rent adjustments will continue as provided in this Lease even if that results in back to back reappraisals in accordance to the rent assignment section, and (6) assignee will be required to provide a security deposit in the amount of three months rent.

Size of Parcel	Percentage of the Appraised Fair Market Value
$A < 50$ acres	8%
50 acres $\leq A < 100$ acres	7%
100 acres $\leq A < 125$ acres	6%
$A \geq 125$ acres	5.25%

10.05 Subleasing.

Lessee shall have the right to sublease all or any part of the Premises hereunder for the same purposes permitted under the terms and provisions of this Lease, including but not limited to the insurance and indemnity requirements. Any such sublease executed after the Effective Date of this Lease shall be subject to the same conditions, obligations and terms as set forth herein and Lessee shall be responsible for the observance by its sublessees of the terms and covenants contained in this Lease. On or before January 1st and July 1st of each year of the Initial Term or Option Period of this Lease, Lessee shall report to Lessor any subleases of the Premises, or any improvements thereon and, upon request of Lessor, Lessee shall furnish Lessor with a copy of the Sublease Agreement. In addition, Lessee shall provide a list of its sublessees, the sublessees contact information, the activities performed by sublessee on the Leased Premises, and shall provide to Lessor updated information whenever said sublessees information changes.

At the request of Lessee or its sublessee, Lessor will enter into a direct Lease with a sublessee if Lessee defaults under this Lease and sublessee cures Lessee's default under this Lease. Such direct Lease shall be under the same terms of this Lease except as follows: (1) the definition of Land will be restricted to only the applicable Parcels, (2) the Lessee will pay the Lessor in advance for a reappraisal of the land that remains under the Lessee's control, (3) the Lessee will pay the Lessor in advance for a reappraisal of the land that will be assigned, (4) the new lease and the Lessee's lease will be amended to set the rental rates at the percentage of fair market value that corresponds to the number of acres as shown in the table below, and (5) the rent adjustments on the Lessee's lease will continue as provided in this Lease even if that results in back to back reappraisals in accordance to the rent assignment section.

Size of Parcel	Percentage of the Appraised Fair Market Value
A < 50 acres	8%
50 acres ≤ A < 100 acres	7%
100 acres ≤ A < 125 acres	6%
A≥ 125 acres	5.25%

10.06 Termination under Phased Development Lease.
The Lessor may partially terminate this Lease as it pertains to any undeveloped Parcel if Lessee has not obtained for each building shown on Exhibit "D" to this Lease a certificate of completion from the City of El Paso by the deadlines established in Exhibit "E" of this Lease unless otherwise agreed by Lessor. Upon partial termination of this Lease as provided herein, all of Lessee's rights to such Parcels under this Lease will terminate (along with Lessee's obligation to pay rent for such Parcels) and the Lessor may proceed to lease the terminated Parcels to other parties.

> For illustration purposes only, if Lessee has failed to obtain a certificate of completion for all buildings shown in Exhibit "D" for Parcel 2 by the identified deadlines in Exhibit "E" of this Lease, then Lessor may terminate this Lease as it pertains to Parcels "2" (if construction has not timely commenced as allowed under this Lease), "3" and "4" at which point such Parcels will no longer be part of this Lease and the Lessor may proceed to lease such terminated Parcels to another party.

Partial termination of this Lease as provided in this Section may be done by the Lessor sending written notification to the Lessee within 90 calendar days after the deadlines described in Exhibit "E". The notice sent by the Lessor to the Lessee for partial termination is sufficient evidence to the partial termination of this Lease and no other signed documents by the Lessee are required. The Lessee remains responsible for the payment of Rent on undeveloped Parcels until the Lessor provides notice of the partial termination. Lessor's failure to timely deliver notification of termination shall be deemed Lessor's waiver of this termination option.

Unless allowed by the Lessor in writing, the Lessee will not commence construction on any Parcel until Lessee has obtained a certificate of completion for all buildings shown in Exhibit "D" from the City of El Paso for the previous Parcel. For illustration purposes, Lessee may not commence construction on Parcel 2 until Lessee has obtained a certificate of completion for all buildings shown in Exhibit "D" for Parcel 1 unless specifically authorized in writing by the Lessor. Failure to abide by the requirement to not commence construction on a Parcel until all previous Parcels have an approved certificate of completion from the City of El Paso is a material breach of this Lease. The Lessor may file any documents in the Official Records of El Paso County to evidence the partial termination of this Lease. Upon partial termination, the Rent amounts will be modified as provided in Section 3.01. Upon partial termination, the description of the Leased Premises in Section 1.01 will automatically be amended to only include the Parcels of Land that remain under the Lease.

If the Lessee fails to commence construction on Parcel 1 before the certificate of completion deadlines in Exhibit "E" of this Lease, then the Lessor may terminate this Lease in its entirety by sending written notification to Lessee within 90 calendar days from the deadline for Parcel 1 described above. The notice sent by the Lessor to the Lessee for partial termination is sufficient

evidence to the termination of this Lease and no other signed documents by the Lessee are required. The Lessor may file any documents in the Official Records of El Paso County to evidence the termination of this Lease.

Provided Lessee has not timely started construction on Parcels 2, 3, or 4, Lessee may partially terminate this Lease as it pertains to Parcels 2, 3, and/or 4 identified in Exhibit "D" by sending written notification to the Lessor within 120 calendar days from the certificate of completion deadlines described Exhibit "E" for the applicable Parcel as described in this Section above. Upon partial termination as provided herein, all of Lessee's rights to such Parcels under this Lease will terminate and the Lessor may proceed to lease the terminated Parcels to other parties. The notice sent by the Lessee to the Lessor for partial termination is sufficient evidence to the partial termination of this Lease and no other signed documents by the Lessor are required. The Lessor may file any documents in the Official Records of El Paso County to evidence the partial termination of this Lease. Upon partial termination, the Rent amounts will be modified as provided in Section 3.01. Upon partial termination, the description of the Leased Premises in Section 1.01 will automatically be amended to only include the parcels of land that remain under the Lease.

Upon termination or partial termination as provided in this Section, the Lessee releases to the Lessor all of Lessee's rights to the terminated Parcels.

For purposes of this Lease, Lessee is deemed to have commenced construction if grading or foundation work pursuant to a permit on the applicable Parcel has occurred.

10.07 Rights Upon Expiration or Termination/Cancellation.
At the expiration or termination/cancellation of this Lease, Lessee shall return the Premises to Lessor clear of all improvements above and below ground level and to have the soil compacted to Lessor's specifications, with no subterranean uses, unless, prior to three hundred sixty-five (365) days before the expiration of this Lease, Lessor, in Lessor's sole discretion, notifies Lessee that it wishes to retain the buildings on the Land. In such case, Lessee shall execute any documentation required by Lessor showing that ownership of all improvements reverts to Lessor. Lessee shall grant Lessor access to all improvements to conduct thorough inspections of the property.

If Lessor does not elect to retain the buildings on the Land, then within one hundred twenty (120) days prior to the expiration of this Lease (or within 30 calendar days following termination/cancellation of this Lease) and prior to removing any improvements from the Premises, Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

A. A contract surety bond in a sum equal to the full amount for the removal of improvements and the compaction of the soil.

Said bond shall guarantee the faithful performance of necessary construction and completion of removal of the improvements and compaction in accordance with approved final plans and detailed specifications which have been approved by the Director and appropriate City departments; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or

resulting from any failure of Lessee to perform completely the work described as herein provided.

B. A payment bond with Lessee's contractor or contractors as principal, in a sum equal to the full amount of the removal and compaction contract awarded.

Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said removal and compaction contract.

In accordance with Article 3503.004 of the Texas Insurance Code, if a performance bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas.

In lieu of the payment and performance bonds described in Paragraph A and B, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable Letter of Credit, in a form acceptable to the Director in her/his reasonable discretion, and subject to approval by the City Attorney, in an amount equal to the full amount of the removal and compaction contract awarded. Such Letter of Credit shall be issued by a national banking association shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the removal and compaction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the removal contract awarded or (ii) complete removal of the improvements contemplated by the removal and compaction contract.

In addition, upon expiration of this Lease for any reason and no later than thirty (30) days after the complete removal of improvements, Lessee, shall provide Lessor with an engineering report on the compaction of the Premises and the Lessee's Report as identified in Paragraph 5.03D of this Lease and if, in the opinion of Lessor, the engineering report on compaction indicates the soil has not been compacted in accordance with approved plans or if Lessee's Report indicates that the Premises are in violation of applicable Environmental Laws, then Lessee shall perform work as is necessary to cause the Premises to be in compliance with approved plans and applicable Environmental Laws.

Lessee shall have one hundred and eighty (180) days after expiration in which to remove such improvements and compact the soil, at its sole cost and expense; provided that any occupancy by Lessee for the purposes of removing the improvements and compacting the soil and for completing the Lessee's Report and any required remediation of the Premises shall be subject to the rent due hereunder and provided further that Lessee shall continue to be bound by the terms and conditions of this Lease. Lessee and Lessor agree that this continued tenancy will not be continued as an extension or renewal of the lease term for other than the aforementioned one hundred eighty (180) days.

If Lessee fails to remove said improvements and compact the soil, to provide the required engineering report or an environmental assessment or to complete any required remediation of the Premises, Lessor may elect to perform the identified requirements and Lessee shall promptly reimburse Lessor for all its costs upon written notice from Lessor.

If Lessee's use of the property included any aboveground or below ground storage tanks, Lessee will provide confirmation from TCEQ an any other applicable agencies, that Lessee has complied with all requirements for the removal of such storage tanks.

Lessee agrees that the title to all improvements made by the Lessee to the Leased Premises, now or hereafter located on the Leased Premises, shall be vested in Lessee until either the termination, cancellation, or expiration of this Lease, at which time all title to and ownership of the improvements made by the Lessee to the Leased Premises shall automatically and immediately vest (without the necessity of any further action being taken by Lessee or Lessor or any instrument being executed and delivered by Lessee to Lessor) in Lessor, and Lessee shall have no rights pertaining to such improvements. Notwithstanding anything to the contrary, nothing in this paragraph relieves the Lessee from any duties under this Lease, including but not limited to the removal of the improvements and the restoration of the Leased Premises.

10.08 Landlord's Lien.
It is expressly agreed that in the event of default in the payment of Rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for Rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at a public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first to the necessary and proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

ARTICLE XI - GENERAL PROVISIONS

11.01 Continuity of Deed Restrictions and Covenants.
This Lease is subject to the terms, covenants and conditions contained in the Declaration. Lessor reserves the right to revise the standards set forth in Exhibit "B" provided, however, that such revisions will not levy any assessments against the Lessee, cause a substantial reduction in the value of Lessee's leasehold interest, result in a material cost or expense to Lessee, or be contradictory to the reasonable and prudent operation of property. Lessor's right to revise the restrictions and covenants contained in the Declaration, is limited to the right to revise said document because of the development of new concepts or improved construction and architectural techniques and, in any event, such revisions shall be operative on a going forward basis only and shall not apply retroactively to any existing improvements.

11.02 Right of Flight.
Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on the Airport.

Lessor reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Premises to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at the Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations. Lessor reserves for itself, its successors and assigns the right to prevent any use of the Premises which would interfere with aircraft landing on or taking off from the Airport and the right to prevent any other use of the Premises which would constitute an airport hazard; provided however, Lessor acknowledges that the permitted uses specified in Exhibit "C" shall be permitted throughout the Lease term as it may be extended provided that the zoning code continues to allow such uses.

