

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

DEPARTMENT: Aviation

AGENDA DATE: October 15, 2019

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E., Managing Director of
Aviation and International Bridges
915 212-7301

DISTRICT(S) AFFECTED: District 2

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

SUBJECT:

Authorize the City Manager to sign a Southern Industrial Site Lease between the City of El Paso ("Lessor") and Circle K Stores, Inc. ("Lessee") for Portions of Lots 1 and Lot 2, Block 13, El Paso International Airport Tracts Unit 8, Replat A, more or less 72,792.05 square feet of land, City of El Paso, El Paso County, Texas municipally known and numbered as 1600 Hawkins Blvd., El Paso, Texas. The land is currently undeveloped and the lease term is 20 years with six (6) five-year options.

BACKGROUND / DISCUSSION:

Circle K's intent is to construct a convenience store with fuel sales. Temporary right of entry was granted to Circle K Stores, Inc. on April 27, 2016 to determine usability of the parcels located at the intersection of Montana Avenue and Hawkins Blvd, El Paso, Texas. Circle K. requires an approved lease prior to proceeding with any design work.

TERM:

20 years with six (6) five-year options.

RENTAL FEES:

70,850.34 SF x \$0.638 = \$45,202.52 annually

Rent will commence upon receipt of the certificate of occupancy or 18 months from the effective date of the lease.

PRIOR COUNCIL ACTION:

N/A.

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue-generating item.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

fol:



Monica Lombraña, A.A.E.
Managing Director of Aviation & International Bridges

RESOLUTION

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

That the City Manager be authorized to sign a Southern Industrial Park Site Lease by and between the City of El Paso ("Lessor") and Circle K Stores Inc., a Texas corporation, ("Lessee") regarding the following described property:

Portions of Lots 1 and Lot 2, Block 13, El Paso International Airport Tracts Unit 8, Replat A, City of El Paso, El Paso County, Texas, commonly known and numbered as 1600 Hawkins Blvd., El Paso, Texas.

Dated this ____ day of _____ 2019.


CITY OF EL PASO

Dee Margo
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:


for: _____
Monica Lombrana, A.A.E.
Managing Director of Aviation and
International Bridges

SOUTHERN INDUSTRIAL PARK SITE LEASE

El Paso International Airport
El Paso, Texas

CIRCLE K STORES INC., a Texas corporation

Tenant

for

1600 Hawkins Boulevard, El Paso, Texas

October 15, 2019
Effective Date

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ATTACHMENTS

- EXHIBIT "A" – Depiction of Premises**
- EXHIBIT "A-1"-Premises**
- EXHIBIT "B" - Declarations of Restrictions and Covenants**
- EXHIBIT "C" – Depiction of Staging Area**
- EXHIBIT "D" – Memorandum of Lease**

SOUTHERN INDUSTRIAL SITE LEASE

THIS SOUTHERN INDUSTRIAL SITE LEASE ("Lease") is entered into this 15th day of October 2019, by and between the **CITY OF EL PASO** ("Landlord") and **CIRCLE K STORES INC.**, a Texas corporation ("Tenant").

WHEREAS, Landlord owns and operates the El Paso International Airport, located in the County of El Paso, State of Texas ("Airport"), which is managed by the Director of Aviation and International Bridges or her successor ("Director");

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

WHEREAS, Tenant has indicated a willingness and ability to properly keep, maintain, and improve said ground in accordance with standards established by Landlord.

NOW THEREFORE, for and in consideration of the terms, conditions and covenants of this Lease to be performed by Tenant, all of which Tenant accepts, Landlord hereby leases to Tenant and Tenant hereby takes from Landlord certain real property, and certain attendant privileges, uses and rights, as hereinafter specifically set out.

ARTICLE I – PREMISES

1.01 Description of Premises Demised.

Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Landlord does hereby demise and lease to Tenant and Tenant does hereby lease from Landlord the:

Portions of Lots 1 and Lot 2, Block 13, El Paso International Airport Tracts Unit 8, Replat A, City of El Paso, El Paso County, Texas, generally depicted as Exhibit "A", attached hereto and incorporated herein by reference, and commonly known and numbered as 1600 Hawkins Blvd., El Paso, Texas (the "Premises").

The "Premises" means a portion of the Lots agreed upon between Landlord and Tenant as the portion of the Lots Tenant will use for construction of Tenant's Improvements based upon a site plan and metes and bounds description agreed upon between Landlord and Tenant and attached as Exhibit "A-1" by amendment to the Lease as contemplated by Section 1.03 of this Lease.

1.02 Conditions of Granting Lease.

The granting of this Lease and its acceptance by Tenant is conditioned upon the following:

- A. That no functional alteration of the Premises or functional change in the uses of such Premises shall be made without the prior written consent of Landlord.

B. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America, the State of Texas; the rules and regulations promulgated by their authority and all applicable rules, regulations and ordinances of Landlord now in force or hereafter prescribed or promulgated by charter authority or by law.

