

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

DEPARTMENT: Aviation

AGENDA DATE: April 23, 2024

PUBLIC HEARING DATE: N/A

CONTACT PERSON NAME AND PHONE NUMBER: Sam Rodriguez, (915) 212-7301

DISTRICT(S) AFFECTED: 3

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

SUBGOAL: N/A

SUBJECT: **Tenant did not provide the Disclosure of Campaign Contributions and Donations Form**

A Resolution that the City Manager, or designee, be authorized to sign a First Amendment of Ground Lease between the City of El Paso, Texas ("Lessor"), and Exeter 50 Walter Jones, L.P. ("Lessee"), in conjunction with Lessee's first lien financing for the airport ground Lease dated May 12, 2020 for 50 Walter Jones Blvd., which amendment (1) provides that a receivership by the lender does not constitute a Lessee default under the Lease, (2) provides that if the Lease is rejected in bankruptcy while the mortgage is still outstanding, such lender has the option to lease the premises for the remainder of the term; (3) incorporates the new Federal Aviation Administration required lease provisions.

BACKGROUND / DISCUSSION:

The Department of Aviation is requesting approval for the First Amendment to the ground lease in conjunction with Lessee's first lien financing for the airport ground lease dated May 12, 2020 for 50 Walter Jones Blvd.

PRIOR COUNCIL ACTION:

- May 12, 2020 – Butterfield Trail Industrial Park Lease
- May 1, 2023 – Lessor's Approval of Assignment

AMOUNT AND SOURCE OF FUNDING:

This is a revenue-generating item.

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

DEPARTMENT HEAD:

for 

Sam Rodriguez, Aviation Director

RESOLUTION

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

That the City Manager, or designee, be authorized to sign a First Amendment of Ground Lease between the City of El Paso, Texas (“Lessor”), and EXETER 50 WALTER JONES, L.P. (“Lessee”), in conjunction with Lessee’s first lien financing for the airport ground Lease dated May 12, 2020 for 50 Walter Jones Blvd., which amendment (1) provides that a receivership by the lender does not constitute a Lessee default under the Lease, (2) provides that if the Lease is rejected in bankruptcy while the mortgage is still outstanding, such lender has the option to lease the premises for the remaining term of the Lease; and (3) incorporates the new Federal Aviation Administration required lease provisions.

Dated this ____ day of _____, 2024.

CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Larry Phifer

Larry H. Phifer
Assistant City Attorney

APPROVED AS TO CONTENT:

for *Samuel Rodriguez*

Samuel Rodriguez, P.E.
Director of Aviation

FIRST AMENDMENT OF GROUND LEASE

THIS FIRST AMENDMENT OF GROUND LEASE (this "**Agreement**") is entered into as of _____, 2024, by and among **CITY OF EL PASO**, a Texas municipal corporation ("**Lessor**"), and **EXETER 50 WALTER JONES, L.P.**, a Delaware limited partnership ("**Lessee**").

RECITALS

A. Lessor is the owner of certain real property located in El Paso, Texas, and more particularly described in attached Exhibit A (the "**Land**") and the landlord under that certain Butterfield Trail Industrial Park Lease made and entered into as of May 12, 2020, by Lessor and **50 WALTER JONES BLVD., INC.**, a Texas corporation ("**Original Lessee**") (together with the assignments of ground lease described below collectively, the "**Ground Lease**"), as evidenced by that certain Memorandum of Lease recorded with the Official Public Records of El Paso County, Texas as File No. 20200035808.

B. Original Lessee assigned its interest in the Ground Lease to Lessee pursuant to that certain Assignment and Assumption of Ground Lease by and between Original Lessee and Lessee dated as of May 12, 2023, as consented to by Lessor pursuant to that certain Lessor's Approval of Assignment by Lessor dated as of May 12, 2023.

C. Lessee has requested, and Lessor has agreed to the provisions of this Agreement.

AGREEMENT:

NOW THEREFORE, in consideration of the premises and other mutual valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Affirmation of Recitals. The recitals set forth above are true and correct and are incorporated herein by this reference.

2. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning assigned such terms in the Ground Lease.

