RESOLUTION

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

That the City Manager, or designee, be authorized to sign an Air Cargo Building Lease Agreement by and between the City of El Paso ("Lessor") and The University of Texas at El Paso ("UTEP") ("Lessee"), for warehouse space, loading dock, and to use a portion of the parking area and the roadway, located in front of and adjacent to 6411 Convair Road, City of El Paso, El Paso County, Texas, in Air Cargo Center Building #2, for a month-to-month term not to exceed twelve months, with a monthly fee of $830.25.

APPROVED this 21st **day of** November **2023.**

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Ignacio Troncoso
Ignacio Troncoso
Assistant City Attorney

APPROVED AS TO CONTENT:

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

AIR CARGO BUILDING LEASE AGREEMENT
6411 Convair Road

El Paso International Airport
El Paso, Texas

Board of Regents of The University of Texas System, for the use and benefit of
The University of Texas at El Paso

NOVEMBER 21, 2023
Effective Date

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EXHIBITS

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EL PASO INTERNATIONAL AIRPORT

AIR CARGO BUILDING LEASE AGREEMENT

THIS AIR CARGO BUILDING LEASE AGREEMENT ("Agreement") is entered into this ___ day of _____, 2023, between the **CITY OF EL PASO, TEXAS** ("Lessor") and the BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM, *for the use and benefit of* THE UNIVERSITY OF TEXAS AT EL PASO ("Lessee").

WITNESSETH:

WHEREAS, Lessor owns and operates the El Paso International Airport ("Airport") located in the County of El Paso, Texas which is managed by the Director of Aviation for the City of El Paso ("Director"); and

WHEREAS, Lessor has constructed an air cargo building facility located on Airport property, commonly known as Cargo Building No. 2 at 6411 Convair Road, El Paso, Texas 79925 (the "Cargo Building No. 2"), and has space therein and appurtenances thereto available for lease, and Lessee desires to lease space in said Cargo Building No. 2; and

WHEREAS, this Agreement is a regulated lease with respect to GASB 87; and

WHEREAS, Lessee has indicated a willingness and ability to properly operate, keep and maintain such space in Cargo Building No. 2 leased hereunder in accordance with the standards established by Lessor; and

WHEREAS, in furtherance of its authority, Lessor desires to lease to Lessee certain facilities located at said Airport in accordance with the terms, covenants, and conditions hereinafter set forth in this Agreement;

NOW THEREFORE, for and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree as follows:

ARTICLE I
PREMISES AND PRIVILEGES

Section 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 premises located at 6411 Convair Rd., El Paso, El Paso County, Texas all of which will hereinafter be referred to as the "Premises":

A. That certain warehouse space within Cargo Building No. 2 containing 1,000 square feet, more or less, as shown on **EXHIBIT "A"** attached hereto, for Lessee's

exclusive use, and as further depicted on **EXHIBIT "B"** attached hereto [denoted thereon as "UTEP – 1,000 SF (warehouse)"], and

B. The exclusive right to use the loading dock and to use 500 square feet, more or less, of vehicle parking space directly in front of said Cargo Building No. 2 as more fully depicted on **EXHIBIT "B"** attached hereto [denoted thereon as "6411 Convair Road vehicle parking and loading dock"].

C. Lessee is further granted the non-exclusive right to use the following (collectively, the "Common Areas"): (i) the interior portion of the Cargo Building No. 2 which is for the common use of the lessees of the Cargo Building No. 2, including the hallway, restrooms, kitchen, and reception area, as more fully depicted on **EXHIBIT "B"** attached hereto [denoted thereon as "Common space - 1,493 SF] (the "Interior Common Area"), (ii) a portion of the vehicle parking area located in front of and adjacent to said Cargo Building No. 2, such portion to be commensurate with Lessee's share of warehouse and office space leased to all lessees that share common use of this vehicle parking area, and (iii) all roadways, walkways, entrances, and access ways intended for the common use of the lessees of the Cargo Building No. 2. For the avoidance of doubt, Lessee's non-exclusive right to the vehicle parking area described in this paragraph is in addition to Lessee's exclusive right to use the loading dock and parking area described in Section 1.01.B. above.

Section 1.02 Right of Ingress and Egress.
Lessor hereby grants to Lessee the rights of ingress to and egress from the Premises over and across the public and private roadways serving the Airport for Lessee, its agents and servants, patrons and invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now or may hereafter have application at the Airport.

Section 1.03 Restrictions of Privileges, Uses and Rights.
Lessee covenants and agrees that it shall use the Premises for Aviation Related Operations only. "Aviation Related Operations" is hereby defined as any activity related to aviation, including, but not limited to, aircraft storage, cargo and maintenance operations.

Lessee shall not offer, or permit to be offered, retail services, sales or repairs of any type from the Premises, other than may be incidental to the conduct of Lessee's operations. Fuel sales are specifically prohibited.

In connection with the exercise of its rights under this Agreement, Lessee:

A. Shall not do or permit to be done anything at or about the Airport that may interfere with the effectiveness or accessibility of the water system, drainage and sewage system, fire protection system, security system, fire hydrants and hoses, electrical system, natural gas, or other Airport systems installed or located on or within the Premises or the Airport.

B. Shall not do or permit to be done any act or thing upon the Airport that will invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.

C. Shall not dispose of and shall prohibit any employee, agent, contractor, or other person from disposing of any waste material taken from, or products used with respect to, its aircraft, equipment or otherwise related to Lessee's operations into the sanitary or storm sewers at the Airport or any other approved location on the Airport (whether liquid or solid), including but not limited to Hazardous Materials as defined herein, unless such waste material or products first be properly treated by equipment installed with the approval of Lessor and all other administrative bodies having appropriate jurisdiction or may remain untreated if wastewater guidelines limitation of the El Paso Water Utilities Public Service Board are not exceeded.

D. Shall not keep or store Hazardous Materials or articles including, without limitation, flammable liquids and solids, corrosive liquids, compressed gasses, and magnetized or radioactive materials on the Airport in excess of Lessee's working requirements during any twenty-four (24) hour period, except when the following conditions are met: (1) in accordance with standards established by the National Board of Fire Underwriters, any such liquids having a flash point of less than one hundred degrees Fahrenheit (100°F) shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories; (2) said material shall be under the control and care of designated Lessee personnel; (3) said material shall be packaged and handled in compliance with applicable U. S. Department of Transportation, Environmental Protection Agency, or other such applicable regulations for transport and pre-transport of hazardous articles and materials; (4) said materials shall be stored in special storage areas designated by the Director or other authorized representative of Lessor while on the Airport.

E. Shall not install fuel storage tanks or pumping facilities for use in fueling any aircraft, vehicles or other equipment on the Premises.

F. Shall not maintain or operate on the Premises or elsewhere at the Airport a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling or dispensing food or beverages to the public or to its employees; nor shall Lessee provide for the sale or dispensing of food and beverages at the Airport except that the Lessee may provide vending machines solely for the sale of hot and cold beverages, food, and confections to Lessee's employees in areas not accessible to the general public.