11.03 Time Is of the Essence.
Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

11.04 Notices.
All notices provided to be given under this Lease shall be given by a) expedited delivery service with proof of delivery, or b) United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the proper party at the following addresses:

LESSOR:	City Clerk City of El Paso P.O. Box 1890 El Paso, Texas 79950-1890	Director of Aviation El Paso International Airport 6701 Convair Rd. El Paso, Texas 79925-1091

LESSEE:	ELP Land Holdings I, LLC Attn: Jeremy Rydberg 1901 N. Akard Street Dallas, Texas 75201	Munsch Hardt Kopf & Harr, PC Attn: David Coligado 500 N. Akard St., Suite 3800 Dallas, Texas 75201

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

11.05 Attorney's Fees.
If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover costs including reasonable attorney's fees and reasonable paralegal fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

11.06 Agreement Made in Texas.
The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

11.07 General Civil Rights Provision.
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.

11.08 Compliance with FAA Requirements and Nondiscrimination Requirements.
Lessee shall comply with and shall cause its assignees, successors in interest, and any contractor, subcontractor, lower-tier subcontractor, or service provider of Lessee to comply with, to the extent required by applicable law, all provisions of **Exhibit G, Federal Aviation Administration Required Provisions**, as amended or interpreted by the FAA from time to time, which are incorporated as if fully set forth herein.

11.09 Affirmative Action.
Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from the City of El Paso, to insure that no person shall, on the grounds of race, color, sex, age, disability or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Lessee assures that it will require that its covered sub-organizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will

undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublessees) to the same effect.

11.10 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. Lessee 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, Lessor 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 Lessee 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 Lessee 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, Lessor 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, Lessee 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, Lessor 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]

11.11 Cumulative Rights and Remedies.
All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

11.12 Interpretation.
Lessor and Lessee agree that this Lease has been freely negotiated by both parties and that any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusion. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that party having drafted this Lease or any portion thereof.

Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

11.13 Agreement Made in Writing.
This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

11.14 Paragraph Headings.
The Table of Contents of this Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

11.15 Severability.
If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

11.16 Successors and Assigns.
All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

11.17 Taxes and Other Charges.
Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against Lessee or Lessor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, during the Term

of this Lease including any extensions granted thereto. By March 1 of each year of this Lease and at no charge to Lessor, Lessee will provide written proof satisfactory to the Director that all taxes and governmental charges of any kind as described herein have been paid in full.

Lessor is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from Lessee's use of the property or possession of the Premises.

Lessee in good faith may contest any tax or governmental charge, provided that Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to Lessor, such action will not adversely affect any right or interest of Lessor.

11.18 Waiver of Warranty of Suitability.
LESSOR DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. LESSEE LEASES THE PREMISES AS IS AND LESSOR DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO LESSEE'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE NOR SHALL LESSOR BE RESPONSIBLE OR LIABLE FOR ANY CONDITION OF THE PREMISES WHICH SHALL SOLELY BE THE RESPONSIBILITY OF LESSEE.

11.19 Survival of Certain Provisions.
All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 5.03 and 6.10.

11.20 Restrictions and Reservations.
This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Lessor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

Lessor reserves for itself and any authorized agent to, at any reasonable time and with 24-hour notice, enter upon and inspect the Premises and improvements on the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with this Lease and all the Environmental Laws and for the purpose of showing the Premises; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. All subtenants of Lessee will be subject to this Lessor's right to enter the Premises and improvements on the Premises. The Lessee will include in all subleases the right of the Lessor to enter the Premises and improvements on the Premises to inspect such for compliance with this Lease. Lessee reserves the right to have an employee of Lessee accompany Lessor during such visit to ensure the safety of all persons during the operation of the Premises. Lessor will not unreasonably interfere with the business operations on the Premises during Lessor's inspections.

11.21 Subordination of Lease.
All rights granted in this Lease shall be subordinate to the rights in any deed from the United States to the City of El Paso. This Lease shall further be subordinate to the provisions of any existing or future agreements between Lessor and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such future agreement with the United States Government be to substantially destroy the commercial value of the Premises, Lessee may cancel this Lease in its entirety, pursue any remedies available to it under the Article VIII of this Lease, and seek an award for reimbursement of expenses incurred in connection with constructing the leasehold improvements pursuant to Article VIII.

11.22 Authorization to Enter Lease.
If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

11.23 Effective Date/Memorandum.
Regardless of the date signed, this Lease shall be effective as of the date provided in Section 2.01. Subsequent to the full execution and delivery of this Lease, Lessor and Lessee may, upon request by Lessee, execute and acknowledge a memorandum of this Lease in a form and substance reasonably acceptable to Lessor and Lessee. Lessee shall provide to Lessor a copy of the memorandum filed of record in the Real Property Records for El Paso County, Texas; provided however, this Lease will not be filed in the Real Property Records for El Paso County, Texas without the express prior written consent of Lessor and Lessee.

11.24 Attachments.
The following attachments are incorporated into this Lease. For purposes of this Agreement, the term Lease includes all attachments.

EXHIBIT "A-1" - Property Description & Metes and Bounds of Premises – Parcel 1
EXHIBIT "A-2" - Property Description & Metes and Bounds of Premises – Parcel 2
EXHIBIT "A-3" - Property Description & Metes and Bounds of Premises – Parcel 3
EXHIBIT "A-4" - Property Description & Metes and Bounds of Premises – Parcel 4
EXHIBIT "A-5" – Property Description & Metes and Bounds of Premises – Master Drainage Site
EXHIBIT "B" – Declaration of Restrictions and Covenants
EXHIBIT "C" – Allowed Uses and Additional Use Requirements and Restrictions
EXHIBIT "D" – Phased Development Parcels
EXHIBIT "E" – Phased Development Improvements and Additional Requirements
EXHIBIT "F" – Site Plan for Parcel 1
EXHIBIT "G" - Federal Aviation Administration Required Provisions

11.25 Complete Agreement.

This agreement, together with the attachment(s) attached hereto, constitutes the entire agreement among the parties relating to the terms and conditions of the agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this agreement confers not rights on any person or business entity that is not a party hereto. This agreement shall not be construed against or unfavorably to any part because of such party's involvement in the preparation or drafting of this agreement.

(Signatures begin on the following page)

LESSOR'S SIGNATURE AND ACKNOWLEDGMENT

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this 28th day of MARCH, 2023.

LESSOR: CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

J. Flores

Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Samuel Rodriguez, P.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 5 day of April, 2023, ~~by~~ Tracey Jerome for Tomás González as City Manager of the City of El Paso, Texas.

Angel Rocha
Notary Public, State of Texas

My Commission Expires:
06.01.2024

ANGEL ROCHA NOTARY PUBLIC STATE OF TEXAS EXPIRES 06-01-2026 ID#13158986-9

(Signatures continue on the following page)

LESSEE'S SIGNATURE AND ACKNOWLEDGMENT

LESSEE:

ELP LAND HOLDINGS I, LLC,
a Delaware limited liability company

By: _____

Print Name: Jeremy Rydberg
Title: Authorized Person

ACKNOWLEDGMENT

THE STATE OF Texas)
)
COUNTY OF Dallas)

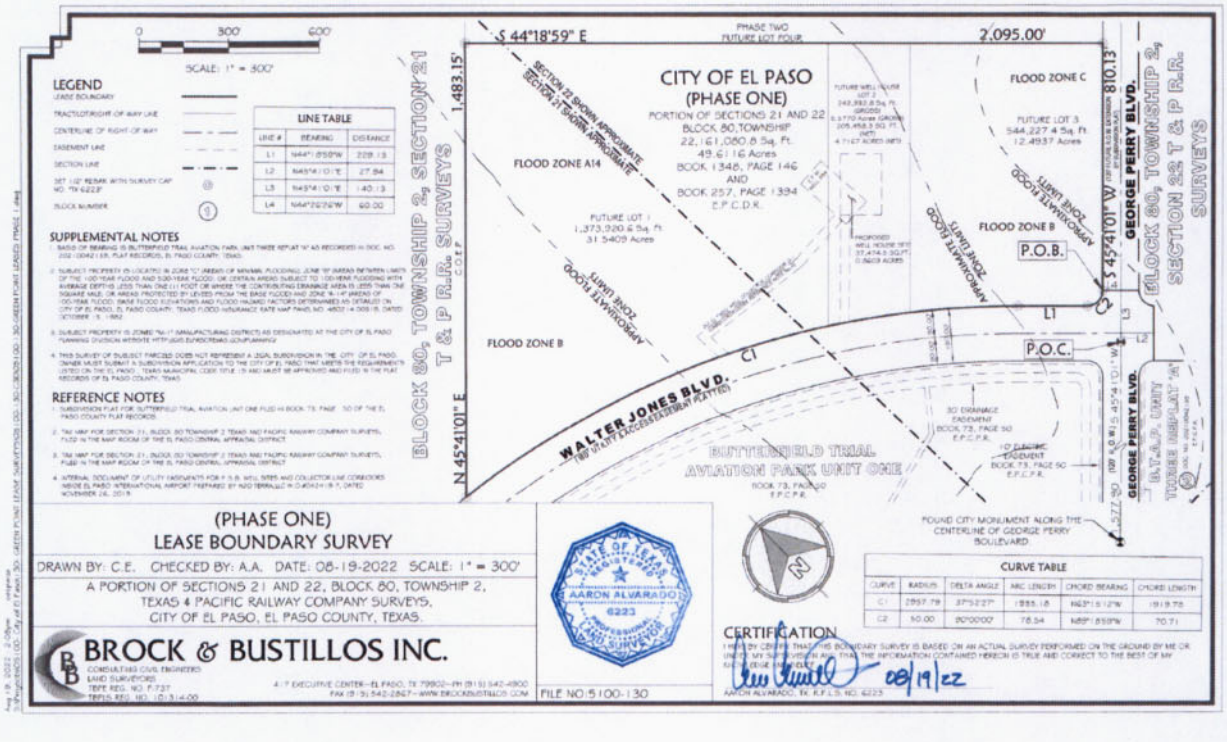
This instrument was acknowledged before me on this 17 day of March, 2023 by Jeremy Rydberg, its Authorized person of ELP Land Holdings I, LLC, a Delaware limited liability company (Lessee).