1.03 Site Plan.

After the Effective Date, Tenant will prepare and submit to Landlord a proposed site plan for the Premises (the "Proposed Site Plan"), including elevations and proposed metes and bounds description for the Proposed Site Plan. Landlord shall have fifteen (15) days after receipt to approve or disapprove the Proposed Site Plan, specifying in detail any reasons for disapproval. If the Proposed Site Plan is disapproved, Tenant shall consider Landlord's comments and resubmit the Proposed Site Plan to Landlord within fifteen (15) days or provide Landlord with the reasons why the requested revisions were declined. Landlord shall then have seven (7) days after receipt of the resubmitted Proposed Site Plan to approve or disapprove them, and, in the event of disapproval, the procedures set forth herein shall be repeated until Landlord and Tenant have approved the Proposed Site Plan. Neither Landlord or Tenant will unreasonably condition, delay or withhold their approval of the site plans or metes and bounds descriptions for the Premises. In the event Landlord and Tenant are unable to agree upon the Proposed Site Plan or the metes and bounds description, Tenant may terminate this Lease. Within thirty (30) days after agreement on the Proposed Site Plan, the Director, as Landlord's authorized representative, and Tenant will execute an amendment to this Lease setting out the metes and bounds description and applicable square footage for the Premises as Exhibit "A-1". The approval set forth in this paragraph shall simultaneously be considered approval under Article 5 of the Declaration, provided however, that this approval shall not constitute a commitment to construct as set forth in Article 5, paragraph 5.07 of the Declaration. If, at any time, Tenant is unable to get approvals from the Director or the Landlord for its plans on the Premises, Tenant may terminate this Lease and receive a return of the Security Deposit, if a Security Deposit has been paid by Tenant to Landlord by that point in time.

Prior to Rent Commencement Date. Tenant shall have determined that its total off-site and extraordinary costs for development of the Premises will not exceed one hundred thousand dollars \$100,000.00. As used in this Lease, "off-site and extraordinary costs" means all costs and expenses other than construction costs for Tenant's standard building and standard site improvements. Off-site and extraordinary costs shall include, but are not limited to: earthwork, storm water management systems, retaining walls, contaminates, soil and ground water removal or remediation costs to extend or relocate utility lines to the Premises; costs to construct off-site drainage or sewage treatment facilities; permit fees; legal fees; expert and consulting fees for non-Tenant employees; costs and expenses for easements and additional property used in conjunction with the Premises, and costs or expenses related to roadways or the surrounding public rights-of-way. If Tenant has determined that the costs will exceed \$100,000.00, Tenant may terminate the Lease by written notice to Landlord at any time through the Rent Commencement Date, in which case Tenant's Security Deposit, if a Security Deposit has been paid by Tenant to Landlord by that point in time, shall be returned to Tenant and neither Landlord nor Tenant shall have any further obligations to the other, except for third party claims arising from Tenant's entry to the Premises for inspection.

1.04 Staging Area.

In consideration of Ten and No/100 Dollars (\$10.00), Tenant is given the option to use a portion of Airport property as depicted on Exhibit C attached hereto for the limited use as a staging area and ancillary uses, such as parking, for construction of its Site Improvements on the Premises (the "Temporary Construction Easement").

Landlord and Tenant shall execute a Temporary Construction Easement Agreement granting Tenant the right to use the Temporary Construction Easement areas as depicted on Exhibit C attached hereto and incorporated herein. The Director is authorized to sign a Temporary Construction Easement, in a form approved by the City Attorney's Office. The Temporary Construction Easement shall expire upon the completion of Tenant's improvements.

ARTICLE II – TERM OF LEASEHOLD

2.01 Term.

The "Term" of this Lease will be the Initial Term and any properly exercised Renewal Term, as provided below. The "Initial Term" of this Lease shall commence on the Effective Date and end twenty (20) years after the Rent Commencement Date. Renewal Term(s) will be as provided in Section 2.02. Annual Rent shall be adjusted as provided in Section 2.02 and 3.03, of this Lease, as applicable, on each fifth (5th) anniversary of the Rent Commencement Date defined in Section 3.02.

All readjustments shall be effective as of the fifth (5th) anniversary date of the Rent Commencement Date, without regard to the date the actual adjustment is made; provided, however, that in no event shall the readjusted Annual Rent be less than the rate in place immediately prior to such readjustment nor more than twenty percent (20%) more than the Annual Rent established at the beginning of the immediately preceding five-year period.