G. The rights and privileges granted Lessee under this Agreement with respect to the performance of ground services and activities in connection with its operations at the Airport may be exercised by Lessee only for and on behalf of Lessee for regularly scheduled or unscheduled service. Lessee may, subject to the prior

written approval of Lessor, and, where applicable, perform ground services for other air cargo operators conducting operations at Cargo Building No. 2 provided said air cargo operators are signatories to an Air Cargo Use Agreement or Airline Operating Agreement with Lessor. It is understood and agreed that Lessor reserves the right to charge a fee or commission associated with controlling access to restricted areas, and to collect reasonable fees or commissions for ground transportation, ground support services for other Air Cargo operator(s), and other services or facilities provided by or for Lessee in competition with concessionaires and operators operating under an agreement with the Lessor.

Section 1.04 Conditions of Granting Agreement.

The granting of this Agreement and its acceptance by Lessee is conditioned upon the following covenants:

A. That no functional alteration of the Premises shown on **EXHIBIT "A"** or functional change in the uses of such Premises permitted under Section 1.03 above shall be made without the specific written consent of Lessor herein; said consent to be at Lessor's sole discretion.

B. That the right to use said public Airport facilities in common with others authorized to do so 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 under their authority with reference to aviation and air navigation; and all applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.

C. That Lessee will utilize only the roadways or other direction, path, route, or form of travel Lessor may designate, from time to time, for Lessee's operation and movement on or about the Airport; provided that, notwithstanding anything in this Agreement to the contrary, Lessee shall at all times have reasonable access from a dedicated public right-of-way to and from the Premises of sufficient size and area to facilitate Lessee's use and occupancy of the Premises in accordance with the terms of this Agreement.

Section 1.05 Exterior Fencing and Storage.

Lessee may store stock, materials, and supplies on the Premises, however all stock, materials, and supplies located outside must be completely enclosed by fence. The placement and design of any exterior fencing and storage on the Premises shall be in accordance with plans and specifications prescribed by Lessor and shall be uniform throughout the entire Cargo Building No. 2, ramp, and associated areas.

ARTICLE II
OBLIGATIONS OF LESSOR

Section 2.01 Quiet Enjoyment.

Lessor agrees that upon Lessee's paying rent and performing all of the covenants, conditions, and agreements herein set forth, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises hereby demised for the term hereby provided.

Section 2.02 Lessor's Right of Entry.

Lessor reserves the right to enter into and upon the Premises at all times during business hours for the purpose of inspecting the condition thereof, or to perform maintenance or repairs as may be necessary in accordance with the provisions of this Agreement, or for the purpose of exhibiting the same to prospective Lessees, purchasers or others. The exercise of this right to enter the Premises shall not be deemed an eviction or disturbance of Lessee's use or possession, provided that Lessor shall exercise its best efforts not to interfere with Lessee's normal operations on the Premises.

Section 2.03 Condition and Maintenance of Premises; Common Areas.

Lessor shall bear responsibility for only those repairs and maintenance to the Structural Elements of Cargo Building No. 2. "Structural Elements" shall mean the roof, foundation, load bearing columns and walls, exterior walls, exterior paint, and the ramp. In addition, Lessor shall bear responsibility for repairs and custodial maintenance of the Common Space with the exception of the kitchen area, which is the responsibility of the Lessees.

ARTICLE III
OBLIGATIONS OF LESSEE

Section 3.01 Net Agreement.

Subject to Lessor's obligations under Section 2.03, this Agreement in every sense shall be without cost to Lessor for the development, maintenance and improvement of the Premises. Subject to Lessor's obligations under Section 2.03, it shall be the sole responsibility of Lessee to keep, maintain, repair and operate the entirety of the Premises and all improvements and facilities placed thereon at Lessee's sole cost and expense.

Section 3.02 Condition and Maintenance of Premises.

LESSEE ACCEPTS THE PREMISES IN "AS IS" CONDITION. Lessor has no responsibility as to the condition of the Premises and shall not be responsible for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition. Lessee shall be solely responsible for repairs and maintenance of the Premises except those required for the Structural Elements referenced in Section 2.03, and shall not cause any damage or impairment to any part of the Structural Elements.

Section 3.03 Internal Improvements.
Lessee may make internal improvements, additions and alterations to the Premises hereunder with the prior written approval of Lessor. Lessee guarantees that all construction work performed by contractors hired by Lessee shall be done in accordance with applicable building codes, laws and regulations and in a good, workmanlike manner, and all materials used by Lessee's contractors shall be of an appropriate grade and quality for the use for which they are employed.

Lessee shall submit to Lessor the internal construction plans and specifications for the written approval by Lessor. It is agreed that Lessor reserves the right to reject any plans and specifications. In the event such additions, alterations, or improvements shall be deemed to have been undertaken without the prior written approval of Lessor required herein, Lessee may, following the expiration of any applicable notice be considered in default and Lessor may cancel this Agreement in accordance with the provisions of Article IX hereinafter set forth.

Subject to written approval of Lessor, all permanent improvements, if any, made by Lessee to said Cargo Building No. 2, of which the Premises are a part, shall become the property of Lessor upon the expiration, cancellation or early termination of this Agreement. All other improvements and fixtures of a non-permanent nature and all trade fixtures, machinery and equipment made or installed by Lessee may be removed from the Premises at any time by Lessee, subject to Lessor's lawful exercise of its Lessor's lien, and to the extent that it does not cause structural or cosmetic damage to the Premises or any other portion of Lessor's Cargo Building No. 2 and facilities.

Section 3.04 Reserved.

Section 3.05 Compliance with Laws.
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 from and providing such alternative services within the Premises, 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.

Lessor shall maintain all Common Areas, and all appurtenant improvements in compliance with all applicable Disabilities Laws and Environmental Laws, and any amendments thereto, at Lessor's sole cost and expense.

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, or transported to and from the Premises, by Lessee, its agents, employees, contractors, or invitees, in violation of any Environmental Law. **Lessee shall, to the extent authorized by the Constitution and the laws of the State of Texas, 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, and any and all claims and actions brought by any person, entity or governmental body, arising in connection with any contamination of the Premises by Hazardous Materials or violation of Environmental Laws as a result (whether in part or in whole) of Lessee's use, occupancy, activities and/or operations on the Premises. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws on the Premises. 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 required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises, in each case, to the**

extent resulting from Lessee's use, occupancy, activities and/or operations on the Premises. 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 Agreement.

(2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon, which presence is caused by Lessee's use, occupancy, activities and/or operations on the Premises, results in any contamination of the Premises or any improvements thereon requiring any removal or remediation under applicable Environmental Laws, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon to the condition required under applicable Environmental Law; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld.

(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 that are applicable to Lessee's use and occupancy of the Premises.

(4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication received by Lessee from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.