_____
Notary Public, State of Texas

My Commission Expires:
5-31-23

HILARY S YANCEY
NOTARY PUBLIC
ID# 132034323
State of Texas
Comm. Exp. 05-31-2023

Exhibit "A-1"
Property Description & Metes and Bounds of Premises
Parcel 1



BROCK & BUSTILLOS INC.
CIVIL ENGINEERS URBAN DESIGNERS LAND SURVEYORS

ROMAN BUSTILLOS, P.E.
President
RANDY P. BROCK, P.E.
Senior Engineer
SERGIO J. ADAME, P.E.
Vice President - Engineering
AARON ALVARADO, R.P.L.S.
Vice President - Surveying
TBPE Reg. No. F-737
TBPLS Reg. No. 101314-00

METES AND BOUNDS DESCRIPTION
"Phase One Lease"

A 49.6116 acres parcel situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Sections 21 and 22, Block 80, Township 2, Texas and Pacific Railway Company Surveys and being more particularly described by metes and bounds as follows:

COMMENCING for reference at a city monument found along the centerline right-of-way of George Perry Boulevard (120 feet wide), 27.94 feet westerly of the centerline of Walter Jones Boulevard Utility and Access Easement (180 feet wide); ***WHENCE,*** a city of monument found along the centerline of said George Perry Boulevard bears, South 45°41'01" West a distance of 1,577.90 feet; ***THENCE***, following the centerline of said George Perry Boulevard, North 45°41'01" East, at a distance of 27.94 feet pass the centerline of said Walter Jones Boulevard Utility and Access Easement and continuing on for a total distance of 168.07 feet to the easterly right-of-way line of said George Perry Boulevard, ***THENCE***, leaving said centerline and following said easterly right-of-way line of George Perry Boulevard, North 44°18'59" West, a distance of 60.00 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for the beginning of a non-tangent curve to the right and the ***POINT OF BEGINNING*** of the parcel herein described;

THENCE, continuing along the easterly right-of-way line of said George Perry Boulevard along the arc of said non-tangent curve to the right having a radius of 50.00 feet, a central angle of 90°00'00", an arc length of 78.54 feet and whose long chord bears North 89°18'59" West, a distance of 70.71 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for a point of tangency on the easterly easement line of said Walter Jones Boulevard;

THENCE, following the easterly easement line of said Walter Jones Boulevard, North 44°18'59" West, a distance of 229.13 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for a point of curvature;

THENCE, continuing along the easterly easement line of said Walter Jones Boulevard along the arc of a curve to the left having a radius of 2,957.79 feet, a central angle of 37°52'27", an arc length of 1,955.18 feet and whose long chord bears North 63°15'12" West, a distance of 1,919.78 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for the southwesterly corner of the parcel herein described;

THENCE, leaving the easterly easement line of said Walter Jones Boulevard, North 45°41'01" East, a distance of 1,483.15 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for the northwesterly corner of the parcel herein described;

THENCE, South 44°18'59" East, a distance of 2,095.00 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for the northeasterly corner of the parcel herein described;

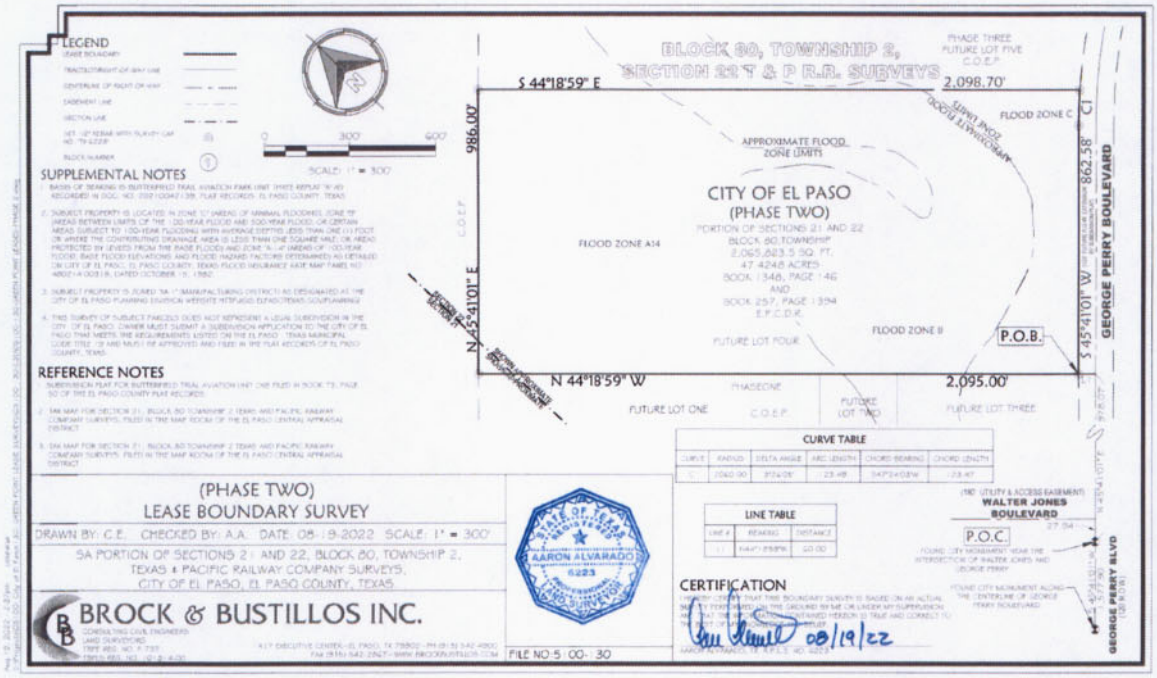
THENCE, South 45°41'01" West, a distance of 810.13 feet to the ***POINT OF BEGINNING***.

Said parcel containing 49.6116 acres (2,161,080.8 square feet), more or less, and being subject to all easements, restrictions and covenants of record.

Aaron Alvarado, TX. R. P. L. S. No. 6223
Date: August 19, 2022
05100-130-PHASE-ONE-LEASE-DESC.doc



Exhibit "A-2"
Property Description & Metes and Bounds of Premises
Parcel 2



BROCK & BUSTILLOS INC.
CIVIL ENGINEERS URBAN DESIGNERS LAND SURVEYORS

ROMAN BUSTILLOS, P.E.
President
RANDY P. BROCK, P.E.
Senior Engineer
SERGIO J. ADAME, P.E.
Vice President - Engineering
AARON ALVARADO, R.P.L.S.
Vice President - Surveying
TBPE Reg. No. F-737
TBPLS Reg. No. 101314-00

METES AND BOUNDS DESCRIPTION
"Phase Two Lease"

A 47.4248 acres parcel situate within the corporate limits of the City of El Paso, El Paso County, Texas as portions of Section 21 and 22, Block 80, Township 2, Texas and Pacific Railway Company Surveys and being more particularly described by metes and bounds as follows:

COMMENCING for reference at a city monument found along the centerline right-of-way of George Perry Boulevard (120 feet wide), 27.94 feet westerly of the centerline of Walter Jones Boulevard Utility and Access Easement (180 feet wide); ***WHENCE,*** a city of monument found along the centerline of said George Perry Boulevard bears, South 45°41'01" West a distance of 1,577.90 feet; ***THENCE***, following the centerline of said George Perry Boulevard, North 45°41'01" East, at a distance of 27.94 feet pass the centerline of said Walter Jones Boulevard Utility and Access Easement and continuing on for a total distance of 978.07 feet to a point on the projection of said centerline of George Perry Boulevard future extension; ***THENCE***, leaving said centerline, North 44°18'59" West, a distance of 60.00 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for the southwesterly corner and the ***POINT OF BEGINNING*** of the parcel herein described;

THENCE, North 44°18'59" West, a distance of 2,095.00 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for the northwesterly corner of the parcel herein described;

THENCE, North 45°41'01" East, a distance of 986.00 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for the northeasterly corner of the parcel herein described;

THENCE, South 44°18'59" East, a distance of 2,098.70 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for the southeasterly corner of the parcel herein described and the beginning of a non-tangent curve to the left;

THENCE, along the arc of said non-tangent curve to the left having a radius of 2,060.0 feet, a central angle of 03°26'05", an arc length of 123.49 feet and whose long chord bears South 47°24'03" West, a distance of 123.47 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for a point of tangency;

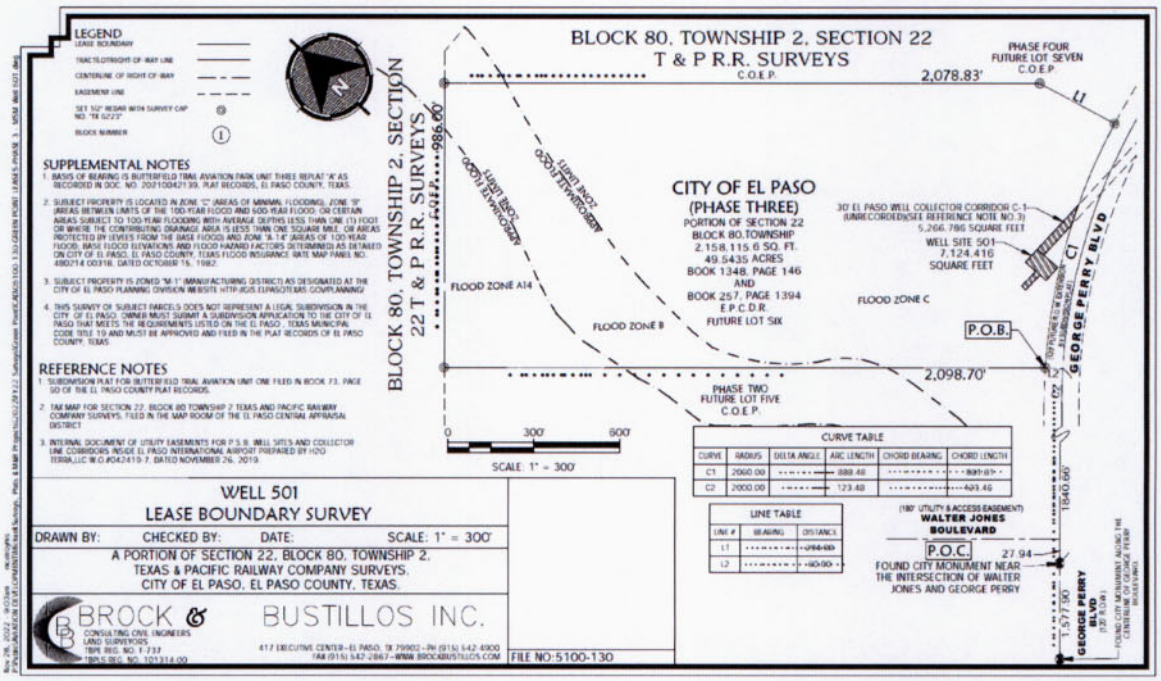
THENCE, South 45°41'01" West, a distance of 862.58 feet to the ***POINT OF BEGINNING***.

Said parcel containing 47.4248 acres (2,065,823.5 square feet), more or less, and being subject to all easements, restrictions and covenants of record.

Aaron Alvarado, TX. R. P. L. S. No. 6223
Date: August 19, 2022
05100-130-PHASE TWO LEASE-DESC.doc



Exhibit A-3
Property Description & Metes and Bounds of Premises
Parcel 3



BROCK & BUSTILLOS INC.
CIVIL ENGINEERS URBAN DESIGNERS LAND SURVEYORS

ROMAN BUSTILLOS, P.E.
President
RANDY P. BROCK, P.E.
Senior Engineer
SERGIO J. ADAME, P.E.
Vice President - Engineering
AARON ALVARADO, R.P.L.S.
Vice President - Surveying
TBPE Reg. No. F-737
TBPLS Reg. No. 101314-00

METES AND BOUNDS DESCRIPTION
"Phase Three Lease"

A 49.5435 acres parcel situate within the corporate limits of the City of El Paso, El Paso County, Texas as portions of Section 22, Block 80, Township 2, Texas and Pacific Railway Company Surveys and being more particularly described by metes and bounds as follows:

COMMENCING for reference at a city monument found along the centerline right-of-way of George Perry Boulevard (120 feet wide), 27.94 feet westerly of the centerline of Walter Jones Boulevard Utility and Access Easement (180 feet wide); ***WHENCE,*** a city of monument found along the centerline of said George Perry Boulevard bears, South 45°41'01" West a distance of 1,577.90 feet; ***THENCE***, following the centerline of said George Perry Boulevard, North 45°41'01" East, at a distance of 27.94 feet pass the centerline of said Walter Jones Boulevard Utility and Access Easement and continuing on for a total distance of 1,840.66 feet to a point of curvature on the projection of said centerline of George Perry Boulevard future extension; ***THENCE***, continuing along said George Perry Boulevard future centerline extension along the arc of said curve to the right having a radius of 2,000.00 feet, a central angle of 03°32'15", an arc length of 123.48 feet and whose long chord bears North 47°27'08" East, a distance of 123.46 feet; ***THENCE***, leaving said centerline, North 40°52'55" West, a distance of 60.00 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for the southwesterly corner and the ***POINT OF BEGINNING*** of the parcel herein described;

THENCE, North 44°18'59" West, a distance of 2,098.70 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for the northwesterly corner of the parcel herein described;

THENCE, North 45°41'01" East, a distance of 986.00 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for the northeasterly corner of the parcel herein described;

THENCE, South 44°18'59" East, a distance of 2,078.83 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South 16°23'48" East, a distance of 294.00 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for the southeasterly corner of the parcel herein described and the beginning of a non-tangent curve to the left;

THENCE, along the arc of said non-tangent curve to the left having a radius of 2,060.0 feet, a central angle of 24°42'42", an arc length of 888.48 feet and whose long chord bears South 61°28'27" West, a distance of 881.61 feet to the ***POINT OF BEGINNING***.