3. Ground Lease.

(a) Effect of Termination with Lessee; New Lease with Mortgagee. Notwithstanding anything to the contrary in the Ground Lease (and only with respect to the first lien Mortgagee who has complied with the notice provisions of Section 10.01 of the Lease), if (i) Mortgagee provides Lessor written notice within sixty (60) days after the date Mortgagee receives written notice that the Ground Lease has terminated because the Ground Lease was rejected in bankruptcy (time being of the essence) or otherwise terminated for which Mortgagee did not get notice or an opportunity to cure, stating that Mortgagee is exercising its right to enter into Lessor's form net Ground Lease with Improvements for the remaining term of the Ground Lease (had it not terminated) at the rental rate provided for in the terminated Ground Lease (had it not terminated); and (ii)

Mortgagee pays to Lessor all unpaid rent and taxes due under the Ground Lease up to and including the commencement date of the term of the new lease, but not any additional accelerated rent or liquidated damages (for all past due amounts, within such 60-day period, and for all future rent and taxes, when the same would have come due under the terminated Ground Lease), then Lessor will enter into such new lease with such first lien Mortgagee if (a) Lessor is vested with undisputed fee simple title to the Premises and all improvements thereon, free and clear of all third-party claims, liens and other encumbrances (except existing easements), (b) there is no existing or threatened legal impediment to Lessor leasing such property to Mortgagee, and there is no existing or threatened litigation related to the Ground Lease or the Premises and improvements thereon, or any financing related thereto, (c) Mortgagee accepts the Premises and the Improvements “AS IS” and subject to all matters of record and/or apparent on the property, including third parties in actual possession of such property, and (d) Mortgagee signs the new lease within a reasonable time after Mortgagee has notice of the Ground Lease termination (but not later than 60 days thereafter, unless Lessor is the cause of the delay).

If Mortgagee fails to provide Lessor the required notice within such 60-day period (time being of the essence), such Mortgagee shall not have the rights provided in this Section.

(b) Title to Improvements after Lease Termination. Lessee acknowledges and agrees that upon the expiration or early termination of the Ground Lease, fee simple title to all improvements located on the Premises shall automatically vest in Lessor, and Lessee shall no longer have any interest in such improvements (subject to Lessor’s right to require Lessee to remove such improvements and restore the leased premises as provided in the Ground Lease).

(c) Receivership Initiated by Mortgagee. Lessor hereby confirms that Section 11.02(G) of the Ground Lease shall not apply with respect to any receivership proceedings that are initiated by a Mortgagee in connection with an exercise of its remedies under the Mortgage and the other loan documents.

(d) Assignment by Lessee. Notwithstanding anything in Section 11.04 of the Ground Lease to the contrary, Lessor hereby agrees that Lessor shall not unreasonably withhold, condition, or delay its consent with respect to any proposed assignment of the Ground Lease.

(e) Cure Rights. The parties confirm that, only to the extent allowed by applicable law and the Federal Aviation Administration or the successor entity, for any non-monetary Tenant default or violation of the Lease that can be cured and no cure period is currently provided for in the Lease, Landlord shall not terminate the Lease without providing Tenant at least thirty (30) days prior written notice and opportunity to cure.

4. FAA Required Provisions. The Federal Aviation Administration Required Provisions attached hereto as Exhibit B (“Updated FAA Requirements”) are hereby incorporated into the lease and amend and replace the provisions set forth in Sections 12.07 – 12.10 of the Lease.

5. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. Counterparts. This Agreement may be executed in any number of counterparts and each of the counterparts shall be considered an original and all counterparts shall constitute but one and the same instrument.

7. Entire Agreement. This Agreement and the exhibits hereto, which are incorporated herein by this reference, shall constitute the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be changed or modified orally or in any manner other than by any agreement in writing signed by the parties hereto. No waiver of any of the terms or conditions of this Agreement and no waiver of any default or failure of compliance shall be effective unless in writing and no waiver furnished in writing shall be deemed to be a waiver of any other term or provision or any future condition of this Agreement.

8. Applicable Law. This Agreement shall be governed by the law of the State of Texas.

9. Conflict. In the case of a conflict between the terms of the Ground Lease and the terms of this Agreement, the terms of this Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates of acknowledgement, to be effective as of the date first above written.