Notwithstanding any other provision in this Agreement to the contrary, in the event Lessee fails to comply with the provisions of this Section, and such failure continues for a period of thirty (30) days after notice of such failure from Lessor to Lessee (or such longer time as may be reasonably necessary so long as Lessee commences the cure within said thirty (30) days and thereafter diligently prosecutes the same to completion), Lessor shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of any law on, under or about the Premises, the cost of which shall be borne by Lessee.

The failure of Lessee to comply with any of the requirements and obligations of this Section, and the continuance of such failure for a period of thirty (30) days after notice of such failure from Lessor to Lessee (or such longer time as may be reasonably necessary so long as Lessee commences the cure within said thirty (30) days and thereafter diligently prosecutes the same to

completion), shall constitute a material default of this Agreement and shall permit Lessor to pursue the remedies as set forth in Article IX hereinbelow, in addition to all other rights and remedies provided by law or otherwise provided in the Agreement, to which Lessor may resort cumulatively, or in the alternative.

C. Reporting.

At any time that Lessee submits any filing pertaining to its property, operations, or presence on the Airport with any governmental entity (other than the Internal Revenue Service and other taxing authorities) by way of example but not in limitation, the FAA, the Environmental Protection Agency or the Texas Commission on Environmental Quality, Lessee shall, upon request of Lessor, provide duplicate copies of the filing(s) made, along with any related documents, to Lessor.

Section 3.06 Maintenance.
Subject to Landlord's obligations under Section 2.03 above, Lessee shall, at its sole cost and expense, maintain the Premises improvements and appurtenances located therein, in a presentable condition consistent with good business practice and equal in appearance and character to other similar improvements on said Airport. Lessee shall repair all damage to said Premises caused by its employees, patrons or Lessee's operation thereon. Lessee shall be responsible for the upkeep and cleanliness of the Premises. Lessee shall maintain and repair all equipment located within the Premises, including, but not limited to any heating and cooling equipment. Lessee shall have no obligation to, and agrees not to, paint the exterior of the improvements or anywhere on the Premises without the written consent of Lessor; said consent to be at Lessor's sole discretion. Lessor shall also be the sole judge of the quality and content of any painting submitted by Lessee for consideration.

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 whatever maintenance Lessor deems necessary. If said maintenance is not undertaken by Lessee within thirty (30) 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 shall be borne by Lessee. Lessee is responsible for the exclusive use of space and paying for the Common Area Maintenance fee.

Section 3.07 Reserved.

Section 3.08 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 the operation of Lessee's business. 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.

Section 3.09 Permitted Uses.
Lessee covenants and agrees that in no event will it enter into any business activity on the Premises other than those specified in Article I.

Section 3.10 Signage.
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 Premises shall be limited to those identifying the uses conducted on the site and to those necessary for directional purposes. The size, design and location of all signs shall require the written approval of the Lessor prior to installation. Said written approval shall be at Lessor's sole discretion. Outdoor advertising, billboards or flashing lighting shall not be permitted.

B. Lighting and Construction. All signs shall comply with all current or future building codes of the City of El Paso and with all current or future rules and regulations of the Federal Aviation Administration (FAA) and its successor agencies. Lessee is solely responsible for obtaining all necessary permits and licenses.

Section 3.11 Reserved.

Section 3.12 Authorization to Enter Restricted Area.
Lessee understands that the Premises include access to a restricted area of the Airport and that Lessee and its agents, employees, servants or independent contractors must be authorized by the Lessor to enter restricted areas of the Airport prior to their entry thereon. The authorization to enter restricted areas of the Airport is not granted by this Agreement, but shall be granted to Lessee upon Lessee's completion of security clearance and identification badging requirements necessary of all persons entering restricted areas of the Airport. As Lessee is required to comply with all applicable rules and regulations, any violation of this provision or those security rules and regulations applicable to the restricted areas of the Airport, shall be considered to be a material violation of this Agreement and grounds for termination.

Section 3.13 Penalties Assessed by Federal Agencies.
Lessee understands and agrees that in the event any federal agency assesses a civil penalty against the Lessor or the Airport for any security violation as a result of or related to any act or failure to act on the part of Lessee, its agents, employees or independent contractors, Lessee shall reimburse the Lessor in the amount of the civil penalty assessed. Failure to reimburse the Lessor within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.
Lessee acknowledges that it is familiar with the restrictions imposed on Lessor by the Federal Aviation Regulations (FAR) Part 1542 and any amendments, and agrees to assume responsibility for compliance with said regulation as it relates to access and identification procedures on the Premises. To accomplish this compliance, Lessee agrees to develop a security plan and will submit same to the Transportation Security Administration (TSA) security office for required approval.

ARTICLE IV
TERM OF LEASEHOLD

Section 4.01 Term.
The term of this Agreement shall commence on _____, 2023 (the "Effective Date") for a month-to-month term not to exceed twelve months.

Section 4.02 Reserved.

Section 4.03 Termination by Either Party.
This Agreement may be terminated by either party without cause by providing forty-five (45) days prior written notice to the other party.

Section 4.04 Holding Over.
It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Agreement shall operate and be construed as a tenancy from month to month at a rental of one and one-half (1½) times the monthly rental in effect immediately preceding the expiration or earlier termination of this Agreement, and Lessee shall be liable to Lessor for all loss or damage on account of any holding over after the expiration or cancellation of this Agreement, 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 Agreement 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 Agreement, 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.

Section 4.05 National Emergency.
In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, the term of this Agreement shall be extended by the amount of the period of such suspension.

ARTICLE V
RENTALS

Section 5.01 Rental.
For the purpose of computing the rental payments, Lessor and Lessee agree that the Premises comprise the following:

1, 000 Sq. ft. of Office and Warehouse Space at **$7.00/Sq. ft.**/annum = **$7,000.00/yr.**

200 Sq. ft. representing Lessee's share of the Interior Common Area at $7.00/Sq. ft./annum = $1,400/yr.

500 Sq. ft. of Vehicle Parking and Loading Dock Space at **$0.726/Sq. ft.**/annum = **$363.00/yr.**

1,200 Sq. ft. of electricity/telecommunications surcharge at **$1.50/Sq. ft.**/annum = **$1,200.00/yr.**

Initially, therefore, the Initial Annual Rental shall be **$9,963.00** per year ($1.50 per Sq. ft. shared space custodial maintenance, per Section 2.03) or **$830.25 per month**

Section 5.02 Commencement of Rental.
Payment of rental by Lessee to Lessor as aforesaid shall commence on the Effective Date of this Agreement, which is first noted on the title page.

Section 5.03 Time of Payment.
All rental due hereunder shall be paid in twelve (12) equal monthly installments. Said monthly rental payments shall be paid in advance on or before the first day of each and every month during the term or any extension of this Agreement. Rental due hereunder shall be prorated for any partial month or fractional year.

Section 5.04 Reserved.