2.02 Option to Extend.

In the event Tenant is not in default of any terms of this Lease, and there is no condition which with notice would put Tenant into default, Tenant shall have the option to extend this Lease for six (6) additional terms (individually the "Option" and collectively "Options") of five (5) years each (individually a "Renewal Term" and collectively "Renewal Terms"). In the event Tenant is in full compliance with the terms of this Lease, as extended, Tenant may exercise the options by notifying Landlord in writing at least ninety (90) days prior to expiration of the Term then in effect. In the event the election is so exercised, the Lease shall be extended for five (5) years on the same terms and conditions, except that the Annual Rent shall be adjusted as per Section 3.03 at the commencement of each Renewal Term. In no event shall the adjusted Annual Rent for a Renewal Term be less than the Annual Rent during the prior Term, nor shall it be more than 20% more than the Annual Rent established for the prior term, be it the Initial Term for the first Option, or the prior Renewal Term for an immediately subsequent Renewal Term.

2.03 Holding Over.

Any holding over by Tenant of the Premises at the expiration, termination or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent of one and one-

half times the then current monthly rent, and Tenant shall be liable to Landlord for all loss or damage on account of any holding over against Landlord's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Landlord from Tenant after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

2.04 National Emergency.

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

ARTICLE III – ANNUAL RENT

3.01 Annual Rent.

The Premises shall contain the number of square feet of land referenced in Exhibit "A-1" to be attached pursuant to Section 1.02 of this Lease. Landlord and Tenant agree that the initial rent for the Premises will be calculated on the basis of \$0.638 per square foot per annum "Annual Rent", subject to adjustment as set forth below.

3.02 Commencement and Payment of Annual Rent.

Payment of rent shall commence on the "Rent Commencement Date", which shall be the later of: (i) the first day of the month following the date a certificate of occupancy is issued for the Premises, or (ii) eighteen (18) months from the Effective Date of this Lease, or (iii) twelve (12) months from the Delivery Date as defined in paragraph 4.02, subject to extension as set forth in paragraph 12.25. Tenant has the right to terminate the Lease with thirty (30) days' written notice to Landlord prior to the commencement of construction on the Premises, in which case Tenant shall be entitled to a return of the Security Deposit, if a Security Deposit has been paid by Tenant to Landlord by that point in time.

3.03 Readjustment of Annual Rent.

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

- A. Annual Rent shall be adjusted on the first of the month following each fifth (5th) anniversary of the Rent Commencement Date during the Initial Term. Landlord and Tenant agree that percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U) shall govern the rent readjustment for these anniversary dates. The parties further agree that for the purposes of computing such percentage increase during the Initial Term, the Base Year CPI-U shall be established as that rate in place ninety (90) calendar days prior to the Rent Commencement Date. Rents shall be adjusted pursuant to the percentage increase

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

All readjustments for each Renewal Term shall be effective as of the commencement of each Renewal Term, without regard to the date the actual adjustment is made; provided, however, that in no event shall the readjusted Annual Rent be less than the rate in place immediately prior to such readjustment nor more than twenty percent (20%) more than the Annual Rent established at the beginning of the immediately preceding Option period.

3.04 Security Deposit.

Within twenty (20) days prior to the Rent Commencement Date of this Lease, Tenant shall tender to Landlord an irrevocable letter of credit ("Security Deposit") in an amount equal to three (3) months of Annual Rental to guarantee the faithful performance of Tenant of its obligations under this Lease and the payment of all Annual Rent due hereunder. Tenant shall be obligated to maintain such Security Deposit in effect until the expiration of eighteen (18) consecutive months from the Rent Commencement Date of this Lease during which Tenant commits no Event of Default under Section 10.02 of this Lease. Within twenty (20) days after expiration of such eighteen (18) month period and if no Event of Default by Tenant has occurred, Landlord shall return the Security Deposit to Tenant. Landlord's rights under this Section shall be in addition to all other rights and remedies provided to Landlord under this Lease.

3.05 Time of Payment.

The Annual Rent shall be paid in twelve (12) equal monthly installments. The payments shall be paid in advance on or before the first day of each and every month during the term of this Lease.

3.06 Unpaid Rent, Fees and Charges.

Any installment of rent, fees, or other charges or monies accruing under any provisions of this Lease that are not received by Landlord by the 20th day of the month in which payment is due, shall bear interest from the date such rental or other amount was due at the lesser of the rate of eighteen percent (18%) per year or the then maximum nonusurious rate under applicable law, (the lesser of said amounts being herein referred to as the "Maximum Rate.") In the event the late charge is ever deemed to be "interest", the amount of interest on past due amounts shall be automatically reduced so that the combination of said late charge and the interest on past due amounts, if any, does not exceed the Maximum Rate. Any amount collected which exceeds the Maximum Rate will be deemed credited to other amounts owed by Tenant to Landlord under this Lease, and any remaining excess after such credit shall be refunded to Tenant. It is the intent of both Landlord and Tenant to at all times comply with the applicable law regarding the maximum nonusurious amount or rate of interest which may be contracted for, charged, taken, reserved or received by Landlord.