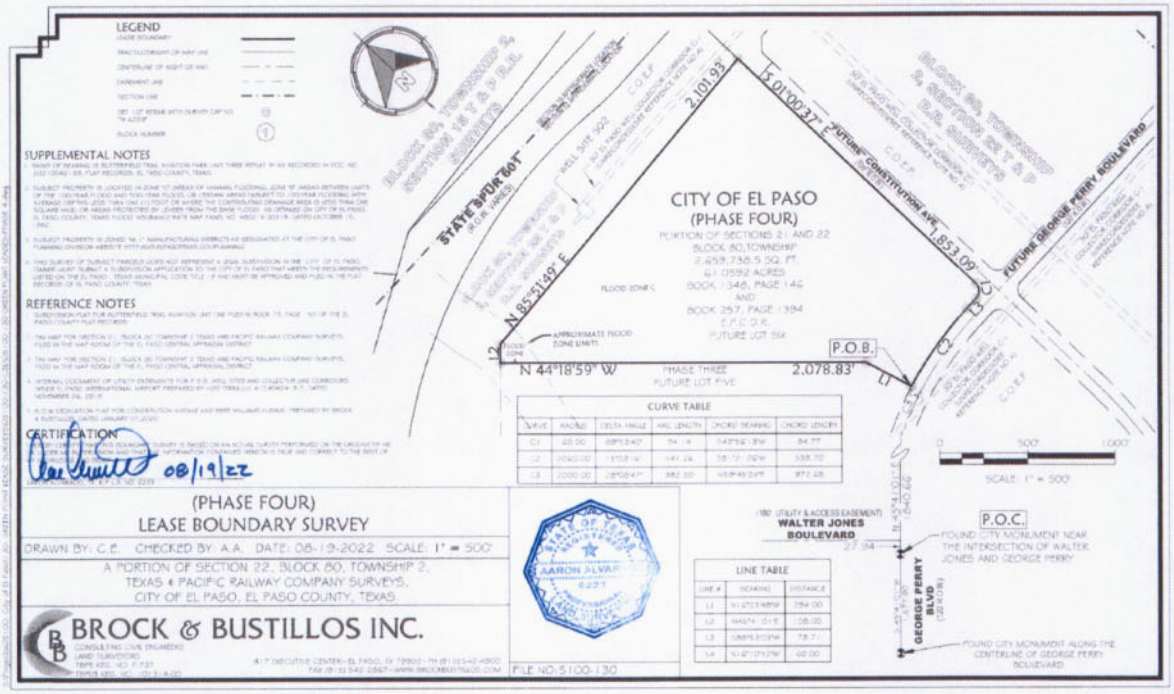
Said parcel containing 49.5435 acres (2,158,115.6 square feet), more or less, and being subject to all easements, restrictions and covenants of record.

Aaron Alvarado, TX. R. P. L. S. No. 6223
Date: August 19, 2022
05100-130-PHASE THREE LEASE-DESC.doc

STATE OF TEXAS
REGISTERED
AARON ALVARADO
6223
PROFESSIONAL
LAND SURVEYOR

Exhibit "A-4"

Property Description & Metes and Bounds of Premises – Parcel 4



BROCK & BUSTILLOS INC.
CIVIL ENGINEERS URBAN DESIGNERS LAND SURVEYORS

ROMAN BUSTILLOS, P.E.
President
RANDY P. BROCK, P.E.
Senior Engineer
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Vice President - Engineering
AARON ALVARADO, R.P.L.S.
Vice President - Surveying
TBPE Reg. No. F-737
TBPLS Reg. No. 101314-00

METES AND BOUNDS DESCRIPTION
"Phase Four Lease"

A 61.0592 acres parcel situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Section 22, Block 80, Township 2, Texas and Pacific Railway Company Surveys and being more particularly described by metes and bounds as follows:

COMMENCING for reference at a city monument found along the centerline right-of-way of George Perry Boulevard (120 feet wide), 27.94 feet westerly of the centerline of Walter Jones Boulevard Utility and Access Easement (180 feet wide); ***WHENCE,*** a city of monument found along the centerline of said George Perry Boulevard bears, South 45°41'01" West a distance of 1,577.90 feet; ***THENCE***, following the centerline of said George Perry Boulevard, North 45°41'01" East, at a distance of 27.94 feet pass the centerline of said Walter Jones Boulevard Utility and Access Easement and continuing on for a total distance of 1,840.66 feet to a point of curvature on the projection of said centerline of George Perry Boulevard future extension; ***THENCE***, continuing along said George Perry Boulevard future centerline extension along the arc of said curve to the right having a radius of 2,060.00 feet, a central angle of 28°08'47", an arc length of 982.50 feet and whose long chord bears North 59°45'24" East, a distance of 972.65 feet; ***THENCE***, leaving said centerline, North 16°10'12" West, a distance of 60.00 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for the southwesterly corner and the ***POINT OF BEGINNING*** of the parcel herein described;

THENCE, North 16°23'48" West, a distance of 294.00 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, North 44°18'59" West, a distance of 2,078.83 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for the northwesterly corner of the parcel herein described;

THENCE, North 45°41'01" East, a distance of 108.00 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, North 85°51'49" East, a distance of 2,101.93 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for the northeasterly corner of the parcel herein described, identical to the westerly right-of-way line of future Constitution Avenue (120 feet wide);

THENCE, following the westerly right-of-way line of said future Constitution Avenue, South 01°00'37" East, a distance of 1,853.09 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for a point of curvature;

THENCE, along the arc of a curve to the right having a radius of 60.00 feet, a central angle of 89°53'40", an arc length of 94.14 feet and whose long chord bears South 43°56'13" West, a distance of 84.77 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for a point of tangency;

THENCE, South 88°53'03" West, a distance of 78.71 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for a point of curvature;

THENCE, along the arc of a curve to the left having a radius of 2,060.00 feet, a central angle of 15°03'16", an arc length of 541.26 feet and whose long chord bears South 81°21'26" West, a distance of 539.70 feet to the ***POINT OF BEGINNING***.

Said parcel containing 61.0592 acres (2,659,738.5 square feet), more or less, and being subject to all easements, restrictions and covenants of record.

Aaron Alvarado, TX. R. P. L. S. No. 6223
Date: August 19, 2022
05100-130-PHASE FOUR LEASE-DESC.doc



EXHIBIT "A-5"


Existing Pond
Borrow Pit
Existing Pond
El Paso International Airport
GreenPoint Borrow Pit

Exhibit "B"
Declaration of Restrictions and Covenants

DECLARATION OF RESTRICTIONS AND COVENANTS
El Paso International Airport
El Paso, Texas

ARTICLE 1 - PROPERTY

This Declaration of Restrictions and Covenants ("Declaration") applies to all leases of Airport property.

ARTICLE 2 - DEFINITIONS

The words and phrases defined in this Article shall have the following meanings when used elsewhere in this Declaration:

2.01 AIR OPERATIONS AREA (AOA): A portion of an airport, specified in the airport security program, in which security measures specified in Title 49 Code of Federal Regulations (CFR) Part 1500 are implemented. This area includes aircraft movement areas, aircraft parking areas, loading ramps, and safety areas for use by aircraft regulated under 49 CFR Parts 1544 or 1546, and any adjacent areas (such as general aviation areas). This area does not include the Secured Area.

2.02 BUILDING: The main portion of any building located on a Lot and all projections or extensions therefrom, including garages, outside platforms and docks, carports, canopies,and porches. Ground cover shall not be included.

2.03 BUILDING COVERAGE: The surface area of a Building Site that may be covered by Buildings, expressed as a percentage of the total site area.

2.04 BUILDING SITE: The entire Lot or Lots (if contiguous) leased by one Lessee.

2.05 CITY: The City of El Paso, Texas, its duly elected Council, or any duly constituted agent or committee representing said Council to fulfill the obligations herein required.

2.06 COMMERCIAL USE: Any use of the Building Site for the provision of goods and services which are used in support of the community's trade and service establishments and which the intensity of the use is compatible with each other surrounding uses and provides for a wide range of types of commercial activity.

2.07 DECLARATION: means this Declaration of Restrictions and Covenants and includes any amendments to this Declaration of Restrictions and Covenants.

2.08 DECLARANT: The City of El Paso, a political subdivision of the State of Texas.

2.09 DIRECTOR OF AVIATION: Director of the Department of Aviation for the City of El Paso.

2.10 ESCORT: An individual granted unescorted access to secured areas of the Airport may escort non-badged individuals into secure areas for official business purposes. An individual

granted escort authorization in the SIDA and Sterile areas must have an "E" designation on their Airport identification badge. The person/persons being escorted must have official business in the area and be strictly controlled by the badged individual.

2.11 FAA: The Federal Aviation Administration of the U. S. Government or any federal agencies succeeding to its jurisdiction.

2.12 FOREIGN-TRADE ZONE: The use of any Lots or any part thereof on airport property for Industrial Operations or other activities that comply with the U.S., Foreign Trade Zone Act Regulations (Title 15, Code of Federal Regulations), U.S. Customs Service Regulations, and City regulations of Foreign-Trade Zone use.

2.13 FRONT LOT LINE: The property line that faces a Street. On corner Lots or Lots fronting on two parallel Streets, the Front Lot Line shall mean the property lines facing each Street, one of which shall be designated by the City as the principal Street.

2.14 IMPROVEMENTS: Improvements shall mean but shall not be limited to Buildings, bridges, overpasses, retaining walls, ditches, culverts, lighting supports, earth fills, earth excavations, paving, ground cover, sidewalks, fences, screening walls, signs, and landscaping, constructed, installed, or placed on, under, or above any Lot by or on account of a Lessee.

2.11 INDUSTRIAL OPERATION: The manufacturing of products from raw or semi-finished materials, including research, warehousing and wholesaling operations. Retail sales of goods and services are specifically excluded from this definition.

2.12 INDUSTRIAL PARK COMMERCIAL SUPPORT: The retail sale of goods and services on a limited basis primarily to the employees of the Lessees in the Industrial Zones as specifically provided herein.

2.13 INDUSTRIAL ZONES: Any area of Airport property that may be identified by the Airport as having multiple tenants engaging in Industrial Operations.

2.14 LESSEE: Any person, firm, or corporation leasing or subleasing one or more Lots, Building Sites, or space in a Building on a Lot.

2.14 LOT: One of the numbered parcels on the map entitled "El Paso International Airport Tracts" as filed with the County Clerk, County of El Paso, Texas.

2.15 REAR LOT LINE: The property line generally parallel to the Front Lot Line and contiguous to another Lot. On corner Lots, the Rear Lot Line shall be parallel to the Front Lot Line facing the principal Street; on Lots fronting on two parallel Streets, there shall be no Rear Lot Line.

2.16 RESTRICTED AREA: Those portions of the Airport within the AOA that are not identified as SIDA or as Secured Areas.

2.17 SECURED AREA: A portion of an airport, specified in the airport security program, in

which certain security measures specified in Part 1542 of 49 CFR Chapter XII are implemented. This area is where aircraft operators and foreign air carriers that have a security program under Parts 1544 or 1546 of 49 CFR enplane and deplane passengers, and sort and load baggage.