Section 5.05 Place of Payment.
All rental and other payments required herein shall be paid to Lessor at the following address:

Accounting Department
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 VI
INSURANCE AND INDEMNIFICATION

Section 6.01 Liability Insurance.
For so long as the lessee hereunder is an agency of the State of Texas, the provisions of this Section 6.01, Sections 6.02 and 6.03 below, and any other requirements that Lessee obtain insurance contained elsewhere in this Lease are superseded by the provisions of the State Law Addendum (hereinafter defined) and shall be of no force and effect. Lessee, at its sole cost and expense shall, throughout the term of this Agreement, provide and keep in force for the benefit of Lessee with the Lessor as an additional insured, comprehensive general liability insurance in an amount not less than One Million Dollars ($1,000,000.00) for bodily injury to one person for each occurrence, Two Million Dollars ($2,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Million Dollars ($1,000,000.00) for property damage arising out of each occurrence, 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.

Section 6.02 Fire and Extended Coverage Insurance.
Lessor agrees that, at all times throughout the term of this Agreement, it will keep Cargo Building No. 2 insured under a Standard Policy of Fire and Extended Coverage Insurance for an amount equivalent to ninety percent (90%) of the replacement cost, such replacement cost to be re-determined every three (3) years. Upon receipt of a statement therefore, Lessee shall reimburse Lessor for Lessee's pro rata share thereof plus ten percent (10%) for administrative overhead. Said share shall be calculated on a pro rata basis utilizing the square footage of each Lessee's occupancy divided by the total square footage of Cargo Building No. 2.

If the operations conducted by Lessee, or anyone holding under Lessee, on the Premises should require the payment of a greater premium for fire and extended coverage insurance than would customarily be payable for the conduct of the air cargo operations permitted hereunder, then the amount of such additional premium cost shall also be reimbursed by Lessee to Lessor.

Section 6.03 Authorized Insurance Companies.
All such policies of insurance shall be written by insurance 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) days prior to the effective date of the insurance policy for which the certificate is issued. Each such certificate shall contain:

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

B. A statement of the period during which the policy is in effect;

C. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance;

D. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days' prior written notice to Lessor; and

E. A statement certifying the Lessor has been listed as an additional named insured on the policy.

Section 6.04 INDEMNIFICATION.

A. INDEMNITY. TO THE EXTENT AUTHORIZED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES", FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER ("CLAIMS), TO THE FULL EXTENT ARISING OUT OF (A) ANY BREACH OF THIS AGREEMENT BY LESSEE OR ITS AGENTS, EMPLOYEES, AFFILIATES, SUBLESSEES, OR CONTRACTORS, (COLLECTIVELY THE "LESSEE PARTIES"); (B) ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE LESSEE PARTIES HEREUNDER; OR (C) NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSEE PARTIES IN CONNECTION WITH THIS AGREEMENT, THE CONSTRUCTION, DEVELOPMENT, OPERATION OR USE OF THE LEASED PREMISES, OR THE AIRPORT.

IT IS THE INTENTION OF THIS INDEMNITY SECTION THAT THE JOINT AND CONCURRING RESPONSIBILITY OF CITY AND LESSEE BE BORNE COMPARATIVELY IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY OR LESSEE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THIS PROVISION SHALL NOT CREATE ANY CAUSE OF ACTION IN FAVOR OF ANY THIRD PARTY AGAINST CITY OR LESSEE NOR SHALL IT ENLARGE IN ANY WAY THE LIABILITY OF CITY OR LESSEE, THIS PROVISION BEING INTENDED SOLELY TO PROVIDE FOR INDEMNIFICATION OF CITY FROM LIABILITY FOR DAMAGE TO THIRD PERSONS OR PROPERTY AS SET FORTH IN THIS PARAGRAPH.

LESSEE SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. MAINTENANCE OF THE INSURANCE REQUIRED UNDER THIS AGREEMENT SHALL NOT AFFECT LESSEE'S INDEMNITY

OBLIGATIONS. LESSEE MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF CITY OR LESSEE, AS LESSEE MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THAT THE EXPENSES THEREOF SHALL BE PAID BY LESSEE. IN NO EVENT MAY LESSEE ADMIT LIABILITY ON THE PART OF CITY WITHOUT THE PRIOR WRITTEN CONSENT OF THE EL PASO CITY ATTORNEY.

B. WAIVER OF CONSEQUENTIAL DAMAGES. EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES FROM THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR INCOME, CLAIMS OF LESSEE'S CUSTOMERS, SUBLESSEES, AND CONTRACTORS, AND OTHER SIMILAR CLAIMS OR DAMAGES.

C. CLAIMS AGAINST LESSEE. IF ANY CLAIM, DEMAND, SUIT, OR OTHER ACTION IS MADE OR BROUGHT BY ANY PERSON OR ENTITY AGAINST THE LESSEE ARISING OUT OF OR CONCERNING THIS AGREEMENT, THE AIRPORT, OR THE LEASED PREMISES, LESSEE SHALL GIVE WRITTEN NOTICE THEREOF TO CITY WITHIN TEN (10) BUSINESS DAYS AFTER BEING NOTIFIED OF SUCH CLAIM, DEMAND, SUIT, OR ACTION. SUCH NOTICE SHALL ENCLOSE A TRUE COPY OF ALL SUCH CLAIMS, AND IF THE CLAIM IS NOT WRITTEN OR THE INFORMATION IS NOT DISCERNABLE FROM THE WRITTEN CLAIM, THE WRITTEN NOTICE SHALL STATE THE DATE OF NOTIFICATION OF ANY SUCH CLAIM, DEMAND, SUIT, OR OTHER ACTION; THE NAMES AND ADDRESSES OF THE PERSON, FIRM, CORPORATION, OR OTHER ENTITY MAKING SUCH CLAIM OR THAT INSTITUTED OR THREATENED TO INSTITUTE ANY TYPE OF ACTION OR PROCEEDING; THE BASIS OF SUCH CLAIM, ACTION, OR PROCEEDING; AND THE NAME OF ANY PERSON AGAINST WHOM SUCH CLAIM IS BEING MADE OR THREATENED. SUCH WRITTEN NOTICE SHALL BE DELIVERED EITHER PERSONALLY OR BY MAIL AND SHALL BE DIRECTLY SENT TO THE EL PASO CITY ATTORNEY.

D. NOTHING IN THIS SECTION SHALL BE INTERPRETED TO LIMIT CITY'S ABILITY TO ADJUST RENTAL RATES AND OTHER FEES IN ACCORDANCE WITH THE OTHER TERMS AND CONDITIONS OF THIS AGREEMENT, AND APPLICABLE LAWS AND REGULATIONS. FURTHERMORE, NO PROVISION IN THIS AGREEMENT IS INTENDED TO LIMIT CITY'S ABILITY TO ADJUST LANDING FEES OR IMPOSE OTHER FEES IN ACCORDANCE WITH APPLICABLE LAWS AND REGULATIONS.

E. THOSE PROVISIONS OF THIS SECTION THAT APPLY TO THE LESSEE SHALL ALSO APPLY TO ANY PARTY HOLDING BY, THROUGH, OR UNDER THE LESSEE.