3.07 Place of Payment.

All rent payments provided herein shall be paid to Landlord at the following address:

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

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

ARTICLE IV – PRIVILEGES

4.01 Inspections.

Tenant shall have the right and privilege to cause a title company to perform a title search on the Premises and issue a title policy, have a survey performed on the Premises, conduct environmental testing on the Premises (including soils tests and a Phase I and Phase II, if necessary). Tenant shall provide to Landlord a copy of any title or survey work and environmental testing reports within ten (10) days of receipt of said reports. If Tenant is dissatisfied with any aspect of the Premises as a result of its investigations prior to the Rent Commencement Date, Tenant may terminate this Lease by notifying Landlord of the termination prior to the Rent Commencement Date. Additionally, if Tenant objects to any title or survey matters as permitted in this Lease, and Landlord fails or refuses to cure the objections on a timely basis (unless waived by Tenant), Tenant may terminate this Lease. Additionally, Tenant may apply for and obtain all approvals required by Tenant in its reasonable discretion for the use of the Premises for its intended purpose. If Tenant is unable to obtain any of the foregoing approvals, Tenant may terminate this Lease by notifying Landlord of the termination prior to the Rent Commencement Date. If the Lease is terminated as established above, Landlord shall return to Tenant the Security Deposit, if a Security Deposit has been paid by Tenant to Landlord by that point in time, and neither Landlord nor Tenant shall have any further obligation to the other, except for any third party claims arising from Tenant's entry to the Premises for inspection.

4.02 Right to Construct.

Tenant shall have the right and privilege to construct, maintain, and remove a building and canopy, signage, landscaping, underground storage tanks, aboveground storage tanks and other alterations and improvements (collectively, the "Improvements") upon the Premises subject to the terms, covenants, and conditions herein; provided, however, that Tenant shall submit all plans and specifications to the Director and shall not commence construction until the Director and all other appropriate and necessary departments of the City shall have reviewed and approved all construction plans and any plans for future modifications (the "Delivery Date"). Such approval shall not be unreasonably withheld, conditioned or delayed.

4.03 Restriction of Privileges, Uses and Rights.

The rights and privileges granted Tenant hereunder are subject and expressly limited to the terms and conditions of the Declarations of Restrictions and Covenants attached hereto as Exhibit "B", and fully incorporated herein by reference (the "Declarations").

4.04 Conditions of Granting Lease.

The granting of this Lease and its acceptance by Tenant is conditioned upon the following covenants:

- A. That no functional alteration of the Premises or functional change in the uses of such Premises, except as reflected in the Declarations, shall be made without the prior written consent of Landlord.
- B. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority and all reasonable and applicable rules, regulations and ordinances of Landlord now in force or hereafter prescribed or promulgated by charter authority or by law.

ARTICLE V – OBLIGATIONS OF LANDLORD

5.01 Quiet Enjoyment.

Landlord agrees that so long as Tenant is not in default Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises. Landlord has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

Tenant specifically understands and acknowledges that the Premises is on Airport property which abuts the El Paso International Airport, and therefore is subject to aircraft noise. The parcels nearby the Premises are to be used for flight operations which will involve fixed-wing and rotary-wing aircraft, the noise associated with jet engines and piston engines, and the related sounds and smells associated with the operation of aircraft. Tenant and any Subtenants waive all rights to complain, sue or use such noise factor as cause for complaint or termination of this Lease.

5.02 Broker's Fee.

Landlord shall be responsible for paying the broker's fee in accordance with Landlord's Land Leasing Policy, as revised on March 23, 2012.

ARTICLE VI - OBLIGATIONS OF TENANT

6.01 Net Lease.

This Lease shall be without cost to Landlord except for Landlord's obligations specifically set forth in Article V above and elsewhere in this Lease Agreement. Tenant shall:

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

- B. Pay any and all taxes assessed against the Premises, improvements located on the Premises, Tenant's interest in the Premises and improvements, and all of Tenant's personal property located on the Premises; and
- C. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

6.02 Condition of Premises.

Subject to Tenant's right to inspect the Premises and terminate the Lease as set forth in Article IV above, TENANT ACCEPTS THE PREMISES IN THEIR PRESENT CONDITION, INCLUDING ANY EXISTING EASEMENTS, OF RECORD OR APPARENT ON THE GROUND, AND THE PROXIMITY TO LOUD NOISES AND OTHER ASPECTS ASSOCIATED WITH THE OPERATION OF AN AIRPORT, AND AGREES THAT THE PREMISES ARE SUITABLE FOR TENANT'S BUSINESS, ACTIVITIES, AND OPERATIONS PROPOSED TO BE CONDUCTED THEREON RELYING ON ITS OWN INSPECTION AND JUDGMENT. LANDLORD HAS NOT MADE ANY WARRANTIES EXPRESSED OR IMPLIED WITH REGARD TO THE CONDITION OF THE PREMISES OR IMPROVEMENTS OR THEIR SUITABILITY FOR A PARTICULAR USE. TENANT ACCEPTS THE PREMISES (AND ITS SURROUNDINGS) "AS IS", WITH ALL FAULTS, RELYING ON TENANT'S OWN INSPECTION AND JUDGMENT AND NOT IN RELIANCE ON ANY REPRESENTATIONS OF LANDLORD. LANDLORD SHALL ASSUME NO RESPONSIBILITY AS TO THE CONDITION OF THE PREMISES AND SHALL NOT ASSUME RESPONSIBILITY FOR MAINTENANCE, UPKEEP, OR REPAIR NECESSARY TO KEEP THE PREMISES IN A SAFE AND SERVICEABLE CONDITION.