2.18 SECURITY IDENTIFICATION DISPLAY AREA (SIDA): That area of Airport property outside of the terminal building and within the security fence where entry to the area is controlled by access card and/or guard posts. An Airport identification badge configured to the SIDA must be displayed by unescorted individuals in the area at all times.

2.19 SETBACK: The distance a Building must be set back from the property line of a Lot.

2.20 STREET: Any street, highway, or other thoroughfare shown on the map entitled "El Paso International Airport Tracts," as filed with the County Clerk, County of El Paso, Texas.

2.21 TSA: The Transportation Security Administration of the U. S. government or any federal agencies succeeding to its jurisdiction.

ARTICLE 3 - PERMITTED USES AND PERFORMANCE STANDARDS

3.01 PERMITTED USES: No Building, structure, or land shall be used for any purpose other than the uses specifically allowed in the lease agreement.

3.02 PERFORMANCE STANDARDS: No Lots shall be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable conditions that may affect any other Lots, including but not limited to:

Hazardous activities
Vibration or shock
Noise
Smoke, dust, odor, or other forms of air pollution
Heat or glare
Electronic or radio interference
Illumination
Liquid or solid refuse or waste
Other substance, condition, or element in such amount as to affect the surrounding area or adjoining premises

A. Hazardous Activities: No activity shall be conducted on any Lot that may be or may become hazardous to public health and safety, that shall increase the fire insurance rating for adjoining or adjacent Lots, or that shall be illegal.

B. Vibration or Shock: No vibration or shock perceptible to a person of normal sensibilities shall be permitted within fifty (50) feet of the property line.

C. Noise: No noise objectionable to a person of normal sensibilities shall be permitted within fifty (50) feet of the property line.

D. Air Pollution: Except for the operation of motor vehicles to, from, and on a Lot as incidental to the use thereof, the following requirements shall apply:

1. Any use producing smoke, gas, dust, odor, fumes, aerosols, particulates, products of combustion, or any other atmospheric pollutant shall be conducted within a completely enclosed building.

2. Any use producing atmospheric emissions shall comply with the standards of the U. S. Environmental Protection Agency, the Texas Air Control Board, any local environmental regulatory body, or any successor organizations performing similar functions, as such regulations exist at thedate of the lease to which this Declaration is attached, or which may be enacted during the term of such lease.

3. The emission of odors which are detectable at any point beyond the property line of any plant will not be permitted.

E. Dust Control: All ground areas not covered by structures shall be landscaped or surfaced with concrete, asphaltic concrete, or other comparable dust-free surfacing; shall be maintained in good condition, free of weeds, dust, trash, and other debris; and shall be properly drained and graded. Such development shall be accomplished before issuance of a certificate of occupancy.

F. Heat or Glare: Any operation producing intense glare or heat shall be performed within an enclosed or screened area in such manner that the glare or heat emittedwill not be discernible from the property line.

G. Electronic or Radio Interference: No electrical, electronic, or radio emissions shall be produced that will interfere, obstruct, or adversely affect the operation ofair navigation aids and Airport communications.

H. Illumination:

1. The source of illumination of any kind on a Lot shall not be visible at the property line except for normal installation of standard interior lighting fixtures within Buildings.

2. The maximum height of any lighting standard shall be limited to thirty (30) feet above curb level.

3. The intensity of illumination shall be limited to 10-foot candles or 0.1 lumens per square foot for open areas or surfaces visible at the property line.

4. The design and location of exterior lighting shall comply in all respects tothe requirements of the FAA or any successor agencies and

other governmental agencies having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from, and around the Airport.

I. Refuse and Trash: No refuse or trash shall be kept, stored, or allowed to accumulate on any Lot.

J. Sewage Disposal Systems: No cesspool, septic tank, or other sewage disposal system or device shall be installed, maintained, or used on any Lot without the approval of the City.

K. Security: If a Tenant activates space on its leased premises for Foreign-Trade Zone usage, said Tenant will comply with the security requirements imposed by the U.S., Foreign Trade Zone Act Regulations (Title 15, Code of Federal Regulations), U.S. Customs Service Regulations, and City regulations of Foreign-Trade Zone use.

ARTICLE 4 - REGULATION OF IMPROVEMENTS

4.01 COMPLIANCE: All Buildings and structures shall be in compliance with the El Paso City Code as amended from time to time. This provision applies to the entirety of the Building Site, unless the requirements of the City of El Paso, through its planning and zoning requirements or otherwise, shall be more restrictive, in which case the more restrictive requirements shall apply.

4.02 INDUSTRIAL USE MINIMUM SETBACK LINES. The following minimum setback requirements apply to Buildings Sites used for Industrial Operations. No structure of any kind and no part thereof shall be placed on any Lot closer to a property line than hereby described.

A. Front Setbacks: Setbacks from Front Lot Lines shall be a minimum of twenty- five (25) feet from the Front Lot Lines; the area between the Street(s) and the Front Setback Line shall be landscaped. If visitor parking is provided in the front Setback area, all Buildings shall be set back a minimum of eighty (80) feet from the Lot line. If the Lessee's Lot or Lots front on more than one street, the front Setbacks shall be from all Lot lines facing a Street.

The front Setback area(s) shall be landscaped and planted in accordance with this Declaration of Restrictions and Covenants except for areas used for parking lots, driveways, or sidewalks. In no event shall less than twenty percent (20%) of the required minimum front Setback area(s) facing a Street be landscaped and planted. If no parking area is provided in the front Setback area(s), the entire front Setback area(s) shall be landscaped.

B. Side Setbacks: Side Setbacks shall be a minimum of twenty (20) feet, and up to a maximum of fifty percent (50%) of the required minimum Setback shall

be landscaped and planted at the discretion of the Declarant or its authorized agent. If a single Lessee uses two or more Lots with a common boundary line between them, the side Setback restrictions may be waived by the Director of Aviation for the term of the shortest lease.

C. Rear Setbacks: Rear Setbacks shall be twenty (20) feet from the Lot line or utility easement line, except that Buildings on Lots abutting railroad spurs may have loading docks extending to the Rear Lot Line, provided such construction does notinterfere with utility services.

D. Exclusions from Setback Requirements: The following structures or Improvements are excluded from the Setback requirements and are thus not considered encroachments on the setbacks:

1. Roof overhang.

2. Steps and walks.

3. Paving and associated curbing, except that parking areas will not be permitted within ten (10) feet of Street property lines.

4. Fences.

5. Landscaping.

6. Planters, none over four (4) feet in height.

7. Railroad spur tracks, switches, and bumpers.

8. Approved signs identifying the Lessee or Sublessee.

4.03 COMMERCIAL USE MINIMUM SETBACK LINES: No structure of any kind and no part thereof shall be placed on any Lot closer to a property line than the limits described in the El Paso City Code.

4.04 PROPERTIES FRONTING GLOBAL REACH DR: Regardless of use, any Airport property fronting Global Reach Dr. must have a front set back equal to 100 feet plus the minimum setback required by the zoning code, as amended by time to time. The tenant must not rely on the 100 feet requirement as part of any stormwater management requirements and landscaping requirements. Tenants must still comply with frontage landscaping requirements along Global Reach Dr.

4.05 EXCAVATION:

A. General: No excavation shall be made by a Lessee unless the excavation is directly related to the construction of an Improvement on the Building Site approved by the Declarant. When construction is complete, all disturbed ground shall be filled or graded and shall be landscaped inaccordance with and conform

to this Declaration of Restrictions and Covenants.

B. Cut and Fill: The Declarant or any authorized agent thereof may at any time enter and make such cuts and fills on any Lot or other part of said Lot and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the Streets in or adjacent to any Lot and to drain surface waters therefrom; provided that after the principal structure on a Lot shall have been completed in accordancewith approved plans, the rights of the Declarant under this paragraph shall terminate with respect to such Lot, except that the Declarant shall thereafter have the right to maintain existing Streets and drainage structures.

4.06 LANDSCAPING: Every Lot on which a Building shall have been placed shall have landscaping according to plans prepared in accordance with the standards established in this Declaration. The first phase of such landscaping, as approved, shall have been completed within ninety (90) days from the date the certificate of occupancy has been filed.

Setback areas shall be landscaped to the minimum extent outlined in this Declaration. In addition, paving or landscaping shall extend from the property line to the curb, such paving and landscaping to be compatible with treatment for this area on other lots on the same block.

All trees shall be limited to a height of thirty-five (35) feet above the curb line.

Desert planting, defined as native desert plants set in a ground cover of boulders, pebbles,and/or sand, shall not comprise more than twenty percent (20%) of any given setback area planting program. This limitation may be waived by the Director of Aviation upon submittal of detailed landscape plans indicating a greater coverage by desert planting.

Vegetation that produces seeds, fruits, or berries, or that provides dense roosting or nesting cover is prohibited. Turf grass and well as any grass seed mixtures containing millet or any other large-seed producing grass is also prohibited. Should any landscaping observed to be attracting birds or wildlife, Lessor will be required to remove said vegetation within ten (10) days of notice after a request in writing from the Declarant or its authorized agent to have it removed, the Declarant or its authorized agent may enter on any Lot to remove same by whatever means it deems necessary. Such entry shall not be deemed a trespass, and the Declarant shall not be subject to any liability therefor. The cost of such work plus 10% shall be borne by the Lessee.

Lessees are encouraged to expand landscape development plans to include such elements as pools, fountains, sculpture, rock arrangements, sheltered outdoor seating areas, all subject to design approval by the Director of Aviation prior to installation.

4.07 SIGNS: The following regulations shall apply to all signs displayed for observation from outside a building whether displayed on, near, or within a building:

A. Permitted Signs: Signs on the Airport shall be limited to those identifying the

uses conducted on the site, to those necessary for directional purposes, and to those required to advertise the rental of the specific property on which the sign is displayed. The size, design, and location of all signs shall require the written approval of the Director of Aviation or its authorized agent prior to installation. Outdoor advertising, billboards, or flashing lighting shall not be permitted.

B. Area and Location: One sign may be permitted in the front of each leasehold and one sign may be attached to the side of the building which faces a public street, both to state only the name, products, and services of the Lessee. The sign in the front of the leasehold shall not exceed one square foot area for each lineal foot of lot frontage and shall not extend more than 35 feet in height above the ground.

C. Construction: All signs shall comply with all building codes of the City of El Paso and with all rules and regulations of the Federal Aviation Administration or any successor agencies.

4.08 PARKING AREAS: Adequate off-street parking shall be provided to accommodate the parking requirements of a business within the limits of the Lot. Parking for employees, visitors, and business vehicular traffic shall be provided on the Lot and designated by white lines painted on the paved surface. All parking must comply with applicable City parking ordinances.

Parking shall not be permitted on the public Streets and between the Street pavement and property line. If visitor parking is provided in the front Setback area, all Buildings shall be set back a minimum of eighty (80) feet from the Lot line. If visitor parking is permitted in the front Setback area(s), such parking shall be screened from the Street(s) by approved trees or shrubbery specified in the Airport Landscaping Standards or such other screening as may be approved by the Declarant or its authorized agent.

4.09 STORAGE AND VEHICLE LOADING AREA: All outside storage and refuse areas shall be constructed and contained to eliminate odors, insects, dust, visual nuisances, andother similar nuisances.

No materials, supplies, or equipment, including company-owned or company-operated trucks, shall be stored in any area on a Lot except inside a closed Building or behind a barrier completely screening such areas from view of adjoining Lots and/or public Streets.