F. **CITY ASSUMES NO RESPONSIBILITY FOR ANY PROPERTY PLACED IN OR ON THE LEASED PREMISES OR ANY PART THEREOF, AND CITY IS HEREBY EXPRESSLY RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITY FOR ANY LOSS, INJURY OR DAMAGE TO PERSONS OR PROPERTY THAT MAY BE SUSTAINED BY REASON OF THE OCCUPANCY OF THE LEASED PREMISES UNDER THIS AGREEMENT, UNLESS SAME IS CAUSED BY THE NEGLIGENCE OR WILLFUL ACT OF CITY, ITS OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES.**

ARTICLE VII
CONDEMNATION

Section 7.01 Definitions.
The following definitions apply in construing the provisions of this Agreement 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.

B. "Total taking" means the taking of the fee title to all of the Premises and improvements thereon.

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 Agreement.

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 Agreement. The notice is considered to have been received when a party to this Agreement receives from the condemning agency or entity a notice of intent to take in writing 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.

Section 7.02 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.

Section 7.03 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 Agreement relating to the condemnation.

Section 7.04 Taking of Leasehold.
Upon a total taking, Lessee's obligation to pay rent and other charges hereunder together with Lessee's interest in the leasehold shall terminate on the Date of Taking. Upon a substantial taking, 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 Agreement shall remain in full force and effect covering the balance of the Premises not so taken, except that the rent payable hereunder 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.

Section 7.05 Total Taking.
All of Lessee's obligations under the Agreement 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 the Lessee-owned improvements, but subject to the Agreement, shall be disbursed to Lessor.

Section 7.06 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 improvements but subject to the Agreement.

Section 7.07 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 year 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 if its intention to that effect.

Section 7.08 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 VIII
ENCUMBRANCES

Section 8.01 Encumbrance.
As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiary under a deed of trust. 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 Agreement so long as such Mortgage is in effect.

Section 8.02 Mortgagee's Rights.
Upon receipt of a notice or demand in accordance with Section 8.01 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-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.

Section 8.03 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 Agreement.

ARTICLE IX
EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

Section 9.01 Expiration.
This Agreement shall expire at the end of the term or any extension thereof.

Section 9.02 Cancellation.
Subject to the provisions of Article VIII above, it shall be an event of default by Lessee under this Agreement and this Agreement 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 ten (10) 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;

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

D. Abandon the Premises;

E. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-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 sixty (60) days after the appointment of such receiver.

In any of the aforesaid events, 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 Agreement 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 Agreement by reason of any subsequent violation of the terms of this Agreement.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Agreement 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 Agreement, 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.

Section 9.03 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 Agreement, 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, 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 Agreement by notice or without canceling this Agreement, 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 Agreement, 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.

Section 9.04 Assignment and Transfer.
Lessee is not permitted to assign this Agreement; provided, that Lessee may assign this Agreement to another state agency or institution of The University of Texas System upon Lessor's prior written consent. The foregoing notwithstanding, any person or entity to which this Agreement 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 Agreement on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

Section 9.05 Subleasing.
Lessee is not permitted to sublease all or any part of the Premises.

Section 9.06 Rights Upon Expiration.
At the expiration of this Agreement, Lessor shall be entitled to have the Premises returned to Lessor clear of all improvements constructed by Lessee, or on Lessee's behalf. Lessee shall have sixty (60) days after expiration of this Agreement in which to remove such improvements; provided that any occupancy by Lessee for the purposes of removal shall be subject to the rental due hereunder. If Lessee fails to so remove said improvements, Lessor may remove same at Lessee's expense. Lessor may, at its option, take title to the improvements in lieu of removal by or for Lessee.

Section 9.07 Lessor's Lien.

It is expressly agreed that in the event of default in the payment of rentals or any other sum due from Lessee to Lessor under the terms of this Agreement, 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 Agreement term, which lien shall not be in lieu of or in any way affect the statutory Lessor'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, nor with any other applicable laws or the Constitution of the State of Texas. Lessor agrees that Lessor will not levy a Lessor'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 the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the 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 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 the necessary proper expense of removing, storing and selling such property, then to the payment of any rentals or other sums due or to become due under this Agreement, with the balance, if any, to be paid to Lessee.

ARTICLE X
GENERAL PROVISIONS

Section 10.01 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 Lessor 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.

Section 10.02 Time is of the Essence.
Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

Section 10.03 Notices.
All notices provided to be given under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, 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

COPY TO: Director of Aviation
El Paso International Airport
6701 Convair Road
El Paso, Texas 79925-1099

LESSEE: The University of Texas at El Paso
Vice President for Business Affairs – Suite 301
500 W. University
El Paso, Texas 79968
Attn: Susan Avena

COPIES TO: The University of Texas System
Real Estate Office 210 West 7th Street
Austin, Texas 78701
Attention: Executive Director of Real Estate

The University of Texas System
Office of General Counsel
210 West 7th Street Austin, Texas 78701
Attention: David Lein

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.

Section 10.04 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 Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

Section 10.05 Agreement Made in Texas.
The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts in El Paso County, Texas.

Section 10.06 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.

Section 10.07 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 D, 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.

Section 10.08 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.

Section 10.09 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. 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]

Section 10.10 Cumulative Rights and Remedies.
All rights and remedies of the parties here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by a party of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

Section 10.11 Interpretation.
Words of gender used in this Agreement shall be held and construed to include the other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

Section 10.12 Agreement Made in Writing.
This Agreement 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.

Section 10.13 Paragraph Headings.
The Table of Contents and the captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

Section 10.14 Severability.
If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement 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 Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 10.15 Successors and Assigns.
All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

Section 10.16 Taxes and Other Charges. The parties expect that the Premises shall be exempt from real and personal property taxes for the duration of the Term; however, if the applicable statutes are changed so as to make the Premises subject to any taxes, Lessee shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against the Lessee or the 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 Agreement including any extensions or option periods granted thereto.

If taxes are assessed and payable by Lessee, then, by March 1 of each year during the term of this Agreement, including any extensions or option periods granted thereto and no cost to Lessor, Lessee shall provide written proof satisfactory to the Director that all taxes and governmental charges of any kind have been paid in full.

Lessee further indemnifies the City from all tax liability including but not limited to ad valorem real property taxes and personal property taxes that may arise in relation to Lessee's activities in furtherance of this Agreement.

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.

Section 10.17 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 LESSEE'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE.

Section 10.18 Survival of Certain Provisions.
All provisions of this Agreement which expressly or impliedly contemplate or require performance after the expiration or termination of this Agreement hereunder shall survive such expiration or termination of this Agreement, including without limitation, Sections 3.05 and 6.03.

Section 10.19 Authorization to Enter Agreement.
Each of Lessor and Lessee warrants to the other that it has full right and authority to enter into this Lease, and that each and every person signing on behalf of the representing party is authorized to do so. Upon request, each party will provide evidence satisfactory to the requesting party confirming these representations.