6.03 Compliance with Laws.

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

Tenant, at Tenant's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990 and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

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

A. Definitions.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land, together with all such laws, regulations and ordinances now in effect or hereinafter enacted that deal with the use and disposal of medical waste and medical products and the by-products of medical procedures and treatment.
- (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; all petroleum products, such as gasoline, kerosene, diesel fuel, and the like; and all medical waste and medical by-products including but not limited to blood, tissue, used syringes and containers, dressings, 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) Other than in its ordinary course of business, Tenant 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 Tenant, its subtenants, agents, employees, contractors, invitees, licensees, or a third party in violation of any Environmental Law. **Tenant shall indemnify, defend and hold harmless Landlord, its successors and assigns, its officers, directors, employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and**

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

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

- (3) Tenant shall, at Tenant's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon or on surrounding property to comply with applicable Environmental Laws, then Tenant shall, at Tenant's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord to determine the applicability of the Environmental Laws to the Premises to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination of the Premises or the improvements thereon or the surrounding property.
- (4) Tenant shall immediately notify Landlord promptly after Tenant becomes aware of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Tenant's operation on the Premises, and (b) any change in Tenant's operation on the Premises that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under the Environmental Laws.
- (5) Tenant shall insert the provisions of this Section 6.03 in any lease, agreement, license, or contract by which it grants a right or privilege to any person, firm or corporation under this Lease, but only with respect to those leases, agreements, licenses or contracts executed after the effective date of this Lease.

C. Release of Hazardous Materials.

In the event of a Release of Hazardous Materials in violation of Environmental Laws on the Premises that presents an immediate threat of injury to persons or property that is not immediately remediated to the satisfaction of the Director or the expiration of cure periods provided for in Article X, then notwithstanding any other provision in this Lease to the contrary, Landlord 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 including attorneys' fees, shall be borne by Tenant. Landlord shall use its best efforts to notify Tenant prior to its exercise of such self-help rights.

Tenant's failure or the failure of its agents, employees, contractors, licensees, invitees, or a third party to comply with any of the requirements and obligations of this Section shall constitute a material default of this Lease and shall permit

Landlord to pursue the remedies as set forth in Article X hereinbelow, in addition to all other rights and remedies provided by law or otherwise provided in the Lease, to which Landlord may resort cumulatively, or in the alternative.

D. Reporting.

- (1) At any time that Tenant submits any filing or response pertaining to its property, operations, or presence on the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the FAA, the EPA or the TCEQ, or any successor agencies, Tenant shall provide duplicate copies to Landlord of such filing(s) and response(s) with any related documents at the time same are made.
- (2) Upon expiration, termination or cessation of this Lease for any reason, Tenant shall coordinate its remedial efforts, if any, with the Director and the Director's requests towards the goal of compliance with all Environmental Laws. Tenant shall perform such work as is necessary to cause the Premises to be in compliance with applicable Environmental Laws. Tenant shall conduct necessary environmental testing and shall file all necessary documents with TCEQ. Tenant shall provide to the Director a TCEQ closure letter or the equivalent indicating that the site has no contaminants and that the site is in compliance with all Environmental Laws.

E. Underground Storage Tanks.

The parties agree that underground storage tanks shall be certified by the appropriate governmental entity and that said tanks shall be regularly inspected in accordance with all applicable regulations and legal requirements. Tenant shall notify Landlord of any notices of violation received by the applicable regulatory body. Upon Landlord's written request, Tenant shall provide to the Director, or designee, and to the Landlord's Director of Environmental Services, or designee, a copy of Tenant's annual self-certification regarding the underground storage tanks on the Premises.

6.04 Minimum Improvement Standard.

Tenant covenants and agrees that all facilities constructed or installed on the Premises shall be in accordance with the zoning and building codes of the City of El Paso.