All provisions for the loading and maneuvering of vehicles incidental to the operation of the business shall be placed on the Lot(s) leased and shall not encroach into Setback areas except the side setback area; on street vehicle loading shall not be permitted. Vehicle loading shall be permitted only at the rear of Buildings, or on a side, except that such loading performed at a side shall be completely screened from view of adjoining Lots and/or public Streets.

4.10 BUILDING HEIGHTS: Building heights shall be limited to the height requirements established in the El Paso City Code and in Federal Aviation Regulations Part 77 or successor regulations for the Airport.

4.11 BUILDING REGULATIONS:

A. General: Any Building, Improvement, or structure on a Lot shall conform to the following general conditions of construction practice.

B. City Zoning: The El Paso City Code, as amended, shall apply except that in the event of a conflict between the El Paso City Code and the standards in this Declaration, the more stringent requirement shall apply.

C. FAA Regulations: All construction must comply with applicable codes and ordinances and the rules and regulations of the FAA or any successor agencies, where applicable.

D. Final Approval by Declarant:. Construction shall not commence before the Director of Aviation has granted final approval.

4.12 TYPE OF CONSTRUCTION:

A. Building Materials: All buildings shall be framed with reinforced concrete or masonry, structural steel, structural aluminum, or wood that has been satisfactorily treated to resist fire, rot, and insects. Approved siding shall be masonry, concrete or glass. Porcelain, enameled steel, anodized aluminum or treated wood may be used upon approval by the Director of Aviation. Concrete, masonry, and treated wood siding shall be kept neatly painted, if used. State-of-the-art changes in types of construction may be permitted from time to time only upon the express condition that any such change be consistent with the intent of this Declaration and that any such change receives written approval of the Director of Aviation. Pre-fabricated metal buildings are specifically prohibited. All structures should employ effective bird deterrent measures to prevent the loafing and nesting of birds.

A minimum of fifteen percent (15%) of the exterior building facade materials on each elevation shall be glass, brick, stone or stucco. The remainder of the facade is to be a combination of concrete, masonry, hardi-plank materials, or wood that has been treated to resist fire, rot, and insects, with a maximum amount of allowed wood being no more than ten percent (10%) and only being utilized for accent and decoration purposes.

B. Roof Screening: All heating and cooling towers, equipment, etc., placed on the roofs of Buildings shall be screened or enclosed from view so that they are architecturally compatible with the main portion of the Building and cannot be seen from any point within two hundred-fifty (250) feet of the Building at an eye level of six (6) feet above the curbline.

C. Accessory Buildings, Enclosures, and Fences: Accessory Buildings, enclosures, and fences shall enhance the design of and be of the same quality of materials as the Buildings they serve.

D. Building Codes and Ordinances: All Buildings shall conform to all local building codes and ordinances.

E. Approval by Director of Aviation: The type of building construction proposed shall be subject to the written approval of the Director of Aviation.

4.13 PIPES: No water pipe, gas pipe, sewer pipe, or drainage pipe (other than those within structures) shall be installed or maintained on any Lot above the surface of the ground, except hoses and movable pipes used for irrigation or similar purposes.

ARTICLE 5 – SUBMISSION OF PLANS FOR IMPROVEMENTS

5.01 AIRPORT DESIGN CRITERIA: All construction of improvements and infrastructure must conform to and comply with the approved plans and specifications submitted by Lessee and approved by the City and the Airport, the applicable statutes, ordinances, building codes, rules and regulations of City and the FAA and such other authorities as may have jurisdiction over the Airport, the Building Site or Lessee's operations herein including, but not limited to the Department of Homeland Security and the Transportation Security Administration, and any successor agencies.

5.02 SUBMISSION OF PLANS: All plans for Improvements shall be prepared by registered engineers, architects, and landscape architects; shall be of contemporary design; and shall require prior written approval by Director of Aviation before any construction may begin.

Prior to the execution of a lease for a Building Site, the Declarant and the Lessee shall jointly determine a reasonable time schedule in which final plans and specifications shall be submitted and construction of facilities shall be completed.

The Lessee will submit the following plans to the Declarant within the time schedule determined:

A. Topographic, Grading, Drainage, Utility, and Plot Plans:

I. Topographic, grading, drainage, and utility plans showing one (1) foot contour intervals and spot elevations referenced to the Airport datum.

2. A plot plan at a scale not smaller than one (1) inch equals one hundred (100) feet showing the relationship of the proposed Improvements to the Lot(s) demised and to the Improvements on adjacent Lots, utilities, and access thereto, curbs, walks, driveways, parking areas, etc.

B. Floor Plans: Floor plans at a scale not smaller than one-sixteenth (1/16) inch

equals one (1) foot.

C. Ground Cover Plans: Ground cover plans, including landscaping, in accordance with the Airport Landscaping Standards.

D. Renderings: A true architectural rendering of the proposed Buildings, including the proposed exterior color scheme, style, materials, landscaping, and design and placement of signs.

E. Materials and Color Samples: Samples, no smaller than one (1) foot square, of all materials and/or paint or other coating colors to be used on the exterior of all Improvements that are visible from any point on any Lot line. The Declarant reserves the right to approve all said materials and/or colors and further reserves the right to suggest alternative materials and/or colors that, in the sole opinion of the Declarant, shall be determined to be more compatible with the Declarant's objectives for the overall aesthetic character and quality of Improvements on the Airport.

F. Other Plans: Any other plans, specifications, or design features that the Director of Aviation may deem necessary and request.

G. Additional Requirements - Foreign-Trade Zone: Tenants who intend to use their facilities as a Foreign-Trade Zone shall, in addition to submittal to the Declarant or its authorized agent submit their plans and specifications to the U.S. Customs Service and other federal agencies, as appropriate, for approval and compliance with the Foreign-Trade Zone Act and other required federal regulations.

5.03 FORM AND CONTENT OF PLANS: The Airport Director may promulgate rules governing the form and content of plans to be submitted for its approval and may issue statements of policy with respect to approval or disapproval of architectural styles, details, or other matters pertaining to the plans.

Such rules and such statements of policy may be amended or revoked by the Declarant at any time, and no inclusion in, omission from, or amendment of any such rule shall be deemed to bind the Declarant to its approval or to waive the exercise of the Declarant's discretion as to any such matter.

5.04 CODES AND REGULATIONS: All Improvements shall be planned and constructed in accordance with the rules and regulations established by the Declarant or its authorized agent, the laws and ordinances of the City, applicable building codes, and the rules and regulations of the FAA or any successor agencies, where applicable.

5.05 REVIEW OF PLANS: Plans and specifications for proposed Improvements submitted to the Declarant for approval by its authorized agent shall be reviewed by Airport staff. Airport staff will review the plans and either approve or disapprove no later than 30 calendar days from the date of complete submission of plans.

5.06 BASIS FOR APPROVAL BY THE DECLARANT: Approval by the Declarant or its authorized agent shall be based on the adequacy of site dimensions and on the general conformity of the plans and specifications to the intent of this Declaration and to the appearance and design of neighboring properties. The Declarant shall not arbitrarily, without written explanation, withhold approval of properly submitted plans and specifications.

Approval of any plans or specifications for use on any one Lot shall not be deemed a waiver of the discretionary right of the Declarant to disapprove the same plans or specifications if such plans or specifications are subsequently submitted for approval for use on any other Lot or Lots.

5.07 FAILURE TO APPROVE: If the Declarant fails to approve or disapprove plans and specifications within forty (40) working days after the same have been submitted, it shall be conclusively presumed that the Declarant has disapproved said plans and specifications.

5.08 COMMITMENT TO CONSTRUCT: Upon approval by the Declarant of plans for construction of any structure, a copy of the approved plans shall be deposited for permanent record with the Declarant and a copy of such plans bearing the written approval of the Declarant shall be returned to the Lessee of the Lot(s) on which such structure is or will be placed.

Approval of these plans by the Declarant shall constitute a commitment on the part of theLessee to erect and maintain the Improvements as proposed and approved within the timeschedule established in Paragraph 5.02.

5.09 CONSTRUCTION WITHIN TIME SCHEDULE SPECIFIED: Any approved construction shall be pursued diligently in accordance with the approved plans and specifications and shall be completed within the specified time schedule. Failure to complete such work in the specified time schedule shall cause such approval to be automatically withdrawn unless the Declarant or its authorized agent grants written extension of such approval.

After such automatic withdrawal of approval, the Lessee will be considered in default of its lease for such Lot(s), and the Declarant may terminate such lease in accordance with the provisions of that document.

5.10 LANDSCAPING PLANS: Trees, shrubs, fences, hedges, or other landscaping shall not be planted, placed, or maintained on any Lot until a complete plan thereof has been submitted to and approved by the Declarant or its authorized agent in writing. The landscaping plans shall be prepared in accordance with this Declaration shall be submitted at the same time as the other plans and specifications for proposed Improvements.

All plans for landscaping Improvements shall be prepared by registered or approved landscape architects. Final approval shall be by the Declarant or its authorized agent.

5.10 PLANS FOR ALTERATIONS OF IMPROVEMENTS: All plans for alterations to the leased Lot(s), either for the construction of additional facilities or alterations to existing Buildings, shall be prepared, submitted, and approved as outlined in Paragraphs 5.01 through 5.09 and shall be subject to the same restrictions as herein provided. This paragraph shall apply only to exterior or structural changes; alterations to the interior of Buildings shall not be considered unless they affect the performance standards in Article 3.

5.11 FEES: The Declarant may charge and collect a reasonable fee, as determined every five years by the Declarant or its authorized agent, for architectural review and other reviews of plans submitted for approval. Such plans could relate to initial development or alterations to existing development. The fee shall be payable at the same time such plans are submitted. If initial plans or any subsequent plans are disapproved, an additional review fee, as determined by the Declarant or its authorized agent, shall be paid before further review.

The amount of such fee shall not exceed the actual cost to the Declarant of making such examination, including the cost of any architect's or engineer's fees incurred in connection therewith.

ARTICLE 6 - ENFORCEMENT

6.01 CONSTRUCTION WITHOUT APPROVAL: If any structure shall be erected, placed, altered, or maintained on any Lot other than in accordance with plans and specifications approved by the Declarant or its authorized agent, such erections, alterations, and maintenance shall be deemed to have been undertaken without the approval required herein. This restriction shall be applicable to landscaping and signage plans as well as toarchitectural plans.

In the event of such construction without approval, the Lessee will be considered in default of the lease for such Lot, and the Declarant may terminate the lease in accordance with the provisions set forth in that document.

6.02 ABATEMENT AND REMOVAL: If the Declarant determines that this Declaration is being violated by any Lessee on a Lot or Lots, the Declarant shall have the right after giving notice as required by the lease to enter the Lot(s) of such Lessee to determine the exact cause, effect a cure, and abate or remove the violation from the Lot(s). All the expenses incurred in this action shall be payable by the Lessee or sublessee of the facilityin which the violation occurred.

6.03 HOUSEKEEPING: If accumulations of weeds, rubbish, or items of equipment or supplies are permitted to remain on a Lot more than ten (10) days after a request in writing from the Declarant or its authorized agent to have them removed, the Declarant or its authorized agent may enter on any Lot to remove same by whatever means it deems

necessary. Such entry shall not be deemed a trespass, and the Declarant shall not be subject to any liability therefor. The cost of such work plus 10% shall be borne by the Lessee.

6.04 MAINTENANCE OF LANDSCAPING: The Declarant shall be the sole judge of the quality of maintenance of the landscaping. If landscaping areas are not maintained in accordance with the standards in the lease and those in this Declaration and the condition is not corrected within ten (10) days after written notice from the Declarant or its authorized agent, the Declarant or its authorized agent shall have the right to enter on any of the Lot(s) leased and plant or replant such areas, without being deemed guilty of trespass. The costs therefor, as determined by the Declarant, shall be paid by the Lessee.