Section 10.20 Effective Date.
Regardless of the date signed, this Agreement shall be effective as of the date noted in Section 4.01 to this Agreement.

Section 10.21 State Agency Addendum.
Lessor acknowledges that Lessee is an agency of the State of Texas and does hereby agree that the terms and conditions set forth in EXHIBIT "C" attached hereto and incorporated herein by reference (the "State Agency Addendum") shall, notwithstanding anything in this Agreement to the contrary, govern the terms and conditions of this Agreement. The State Law Addendum amends and modifies this Agreement and Lessor and Lessee expressly agree that so long as Lessee or another agency of the State of Texas is a lessee under this Agreement, the provisions of the State Law Addendum shall control to the extent of any conflict between the provisions of the State Law Addendum and the remainder of the Agreement.

Section 10.22 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 29th day of November, 2023.

LESSOR: CITY OF EL PASO:

Samuel Rodriguez

Samuel Rodriguez, P.E.
Director of Aviation

APPROVED AS TO FORM:

Ignacio Troncoso

Ignacio Troncoso
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Shane Brooks

Shane Brooks
Aviation Development Assistant Director

LESSOR'S ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 29th day of November 2023, by Samuel Rodriguez, P.E. as the **Director of Aviation** for the **City of El Paso, Texas (Lessor)**.

Rosa E Pinon

My Commission Expires:
7-29-26

Notary Public, State of Texas

ROSA ESTHER PINON
Notary ID #128342168
My Commission Expires
July 29, 2026

(Signatures continue on the following page)

LESSEE'S SIGNATURE AND ACKNOWLEDGMENT

LESSEE: BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM, for the use and benefit of THE UNIVERSITY OF TEXAS AT EL PASO

By: _____
Name: Mark McGurk
Title: Vice President for Business Affairs

LESSEE'S ACKNOWLEDGMENT

STATE OF Texas)
)
COUNTY OF El Paso)

This instrument was acknowledged before me on this 1 day of November, 2023, by Mark McGurk, as Vice President for Business Affairs of the Board of Regents of the University of Texas System, for the use and benefit of The University of Texas at El Paso, as the act and deed thereof.

_____
Notary Public

My Commission Expires:
7/18/2026

NORMA ALICIA NAVEDO
My Notary ID # 124274828
Expires July 18, 2026

EXHIBIT "A"

THE PREMISES

EXHIBIT "B"

WAREHOUSE AND PARKING SPACES

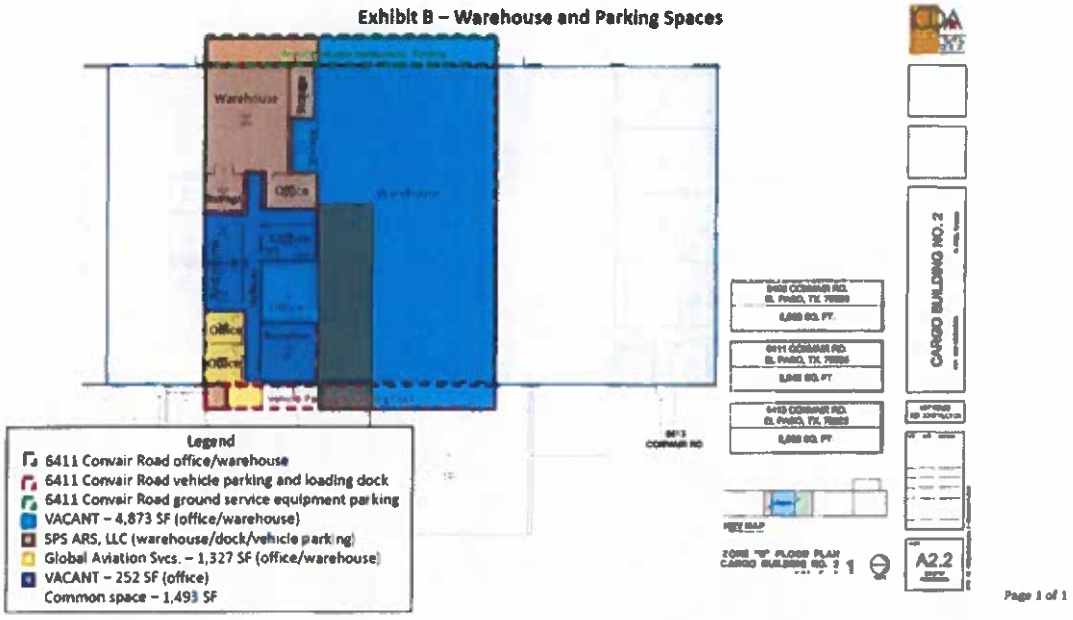

EXHIBIT "C"

STATE AGENCY ADDENDUM

THE PROVISIONS OF THIS STATE AGENCY ADDENDUM MAY NOT BE ALTERED BY AGREEMENT OF THE PARTIES

This STATE AGENCY ADDENDUM ("***State Agency Addendum***") is attached to and made a part for all purposes of the agreement to which it is attached titled "_____" by and between the Board of Regents of The University of Texas System, for the use and benefit of The University of Texas _____ (the "***BOR***") and _____ "***Owner***" (as amended from time to time, "***Agreement***").

This State Agency Addendum amends and modifies the Agreement and the parties expressly agree that so long as BOR or another agency of the State of Texas is a party to the Agreement, the provisions of this State Agency Addendum shall control to the extent of any conflict between the provisions of this State Agency Addendum and the remainder of the Agreement. This State Agency Addendum also amends and modifies any agreement, certification, confirmation, and other documentation signed, approved or provided by BOR in connection with the Agreement or the transactions contemplated therein, including but not limited to any estoppel certificates, subordination and/or non-disturbance agreements (collectively, "***Ancillary Agreements***"), and the parties expressly agree that so long as BOR or another agency of the State of Texas is a party to any Ancillary Agreement, the provisions of this State Agency Addendum shall control to the extent of any conflict between the provisions of this State Agency Addendum and such Ancillary Agreement.

1. **Prohibition on Violation of State Agency and Constitution by BOR**. OWNER AND BOR HEREBY AGREE THAT BOR SHALL NOT BE REQUIRED TO PERFORM ANY ACT OR REFRAIN FROM PERFORMING ANY ACT UNDER THIS AGREEMENT OR ANY ANCILLARY AGREEMENT IF THAT PERFORMANCE OR NON-PERFORMANCE WOULD CONSTITUTE A VIOLATION OF THE CONSTITUTION OR LAWS OF THE STATE OF TEXAS.