6.05 Landlord's Approval of Plans.

Landlord's approval of any plans, specifications and working drawings for Tenant's construction or alterations of improvements or any plans, specifications and working drawings for Tenant's removal of improvements shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities. It is specifically understood that the Department of Aviation is only one of numerous departments of the Landlord and that, in addition to

obtaining approval of the Director, Tenant shall be required to obtain the approval of other City departments. Landlord shall not impose any requirements above what is currently set forth in the City Code and Declarations. Upon approval by such agencies and the issuance of permits for the commencement of construction, Tenant shall deliver to the Director one (1) complete set of the Final Plans as approved by the governmental agencies exercising jurisdiction thereover, and copies of all issued permits, all to be in hard-copy form and in electronic form. Upon completion of construction, Tenant shall deliver to Director a complete set of record (as-built) drawings of the construction signed and sealed by a professional engineer licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises. Notwithstanding the foregoing, the Landlord shall not require any changes to the plans following the Delivery Date, except as required by applicable law.

6.06 Landscaping and Maintenance of Improvements.

Tenant shall keep the landscape and the improvements on the Premises in a good state of repair and condition and in a presentable condition comparable in appearance and character to similar improvements on land managed by the Department of Aviation for the benefit of the Landlord. The exterior finish on the improvements shall be repainted and refinished as necessary to maintain the appearance of such improvements. Tenant shall repair all damages to said premises caused by its employees, patrons or its operation thereon; shall maintain and repair all equipment thereon, including any drainage installations, paving, curbs, islands, buildings and improvements; and shall repaint its own buildings as necessary. Landlord encourages the use of low water usage landscaping.

Landlord shall be the sole judge of the quality of maintenance and, upon written notice by Landlord to Tenant, Tenant shall be required to perform whatever reasonable maintenance Landlord deems necessary. If said maintenance is not undertaken by Tenant within ten (10) days after receipt of written notice, Landlord shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which plus ten percent (10%) shall be borne by Tenant.

6.07 Utilities.

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

6.08 Trash, Garbage, and Other Refuse.

Tenant shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises. Tenant 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.

6.09 Permitted Uses.

Tenant may operate a convenience store and gas station car wash, and for all purposes incidental to the foregoing, including but not limited to the sale of food for off-premises consumption

through a vendor or subtenant (collectively, the "Permitted Uses"). Tenant will not enter into any other business activity on the Premises without prior written permission from the Director. Tenant will not enter into any business activity on the Premises other than those permitted in the Declarations. Notwithstanding the foregoing and anything in the Declarations to the contrary, Landlord hereby represents and warrants that the Permitted Uses are hereby approved and do not violate the Declarations. The Permitted Uses shall not be considered violations of any provision of paragraph 3.04 of the Declarations.

6.10 Penalties Assessed by Federal Agencies.

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

ARTICLE VII – INSURANCE AND INDEMNIFICATION

7.01 Insurance.

Prior to the execution of this Agreement, Tenant shall obtain, provide proof of, and shall maintain for the term of this Agreement, the types and amounts of insurance coverage listed below, in amounts as reasonably set from time to time by the Director, but not less than:

Comprehensive General Liability Insurance in amounts 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,

Three Million Dollars (\$3,000,000.00) for Comprehensive Pollution Damage arising out of each occurrence, which insurance shall cover, at a minimum, bodily injury, property damage, including natural resource damage, loss of use of damaged property or of property that has not been physically injured or destroyed, cleanup costs, removal, storage, disposal, and or use of the pollutant, and defense costs, including costs and expenses incurred in the investigation, defense, or settlement of claims,

or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater. Tenant may self-insure if done so under its corporate insurance program. If self-insurance is provided, Landlord shall be provided the same rights as those provided by a commercial policy. In addition, should Tenant self-insure, Tenant must provide to Landlord a self-insurance letter from the Tenant's parent company, if any, guaranteeing that the self-

insurance meets or exceeds the required coverage and limits of a standard ISO Commercial General Liability Insurance Policy.

7.02 Additional Insured.

Landlord shall be named as an Additional Insured on all insurance policies either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

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

Commercial General Liability and Property Damage coverage requirements may be satisfied through a combination of individual policy limits and umbrella coverage but the amounts under each type of coverage shall be subject to the final approval of the City's Risk Manager.

7.03 Fire and Other Risks Insurance.

Tenant, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Premises insured for the mutual benefit of Landlord and Tenant against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief in an amount equal to the actual replacement cost of such improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (hereinafter called "Full Insurable Value"). In the event a dispute arises as to the Full Insurable Value which cannot be resolved by agreement of the Parties, an appraisal of the Premises and improvements thereon shall be made by an appraiser selected by Tenant and reasonably acceptable to Landlord to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser Tenant selected be unsatisfactory to Landlord, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Tenant, unless the value claimed by Tenant is confirmed through such an appraisal, in which case the Landlord shall reimburse the Tenant for the cost of such appraisal.

7.04 Payment and Performance Bonds.

Prior to commencement of any construction work on the Premises that costs more than Fifty Thousand Dollars (\$50,000.00), Tenant, at its own cost and expense, must cause to be made, executed, and delivered to Landlord two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded.
Said bond shall guarantee the faithful performance of all necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Landlord against any losses and liability, damages, expenses, claims and judgments caused by or resulting from

any failure of Tenant to perform completely the work described as herein provided.