6.05 SUIT: The Declarant or the lessees of facilities affected by a violation shall have the right to file suit against violators of this Declaration, to prevent a violation, effect a cure, abate or remove a violation, or recover damages for said violation.

6.06 ATTORNEY'S FEES: In any legal proceeding for the enforcement of this Declaration or prevention of a violation of this Declaration or any part hereof, the party against whom judgment is rendered shall bear the reasonable expense of attorneys' fees of the prevailing party in the amount to be specified by the Court.

6.07 RIGHT OF ENTRY AND INSPECTION: Any authorized agent of the Declarant, at any reasonable time and without notice, may enter on and inspect any Lot to ascertain whetherthe maintenance of such Lot, Improvements under construction, or alteration of structures thereon are in compliance with the provisions hereof. Neither the Declarant nor such authorized agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

6.08 FAILURE TO ENFORCE A RESTRICTION: The Declarant may fail to enforce any restriction herein specified on any Lessee on a Lot or Lots, but in no event should this be deemed a waiver of this Declaration or the right to enforce.

6.09 FEE AND EXPENSES: Lessee shall be responsible for all costs incurred by the Declarant in enforcing any provisions of this Declaration in addition to a 10% fee to recover administrative costs incurred by the Airport.

ARTICLE 7 - MISCELLANEOUS PROVISIONS

7.01 ACCEPTANCE BY ALL LESSEES: Every person, firm, or corporation who shall hereafter acquire any right, title, or interest in any Lot(s) or Buildings or portions thereof shall have consented and agreed to every covenant and restriction herein contained or implied even though this Declaration may not have been made reference to or part of the documents received as a part of leasing a Lot or Building or any portion thereof.

7.02 ASSIGNMENT OF DECLARANT'S RIGHT AND DUTIES: The Declarant has certain rights, powers, and reservations as herein established by this Declaration and may assign to any person, firm, or corporation these rights, powers, and duties evidencing its

consent in writing to accept such an assignment and assume such duties. The person, firm or corporation having accepted the rights of the Declarant shall also be bound to the obligations in this Declaration.

7.03 USE PERMITS: Such use and occupancy permits as may be required by the Building Code of the City of El Paso shall be maintained in force at all times by each Lessee.

7.04 CUTTING AND FILLING: The City or any authorized agent thereof may at any time make such cuts and fills upon any parcel or other part of said property and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the streets in, or adjacent to, any property and to drain surface waters therefrom; provided, however, that after the principal structure upon a parcel shall have been completed in accordance with approved plans, the rights of the City under this paragraph shall terminate with respect to such parcel, except that the City shall thereafter have the right to maintain existing streets and drainage structures.

7.05 RESERVATION OF RIGHTS: Declarant hereby reserves the right to modify, amend and revoke any or all portions of these Covenants at any time, at its sole discretion, with or without notice to any person other than by filing notice of such modification, amendment or revocation in the airport website. Further, the Director of Aviation may grant waivers to, or amend parts of this Declaration in the event the Director of Aviation determines that such waiver or amendment is in the best interest of the Airport.

ARTICLE 8 – PERTAINING TO GENERAL AVIATION (GA)/ FIXED BASE OPERATORS (FBO)

8.01 GENERAL: The requirements within this Article 8 apply to any leases pertaining to GA and FBO and are in addition to all other requirements in this Declaration of Restrictions and Covenants.

8.02 PERFORMANCE STANDARDS:

A. Fire and Explosive Hazards: No activity shall be undertaken involving fire or explosive hazard which shall endanger the property, improvements, or employees of any other property owner or tenant.

B. Air Pollution: No activity of any type shall be conducted or permitted on the leased premises, which violates any applicable federal, state or local law, rule or regulation.

C. Illumination:

1. Exterior Lighting. The design and location of exterior lighting shall comply in all respects to the requirements of the City, the Federal Aviation Administration or any successor agencies, and other governmental agencies having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from and around the Airport.

2. Interior Lighting. The source of illumination of any kind within any building on the site shall not be visible at the property line except for normal Installation of standard interior lighting fixtures within buildings.

D. Signs: The number, size, design, and location of all signs displayed for observation from outside a building whether displayed on, near, or within a building shall be subject to prior written approval by the Director of Aviation. All signs shall comply with any applicable sign ordinances and building codes of the City of El Paso and with all rules and regulations of the Federal Aviation Administration and ts successor. Signs on the Leased Premises shall be limited to those identifying the uses conducted on the site and to those necessary for directional purposes. Outdoor advertising, billboards or flashing lighting shall not be permitted.

E. Storage: All storage of every type, except of autos or aircraft, shall be within buildings or enclosures formed by a tight, painted board fence or rock walls. Storage of aircraft parts, service equipment or similar Items shall be expressly prohibited outside buildings or such enclosures. Storage of motor vehicles, other than aircraft, is not permitted; provided, however, that motor vehicle parking for reasonable periods of time in designated areas for such, is permitted.

8.03 DEVELOPMENT OF SITE - REQUIRED IMPROVEMENTS FOR GA/FBO

A. OFFSTREET PARKING: All provisions for automobile parking for employees and visitors of the Lessee shall be placed on the lot(s) leased. No parking whatsoever shall be permitted on the streets.

All parking areas shall be in rear setback areas and shall be paved to provide dust-free, all- weather surfaces.

Offstreet parking facilities shall be provided generally in accordance with the El Paso City Code and any amendments or successor ordinances thereto and shall be sufficient for the parking of all automobiles necessary to the conduct of the business.

Each parking space shall be designated by white lines painted upon the paved surface.

B. AIRCRAFT PARKING AND SERVICING: Except for routine parking and servicing of transient aircraft on a specifically designated transient parking apron, all provisions for parking of all aircraft of Lessee and its patrons, if any, shall be on the lot(s) leased. Parking of aircraft in areas other than the lot(s) leased or on transient parking aprons specifically designated by the City is expressly prohibited.

C. VEHICLE LOADING: All provisions for the loading and maneuvering of vehicles incidental to the operation of the business shall be placed on lot(s) leased; on-street vehicle loading shall not be permitted.

D. SETBACKS: All buildings shall be set back a minimum of twenty-five (25) feet from the front lot line and twenty-five (25) feet from the rear lot line. Side setbacks shall be a minimum of ten (10) feet.

One hundred percent (100%) of the required rear setback area shall be landscaped and planted, unless covered by paving.

E. LANDSCAPING: A reasonable amount of landscaping, including the planting of ground- covers, shrubs and trees, shall be required, such landscaping to be in accordance with standards established by the City. The first phase of such landscaping, as approved, shall be installed within a period not to exceed one hundred eighty (180) days after the notice of completion has been filed on the initial building.

Setback areas shall be landscaped to the minimum extent outlined in Paragraph D above. In addition, paving or landscaping shall extend from the property line to the curb, such paving or landscaping to be compatible with treatment for this area on other lots in the same Block.

All trees shall be limited to a height of thirty-five (35) feet above the curb line.

Vegetation that produces seeds, fruits, or berries, or that provides dense roosting or nesting cover is prohibited. Turf grass and well as any grass seed mixtures containing millet or any other large-seed producing grass is also prohibited. Should any landscaping observed to be attracting birds or wildlife, Lessor will be required to remove said vegetation within ten (10) days of notice after a request in writing from the Declarant or its authorized agent to have it removed, the Declarant or its authorized agent may enter on any Lot to remove same by whatever means it deems necessary. Such entry shall not be deemed a trespass, and the Declarant shall not be subject to any liability therefor. The cost of such work plus 10% shall be borne by the Lessee.

F. BUILDING HEIGHTS: All building heights shall conform to FAA rules and regulations, and any amendment and successor rules and regulations. The term building height shall include any building equipment, extrusions, etc.

G. SITE COVERAGE: All buildings and structures, or portions thereof, placed on the lot(s) shall not cover more than fifty percent (50%) of the total lot area.

H. TYPE OF CONSTRUCTION: All buildings shall be framed with reinforced concrete or masonry, structural steel or structural aluminum. Siding shall be masonry, glass, or enameled steel. Concrete or masonry units shall be kept neatly painted, if used. All buildings shall conform to applicable laws, ordinances and building codes of the City of El Paso. All structures should employ effective bird deterrent measures to prevent the loafing and nesting of birds.

All structures for the storage of gasoline, jet fuel, or other petroleum products shall be screened from public view; of a state-of-the-art design and construction; and shall conform to applicable laws, ordinances and regulations of the Environmental Protection Agency (EPA) and the Texas Commission of Environmental Quality (TCEQ), and any successor agencies.

I. PIPES: No water pipe, gas pipe, sewer pipe or drainage pipe (other than those within structures) shall be installed or maintained upon any building site above the surface of the ground, except hoses and movable pipes used for irrigation or similar purposes, as approved by the City.

J. FENCING: Construction of fencing between buildings of all tenants on all lots shall be required and limited to the rear lot of the Premises. The placement and design of such construction shall be in accordance with plans and specifications prescribed by the City, or its authorized agent, for the General Aviation Area and shall be uniform throughout the area. The fence must meet the Airport's standard six-foot (6') chain link fence plus three (3) strands of barbed wired for a total height of no less than eight feet (8') and it must be approved by the Director of Aviation.

K. AVIATION SECURITY: As a result of the various security requirements of the Transportation Security Administration (TSA) and the Airport, the Lessee shall be responsible for compliance with Airport Security regulations and Title 49 Code of Federal Regulations (CFR) Part 1542 (Airport Security) and Title 14 CFR Part 139 (Airport Certification and Operations). Any and all violations pertaining to Part 1542 and Part 139 resulting in a fine will be passed on to and borne by the Lessee. These requirements shall also apply to any Sublessee.

Fines levied against the Airport by the FAA or the TSA for security violations shall be passed on to and borne by the Lessee if the violation is attributed to Lessee deficiencies and/or negligence. Lessee's liability for any civil penalty assessed as a result of an FAA/TSA test failure shall be full payment for fines arising out of any one occurrence. Payment will be due 30 days from notification by the City of El Paso after resolution of the fine amount between the Airport and the FAA and/or TSA.

The Premises include access points to the Air Operations Area (AOA) of the Airport and that the Lessee and its agents, employees, servants or independent contractors must be separately authorized by the Lessor to enter the AOA of the Airport prior to their entry thereon. The authorization to enter the AOA of the Airport is not granted by the Lease, but shall be granted to Lessee upon its completion of all security clearance and identification badging requirements.

The Lessee, employees and any other individuals issued an Airport identification badge under the auspices of the Lessee will ensure that all persons working in the AOA of the Airport will display the proper identification badge for that area or are under the escort of a proper Airport issued identification badge holder. Lessee employees, sublessees and any other person using the AOA is responsible for the payment of all fees required for the issuance of proper identification.

Failure to follow or enforce security rules and regulations will be considered a breach of the Lease attached to this document and Lessee will be considered to be in non-compliance with the terms of this Lease until security violations have been corrected. Repeated violations of the security rules and regulations may be considered an event of default that may result in termination of said Lease.

L. MOTOR VEHICLES ON AIRPORT: The Lessee shall control the on-Airport transportation of pilots and passengers of all aircraft of Lessee or its patrons using the Lessee's facilities and services. Unauthorized motor vehicles are not permitted on the Air Operations Area (AOA). The Lessee-owned or operated motor vehicles driven on the AOA shall do so only in strict accordance with Airport Rules and Regulations, applicable federal, state and municipal laws, ordinances, codes or other similar regulatory measures now in existence or as may be hereafter modified or amended. The Airport requires training and licensing requirements for AOA driving privileges. Only personnel assigned a Security Badge by Airport Operations may be eligible for driving privileges.