2. **Waivers and Releases**. Pursuant to Article III, Sections 49, 50, 51, 55 and the other applicable provisions of the Texas Constitution, no provision of this Agreement and the Ancillary Agreements providing for (i) BOR's waiver, release or exculpation of Owner and/or Owner's officers, employees, principals and agents for claims, liabilities and damages of any kind or nature arising from the negligent or willful acts or omissions of said persons, whether jointly or severally; or (ii) limitations on the remedies or recourse of BOR against Owner and/or Owner's officers, employees, principals and agents, whether jointly or severally, for claims, liabilities and damages of any kind or nature, shall be of force and effect, except as otherwise expressly provided by statute. Without limitation of the foregoing, any waiver of subrogation rights by BOR under the Agreement, any Ancillary Agreement, or under any policy of insurance provided by or on behalf of Owner with respect to the Agreement or any Ancillary Agreement shall be effective only to the extent authorized by applicable law.

3. **Indemnities**. Pursuant to Article III, Sections 49, 50, 51, 55 and the other applicable provisions of the Texas Constitution, no provision of this Agreement and the Ancillary Agreements providing that BOR will reimburse, indemnify or hold harmless Owner or any other party for any liability, claim or damages that are not caused by the negligence or willful misconduct of BOR shall be of force and effect. Notwithstanding any provision in this Agreement or any Ancillary Agreement stating that BOR will indemnify or hold harmless Owner or any other party, BOR shall be obligated to indemnify and hold harmless only to the extent authorized by applicable law.

4. **Courts, Jury Trial and Waiver**. Except as otherwise expressly provided by statute, no provision of this Agreement and the Ancillary Agreements shall constitute, nor is it intended to constitute, a waiver of BOR's or the State of Texas' exemptions, privileges, and immunities provided by or allowed under the Constitution of the State of Texas or any other applicable laws, including without limitation (i) sovereign immunity to suit; (ii) sovereign immunity against the recovery of money damages; or (iii) right to a jury trial for any issue arising under the Agreement or any Ancillary Agreement. Except as otherwise expressly provided by statute, no provision of this Agreement and Ancillary Agreements providing that BOR consents to the jurisdiction of any court shall be binding against BOR.

5. **Attorney Fees**. No provision of this Agreement and the Ancillary Agreements requiring BOR to pay court costs, costs of suit, or attorney fees incurred by Owner or any other person in enforcing or interpreting the terms of this Agreement or any Ancillary Agreement shall be of force and effect, except as otherwise expressly provided by

statute.

6. **Arbitration**. Pursuant to Texas Government Code §2009.005(c), no provision of the Agreement and the Ancillary Agreements providing for the arbitration of disputes concerning the Agreement or any Ancillary Agreement by the parties shall be of force and effect.

7. **State Property**. No provision of the Agreement and the Ancillary Agreements purporting to grant to Owner (i) a security interest or lien against the real or personal property of the BOR or any other state agency; or (ii) a contractual right or power of attorney to take control over or otherwise handle or dispose of the property of BOR or any other state agency, shall be of force and effect.

8. **Insurance**. Owner acknowledges that BOR is an agency of the State of Texas and has only such authority as is granted to BOR by State Agency or as may be reasonably implied from such law, and that any obligation of BOR under this Agreement or any Ancillary Agreement to obtain insurance is expressly made subject to the BOR's authority under State Agency to obtain such insurance. Owner further agrees that BOR shall have the right, at its option, to (a) obtain liability insurance protecting BOR and its employees and property insurance protecting BOR's interests in real property and the contents located in such real property, to the extent authorized by Section 51.966 of the *Texas Education Code* or other law; or (b) self-insure against any risk that may be incurred by BOR as a result of its operations under this Agreement or any Ancillary Agreement.

9. **Funding Contingency**. The Agreement and the Ancillary Agreements are made contingent upon the continuation of the availability of funds designated or appropriated to pay for the Agreement and the Ancillary Agreements. In the event the funds become unavailable, BOR shall have the right to terminate the Agreement and the Ancillary Agreements upon 30 days prior written notice to Owner.

10. **Texas State Auditor's Office**. Owner acknowledges and stipulates that, notwithstanding anything to the contrary set forth in this Agreement and the Ancillary Agreements, the Texas State Auditor's Office (collectively, with any successor agency thereto, the "***State Auditor***") is authorized under applicable Texas law (including, without limitation, Texas Education Code Sections 51.9335(c), 73.115(c) and 74.008(c)), in each case, as may be amended from time to time, to conduct an audit or investigation in connection with any of the funds or payments received and accepted by Owner from BOR pursuant to this Agreement or any Ancillary Agreement. Owner agrees to cooperate with the State Auditor in the conduct of any such audit or investigation, including, without limitation, providing the State Auditor with all records requested as may be required under applicable Texas law. All costs and expenses of any such audit or investigation by the State Auditor shall be BOR's sole responsibility, except and unless such audit and investigation determines that the amounts paid by BOR for the applicable period which are the subject of such audit or investigation were in excess of the amounts properly payable under this Agreement or any Ancillary Agreement, in which event Owner will pay to BOR the amount determined to be in excess of the correct amount. In addition, if the excess amounts are greater than five percent (5.0%) than the amounts properly payable under this Agreement or any Ancillary Agreement, Owner shall reimburse BOR for the actual and reasonable cost of such audit by the State Auditor.

11. **Public Information Act**. Any obligation of BOR under the Agreement or any Ancillary Agreement to (i) keep the terms and provisions of the Agreement or such Ancillary Agreements confidential; and/or (ii) not disclose the financial terms of this Agreement or such Ancillary Agreement, shall be binding on BOR only to the extent permitted by law, including without limitation Chapter 552 of the Texas Government Code (commonly known as the Texas Public Information Act) or any successor law or other similar statutory provisions. Owner shall perform any obligations required by Owner under the Texas Public Information Act.

12. **Accessibility Inspection**. Texas Government Code §469.106(c) and §2167.006(b) provide that before the premises subject of the Agreement may be occupied in whole or in part by BOR, an on-site inspection of the Building and the Premises must be performed by (i) the Texas Department of Licensing and Regulation ("***TDLR***"), (ii) an entity who has contracted with the Texas Commission of Licensing and Regulation ("***TCLR***") pursuant to Texas Government Code §469.055, or (iii) a person who holds a certificate of registration issued pursuant to Texas Government Code §469.201, to ensure compliance with the accessibility standards and specifications adopted by TCLR (Title 16, Texas Administrative Code, Chapter 68) under authority of Texas Government Code Chapter 469. The provisions of this Section shall apply to any additional or new premises that may be occupied or used by BOR

after the effective date of the Agreement.

(a) Repair. The term "***Inspector***" as used in this paragraph means any one or more of the following: The TDLR, any contracted entity, or any certificated person described above in this paragraph as authorized to perform on-site inspections. If the Inspector finds any condition in the Premises or the Building not in compliance with TDLR accessibility standards and specifications (conditions as to which the TDLR has waived compliance pursuant to a variance or other written departmental action shall be deemed to be in compliance), Owner may, but is not obligated, to correct such noncompliance, but if Owner shall not have corrected such noncompliance by the date that is sixty (60) days after the report of the Inspector shall have been delivered to Owner or such later date as may be established by the TDLR for correction of such non-complying conditions (such period being the "***Cure Period***"), then pursuant to Texas Government Code Chapter 469, BOR must terminate this Agreement upon written notice to Owner given within thirty (30) days after the expiration of the Cure Period and prior to correction of such noncompliance by Owner, time being of the essence. If this Agreement is cancelled by BOR pursuant to the provisions of this Section, the cancellation shall be effective upon written notice to Owner, and BOR shall be automatically released of all claims of Owner for rent or use fees or for damages or liability arising from the termination.