[Remainder of page intentionally left blank; signature pages follow]

SIGNATURE PAGE OF LESSOR TO AMENDMENT OF GROUND LEASE

LESSOR:

CITY OF EL PASO, TEXAS

a Texas municipal corporation

By: _____

Name: Cary Westin

Title: City Manager

APPROVED AS TO FORM:

Larry Phifer

Larry Phifer

Assistant City Attorney

APPROVED AS TO CONTENT:

Samuel Rodriguez

for

Samuel Rodriguez P.E.

Director of Aviation

ACKNOWLEDGMENT

STATE OF TEXAS)

)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2024,
by Cary Westin, as **City Manager** for the **City of El Paso**, a Texas municipal corporation, on
behalf of said corporation.

Notary Public, State of Texas

My Commission Expires:

SIGNATURE PAGE OF LESSEE TO AMENDMENT OF GROUND LEASE

LESSEE:

EXETER 50 WALTER JONES L.P., a Delaware limited partnership

By Exeter 50 Walter Jones GP, LLC, a Delaware limited liability company, its sole general partner

By: J. Peter Lloyd
Name: J. Peter Lloyd
Title: Vice President

COMMONWEALTH OF PENNSYLVANIA)
) ss.:
COUNTY OF DELAWARE)

On this the 26 day of March, 2024, before me, the undersigned officer, personally appeared J. Peter Lloyd who acknowledged himself to be the Vice President of Exeter 50 Walter Jones GP, LLC, a Delaware limited liability company, which is the sole general partner of **EXETER 50 WALTER JONES, L.P.**, a Delaware limited partnership, and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My Commissions Expires: Commonwealth of Pe

[SEAL]

Commonwealth of Pennsylvania - Notary Seal
Lisa Bianchini, Notary Public
Delaware County
My commission expires November 25, 2026
Commission number 1011466

EXHIBIT A

LEGAL DESCRIPTION OF LAND

BEING A PORTION OF LOT 1, BLOCK 15, BUTTERFIELD TRAIL INDUSTRIAL PARK UNIT THREE, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 60, PAGE 60, CITY OF EL PASO, EL PASO COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING FOR REFERENCE AT THE CENTERLINE INTERSECTION OF WALTER JONES BOULEVARD (120.00 FEET WIDE) AND SPUR DRIVE (90.00 FEET WIDE);

THENCE, ALONG THE CENTERLINE OF SAID WALTER JONES BOULEVARD, SOUTH 87° 54' 08" EAST, A DISTANCE OF 80.00 FEET TO A POINT;

THENCE, LEAVING SAID CENTERLINE, SOUTH 02° 05' 52" WEST, A DISTANCE OF 60.00 FEET TO A POINT IN THE SOUTH RIGHT-OF-WAY LINE OF SAID WALTER JONES BOULEVARD, AND POINT OF BEGINNING FOR THE HEREIN DESCRIBED TRACT;

THENCE, ALONG SAID SOUTH RIGHT-OF-WAY LINE, SOUTH 87° 54' 08" EAST, A DISTANCE OF 611.00 FEET TO A POINT FOR CORNER;

THENCE, LEAVING SAID SOUTH RIGHT-OF-WAY LINE, SOUTH 02° 05' 52" WEST, A DISTANCE OF 373.00 FEET TO A POINT FOR CORNER;

THENCE, NORTH 87° 54' 08" WEST, A DISTANCE OF 646.00 FEET TO A POINT FOR CORNER IN THE EAST RIGHT-OF-WAY LINE OF SAID SPUR DRIVE;

THENCE, ALONG SAID EAST RIGHT-OF-WAY LINE, THE FOLLOWING TWO COURSES:

NORTH 02° 05' 52" EAST, A DISTANCE OF 338.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;

ALONG THE ARC OF SAID CURVE (DELTA ANGLE = 90° 00' 00", RADIUS = 35.00, CHORD = NORTH 47° 05' 52" EAST, 49.50 FEET) A DISTANCE OF 54.98 FEET TO THE POINT OF BEGINNING AND CONTAINING 240,695 SQUARE FEET, OR 5.526 ACRES OF LAND.

EXHIBIT B

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.

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).