- B. Prior to the date of commencement of any construction, a payment bond with Tenant's contractor or contractors as principal in a sum equal to the full amount of the construction contract project.
Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction project.

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

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

7.05 Authorized Insurance and Surety Companies.

All required policies of insurance and bonds shall be written by insurance and surety companies authorized to do business in the State of Texas and shall be written by companies approved by Landlord, such approval not to be unreasonably withheld. Certificates of insurance shall be delivered to Landlord at least thirty (30) calendar days prior to the effective date of the insurance policy for which the certificate is issued and prior to the Effective Date of this Lease. Each insurance policy shall contain:

- A. a statement of the coverage provided by the policy;
- B. a statement certifying the Landlord to be listed as an additional insured in the policy;
- C. a statement of the period during which the policy is in effect;
- D. a statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and

- E. an agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days' prior written notice to Landlord.

7.06 Indemnification.

Tenant agrees to indemnify and hold Landlord harmless against any and all claims, demands, damages, costs, and expenses, including investigation expenses and reasonable attorney's fees for the defense of such claims and demands, arising out of or attributed directly, or indirectly to the operation, conduct or management of Tenant's business on the Premises, its use of the Premises, or from any breach on the part of Tenant of any terms of this Lease, or from any act or negligence of Tenant, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the Premises, including claims and damages arising in whole, or in part, from the negligence of Landlord. In case of any action or proceeding brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, agrees to defend the action or proceeding by counsel acceptable to Landlord. Tenant waives any and all complaints, claims, demands, and causes of action which may arise or be related to the proximity of the Premises to the El Paso International Airport and all operations and activities related thereto, including without limitation ground and flight operations of aircraft and ground vehicles, noises and odors related thereto, the flight over the Premises of aircraft at all times during all hours of the day and night, and the like, and agrees to indemnify and hold Landlord harmless against same at its sole cost and expense by counsel acceptable to Landlord.

**ARTICLE VIII – DESTRUCTION OF IMPROVEMENTS BY FIRE
OR OTHER CASUALTY**

8.01 Obligations of Tenant.

During the term hereof, except as provided in Section 8.03 below, should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty, Tenant shall give prompt notice thereof to Landlord, and Tenant, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Tenant as aforesaid and subject to and in accordance with the following terms and conditions:

- A. Prior to commencing such work, Tenant shall deliver to Landlord, for approval, a set of the preliminary construction plans and specifications in accordance with the terms and provisions of the Declarations. Such approval shall not be unreasonably withheld, conditioned or delayed. In the event the preliminary plans and specifications are disapproved, Tenant will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto.
- B. Upon approval of the preliminary plans and specifications, as herein provided, Tenant shall prepare, or cause to be prepared, final working plans and specifications in substantial conformity to the preliminary plans and

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

- C. Prior to commencing construction, Landlord may require Tenant to furnish a performance and payment bond in accordance with Section 7.04 and, if requested, Builder's Risk Insurance.
- D. Upon compliance with the foregoing, Tenant's obligation to repair, replace or rebuild shall be subject to settlement occurring with the insurance company or companies and said proceeds of such insurance policy or policies having been paid to Tenant. After actual receipt of such insurance proceeds, Tenant shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.
- E. Upon completion of the construction, Tenant shall deliver to Landlord, a complete set of record (as-built) drawings of the construction signed and sealed by a professional engineer licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises, all to be in hard-copy form and in electronic form.

8.02 Insurance Proceeds.

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

8.03 Cancellation of Lease.

Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty during the last five (5) years of the initial term or last five (5) years of any renewal term of this Lease, Tenant may elect not to repair, replace and rebuild the same and Tenant shall have the right to cancel this Lease by giving Landlord written notice of such election within thirty (30) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to Tenant, and Tenant shall return the Premises to Landlord in the condition specified in paragraph 10.06 below. All rents payable under this Lease shall be prorated and paid to the date of such cancellation.

ARTICLE IX - ENCUMBRANCES

9.01 Encumbrance.

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

- A. The amount of the obligation secured by the Mortgage;
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

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

9.02 Mortgagee's Rights.

Upon receipt of a notice or demand in accordance with Section 9.01 above, Mortgagee shall have one hundred and twenty (120) days after receipt of such notice within which, at Mortgagee's election, either:

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;
- C. If the default cannot be cured within one hundred and twenty (120) days, to commence performance within such one hundred twenty (120) day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.
- E. No notice of a default by Tenant hereunder given by Landlord shall be effective against a Mortgagee that has provided Landlord the information specified in Section 9.01 of this Lease unless Landlord has given a copy of it to such Mortgagee.
- F. No Mortgagee shall have any personal liability under this Lease unless and until it becomes Tenant under this Lease.