(b) Cooperation. Owner and BOR shall provide to TDLR and the Inspector all necessary cooperation and information concerning inspection of the Building and the Premises and any corrective action required. BOR shall pay any fees charged by TDLR for inspection of the Building under Texas Government Code Chapter 469, as amended from time to time.

13. HIPAA and FERPA. In the event that in its use of the Premises for the permitted use under the Agreement, the BOR stores or maintains (a) "protected health information" ("***PHI***"), as that term is defined by 45 CFR § 160.103 and all amendment thereto, and/or (b) student information ("***FERPA Information***") that is subject to the Family Educational Rights and Privacy Act (20 U.S.C § 1232g) and all amendments thereto, including but not limited to "treatment records", as that term is defined by 34 CFR § 99.3 and all amendment thereto, in the Premises, the parties agree that nothing in the Agreement and any Ancillary Agreement gives Owner or Owner's employees and agents any right to access, use or disclose PHI and/or FERPA Information and that Owner and its employees and agents shall never need or seek access to, or the use of, any PHI and/or FERPA Information of the BOR. However, in the event PHI and/or FERPA Information is accessed (whether inadvertently or otherwise) by Owner or its employees or agents, the party discovering such disclosure shall promptly notify the other party and Owner agrees to promptly return any such information if such information has come into Owner's possession and promptly take commercially reasonable measures to prevent any subsequent dissemination by Owner or Owner's employees or agents of such PHI and/or FERPA Information to third parties. The parties agree that the provisions of this Section do not create, and are not intended to create, a "business associate" relationship between the parties as that term is defined by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Subparts A and E of Part 164 and all amendments thereto (commonly known as the "***Privacy Standards***"). The parties agree that the provisions in this Section do not create, and are not intended to create a "school official" relationship between the parties as that term is defined by 34 CFR § 99.31.

The parties further agree that in the event that Owner or its employees or agents have a lawful right to enter into the Premises without the permission and/or knowledge of the BOR, Owner shall have no right to access PHI and/or FERPA Information or deprive the BOR of access to such PHI and/or FERPA Information, provided that the BOR shall take reasonable efforts to safeguard PHI and/or FERPA Information confidentially and securely so as to prevent Owner or its employees or agents from inadvertently coming into contact with PHI and/or FERPA Information on the Premises. This Section 13 shall be interpreted to ensure that, in the event the BOR is required to comply with the Health Insurance Portability and Accountability Act of 1996 and all amendments thereto ("***HIPAA***"), FERPA, and all other state and federal privacy laws, that the BOR is compliant, to the extent possible. To the extent that any other provision of the Agreement or any Ancillary Agreement can be read to provide Owner with any right to access PHI and/or FERPA Information, this Section 13 shall govern.

14. Clery Act Responsibilities. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. §1092(f) (as amended from time to time, the "***Clery Act***") imposes a legal duty on The University of Texas _____ (the "***University***") to disclose to its campus community and to the U.S. Department of Education timely and annual information about certain incidents and crimes that occur on its campus and at certain off-campus, non-campus, and public property locations. Owner agrees to assist the University in

fulfilling these reporting duties and in complying with the Clery Act and any regulations promulgated pursuant to the Clery Act. Owner will report this information to the University by notice given in accordance with the terms of this Agreement as soon as practical after Owner learns of this information.

15. **Goods and Services.** Owner is advised that pursuant to Texas Education Code 51.9335, in any contract for the acquisition of goods and services to which an institution of higher education is a party, a provision required by applicable law to be included in the contract is considered to be a part of the executed contract without regard to: (i) whether the provision appears on the face of the contract; or (ii) whether the contract includes any provision to the contrary.

16. **State Requirements Concerning the Disclosure of Interested Parties in a State Contract**. Pursuant to Texas Government Code § 2252.908 and Chapter 46 of the rules of the Texas Ethics Commission, a state agency such as the Board of Regents of The University of Texas System may not enter into certain statutorily defined contracts with a business entity unless the business entity, in accordance with said statute and administrative rules, fills out and electronically files Texas Ethics Commission Form 1295 entitled "Certificate of Interested Parties" with the Texas Ethics Commission at its website ("***Form 1295***"). The Form 1295 generated by the Commission's electronic filing application must be printed, signed by an authorized agent of the contracting business entity, and submitted (either electronically or by hard copy) to the state agency that is the party to the contract for which the form is being filed. The state agency will then electronically acknowledge its receipt of the signed Form 1295 with the Texas Ethics Commission not later than the 30th day after the state agency receives the signed Form 1295. Accordingly, if the Agreement or any Ancillary Agreement has a total cost or value of $1,000,000 or more or must be approved by the Board of Regents of The University of Texas System, Owner must comply with the statutory requirements before the Board of Regents of The University of Texas System may execute and enter into the Agreement or such Ancillary Agreement.

17. **Other State Agency Requirements**.

(a) Certification Regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Owner certifies Owner is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Owner acknowledges the Agreement and Ancillary Agreements may be terminated and payment withheld if this certification is inaccurate.

(b) Certification Regarding COVID-19 Vaccination. Pursuant to Section 161.0085, Texas Health and Safety Code (enacted by SB 968, 87th Texas Legislature, Regular Session (2021)), Owner certifies that it does not require its customers to provide any documentation certifying such individual's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Owner's business. Owner acknowledges this Agreement and Ancillary Agreements may be terminated and payment withheld if this certification is inaccurate.

[Add (c) if Owner or counterparty is a professional sports team as defined in Chapter 2274, Texas Government Code]

(c) Agreements with Professional Sports Teams. Pursuant to Chapter 2274, Texas Government Code (enacted by SB 4, 87th Texas Legislature, Regular Session (2021)), Owner verifies that it will play the United States national anthem at the beginning of each Owner's sporting event held at Owner's home venue or other facility controlled by Owner for the event. Owner acknowledges that failure to comply with the foregoing verification (i) constitutes a default by Owner under the Agreement; (ii) immediately subjects Owner to any remedies the Agreement authorizes for default; and (iii) may subject Owner to debarment from contracting with the State of Texas.

18. **Amendment. THE PROVISIONS OF THIS STATE AGENCY ADDENDUM MAY BE AMENDED BY AGREEMENT OF THE PARTIES ONLY WITH THE WRITTEN APPROVAL OF THE OFFICE OF GENERAL COUNSEL OF THE UNIVERSITY OF TEXAS SYSTEM.**

Exhibit "D"
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).