[End of Declaration]

Exhibit "C"
Allowed Uses and Additional Use Requirements and Restrictions

1. Allowed Uses. Lessee will only use the Leased Premises for the following uses: light manufacturing, processing center, third party logistics, and warehousing. _____.

2. Additional Insurance Requirements. Lessee will obtain the following insurance policies in addition to the policies required under the Lease: __. For the duration of this Lease, the Lessee will require any subtenants that will use or store Hazardous Materials on the Leased premises to obtain 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. Lessee will require subtenants to add the City of El Paso - El Paso International Airport as an additional insured on the Comprehensive Pollution Liability Insurance. _____.

3. Additional Requirements. Lessee will comply with the following requirements in addition to the requirements under the Lease: _____Lessee shall construct all improvements in accordance to the agreement and all attachments. The improvements need to be designed and built to have the appearance of a planned industrial park in terms of signage, materials, color, landscaping, and building design.

4. Roadway, Utility, and Grading

    a. Roadway and Utilities. The Lessor will construct the extension of the South Road as identified below. The roadway will include the following utilities: water, wastewater, gas, communication fiber, stormwater, and electricity. The Lessor will allow connection to utilities at the public right of way limits. It will be the sole responsibility of the Lessee to connect to the utilities from the public right of way. Construction of the South Road will be completed no later than **24 months** from the Effective Date. In the event that the construction of the South Road is not completed by the deadline in this section, any deadlines on construction imposed under this Agreement on the Lessee will be modified to accommodate for the roadway construction delay. In the event the South Road is not finished within 24 months of the Effective Date then Lessee may partially terminate this Lease at it pertains to Parcels 2, 3, and 4 as its sole remedy or may elect to extend the rent commencement deadlines for the delayed phases to accommodate for the delay.

    b. Grading.
        i. The Lessee is responsible for the grading of the Premises. Lessee has the right to access the areas generally identified in Exhibit A-5 and secure fill material from this location. The Lessor will provide the final drainage plan

to the Lessee that shows the areas where the Lessee can secure fill material ("Master Drainage Site"). The rights granted under this Section regarding the Master Drainage Site do not constitute a leasehold interest but rather are only limited to the right to enter the Master Drainage Site and secure the fill from the Master Drainage Site. The rights to enter the Master Drainage Site expire on April 7, 2025 unless extended in writing by the Director of Aviation for the Lessor. The Lessee will comply with the following when performing any work on the Master Drainage Site: (1) properly remove and properly dispose of all clearing and grubbing material offsite Airport and City property; (2) keep all work areas clear of waste; (3) obtain all necessary permits that may be required for grading work) replace or repair all removed or damaged fencing and structures by Lessee or Lessee's contractors; (4) comply with all insurance, indemnification, and bonding requirements listed in Article VI of this Lease.

Exhibit "D"
Phased Development Parcels

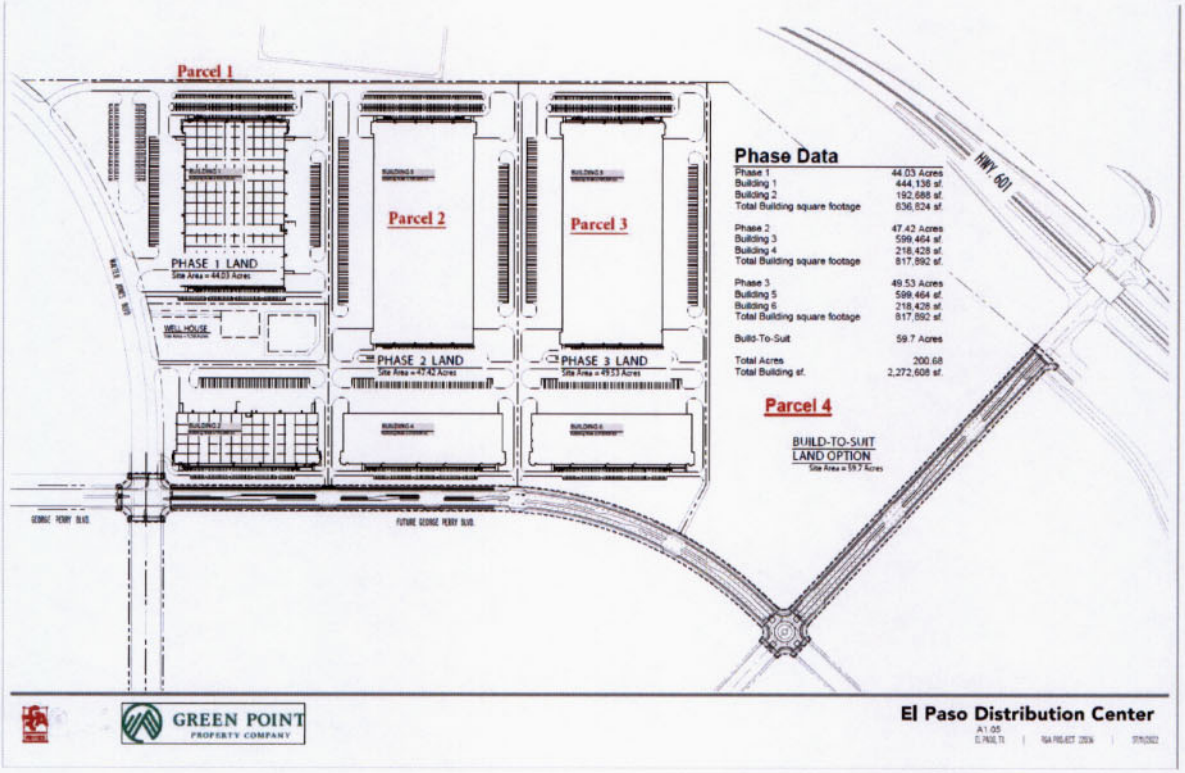

Exhibit "E"
Phased Development Improvements and Additional Requirements

Parcel 1 Development

1. Number of buildings and approximate square footage for each building: ___2 buildings. (Building 1: 444,136 square feet. Building 2: 192,688 square feet)_____
2. Certificate of Completion deadline for all buildings: April 6, 2025.
3. Special construction requirements: _____The improvements need to be designed and built to have the appearance of a planned industrial park in terms of signage, materials, color, landscaping, and building design_____

Parcel 2 Development

1. Number of buildings and approximate square footage for each building: _2 buildings. (Building 3: 599,464 square feet; Building 4: 218,428 square feet)_____
2. Certificate of Completion deadline for all buildings: May 26, 2027.
3. Special construction requirements: _____The improvements need to be designed and built to have the appearance of a planned industrial park in terms of signage, materials, color, landscaping, and building design_____

Parcel 3 Development

1. Number of buildings and approximate square footage for each building: __2 buildings. (Building 5:_599,464 square feet; Building 6: 218,428 square feet)_____
2. Certificate of Completion deadline for all buildings: June 4, 2029.
3. Special construction requirements: _____The improvements need to be designed and built to have the appearance of a planned industrial park in terms of signage, materials, color, landscaping, and building design_____

Parcel 4 Development

1. Number of buildings and approximate square footage for each building: __spec buildings number and square footage according to market requirements._____
2. Certificate of Completion deadline for all buildings: June 14, 2031.
3. Special construction requirements: _____The improvements need to be designed and built to have the appearance of a planned industrial park in terms of signage, materials, color, landscaping, and building design_____

Exhibit "F"
Site Plan for Parcel 1

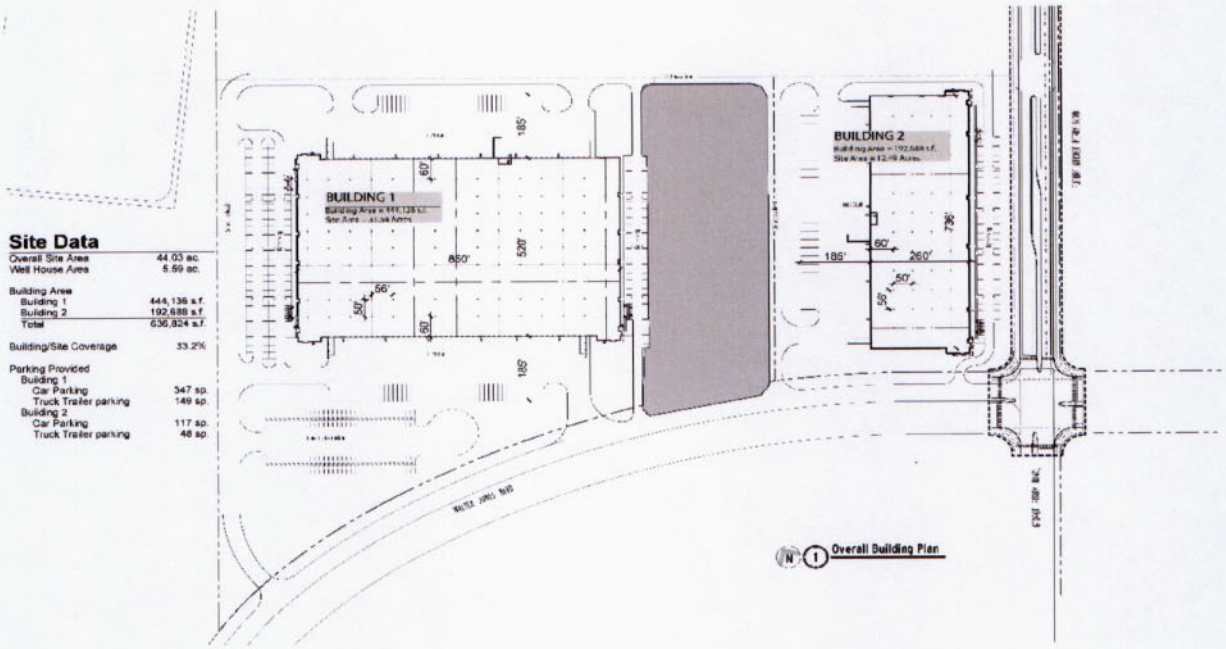

Exhibit "G"
Federal Aviation Administration Required Provisions

A. General Civil Rights Clause.

1. In all its activities within the scope of its airport program, Lessee agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. If Lessee transfers its obligation to another, the transferee is obligated in the same manner as Lessee.

2. The above provision obligates Lessee for the period during which the property is owned, used or possessed by Lessee and the Airport remains obligated to the Federal Aviation Administration.

B. Compliance with Nondiscrimination Provisions. During the performance of this Lease, Lessee, for itself, its assignees, and successors in interest (hereinafter collectively referred to as "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 Lease.

2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability 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 Agreements, 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 Lessor 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 Lessor 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, Lessor 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 Lessor 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 Lessor to enter into any litigation to protect the interests of Lessor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

C. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. 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);

2. 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);

3. 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);

4. 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

(Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);

5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);

6. Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

7. The Civil Rights Restoration Act of 1987 (PL 100-259) (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);

8. Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (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) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination 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);

11. 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). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. 74087 (2005));

12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

D. Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.

1. Lessee for itself, its, personal representatives, 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 the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) 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.

2. In the event of breach of any of the above Nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.

E. Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

1. Lessee, its heirs, personal representatives, 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 Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

2. With respect to the Lease, in the event of breach of any of the above Non-discrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

F. Subcontracts. Lessee agrees that it shall insert in any subcontracts the clauses set forth in paragraphs (A) through (E) above and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. Lessee shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (E).