- G. The Director will, upon request by any Mortgagee, certify in writing that this Lease is in full force and effect, whether this Lease has been amended, that to Landlord's knowledge Tenant is not in default, and the date through which rent has been paid.
- H. If this Lease and the fee estate in the Premises are ever commonly held as a result of a default by Tenant, then they shall remain separate and distinct estates and shall not merge until such time as all cure periods for Mortgagee specified in this Lease have expired.
- I. This Lease may not be amended, modified, changed, cancelled, waived, or terminated without prior written notice to all Mortgagees. Landlord shall not accept a voluntary surrender of the Lease without consent by all Mortgagees.

9.03 Rights on Foreclosure.

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

9.04 Estoppel Certificates.

Upon request, Landlord, acting through the Director, shall provide to Tenant or Tenant's Mortgagee an estoppel certificate containing the following information as applicable and no more: confirmation that Landlord remains owner of the Premises and Landlord under this Lease; that this lease contains the full agreement between Landlord and Tenant with regard to the Premises; that Tenant is current in its obligations under this Lease as of a certain date; that, to the best knowledge of Landlord, Tenant is not in default under the terms of the Lease nor is Landlord aware of any condition which with notice or the passage of time would constitute default under this Lease if uncured; and the beginning date, expiration date, length of term and number and length of any option terms under this Lease.

**ARTICLE X - EXPIRATION, CANCELLATION,
ASSIGNMENT AND TRANSFER**

10.01 Expiration.

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

10.02 Cancellation.

Subject to the provisions of Article IX above, this Lease shall be subject to cancellation by Landlord in the event Tenant shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of thirty (30) days after Landlord has notified Tenant 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 Tenant's property and such petition is not dismissed within ninety (90) days after filing;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises;
- E. Be in violation of any local, state, or federal rules and/or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Tenant, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Landlord to cure such default, unless during such thirty-day period, Tenant 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 Tenant where such receivership is not vacated within ninety (90) days after the appointment of such receiver.

In any of the aforesaid events, which shall be events of default, Landlord may take immediate possession of the Premises including any and all improvements thereon and remove Tenant's effects, forcibly if necessary, without being deemed guilty of trespassing.

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

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

10.03 Repossessing and Reletting.

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

- A. Enter into and upon the Premises or any part thereof and repossess the same, change the locks on the Premises, install fences and gates, expelling therefrom Tenant and all personal property of Tenant (which property may be removed and

stored at the cost of and for the account of Tenant), using such force as may be necessary; and

- B. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Landlord. If Landlord shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Tenant during such month or part thereof under the terms of this Lease, Tenant shall pay such deficiency to Landlord immediately upon calculation thereof, providing Landlord has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

10.04 Assignment and Transfer.

Tenant shall have the right and privilege to assign or transfer this Lease subject to the prior written approval of Landlord, which shall not be unreasonably withheld; provided, however, that Landlord's approval shall not be required in the event of an assignment of this Lease by Tenant to the first leasehold Mortgagee or to an entity controlling, controlled by or under common control of Tenant.

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

10.05 Subleasing.

Tenant shall have the right to sublease all or any part of the Premises hereunder for the same purposes permitted under the terms and provisions of this Lease, including but not limited to the insurance and indemnity requirements. Any such sublease executed after the effective date of this Lease shall be subject to the same conditions, obligations and terms as set forth herein and Tenant shall be responsible for the observance by its subtenants of the terms and covenants contained in this Lease. Tenant shall promptly report to Landlord any subleases of the Premises, or any improvements thereon and, upon request of Landlord, Tenant shall furnish Landlord with a copy of the Sublease Agreement. In addition, Tenant shall provide a list of its subtenants and the subtenants contact information whenever the identity of any subtenant may change.

10.06 Rights upon Expiration.

At the expiration of this Lease, Tenant shall return the Premises to Landlord clear of all improvements above and below ground level and have the soil compacted and restored to its original condition in accordance with Landlord's reasonable specifications, with no subterranean uses.

Within one hundred twenty (120) days prior to the expiration of this Lease and prior to removing any improvements from the Premises, Tenant, at its own cost and expense, shall cause to be made, executed, and delivered to Landlord two (2) separate bonds, as follows:

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

Said bond shall guarantee the faithful performance of necessary construction and completion of removal of the improvements and compaction in accordance with approved final plans and detailed specifications which have been approved by the Director and appropriate City departments; and shall guarantee Landlord against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Tenant to perform completely the work described as herein provided.

- B. A payment bond with Tenant's contractor or contractors as principal, in a sum equal to the full amount of the removal and compaction contract awarded. Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said removal and compaction contract.

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

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

In addition, upon expiration of this Lease for any reason and no later than thirty (30) days after the complete removal of improvements, Tenant, shall provide Landlord with an engineering report on the compaction of the Premises and the Tenant's Report as identified in Paragraph 6.03D of this Lease and if, in the opinion of Landlord, the engineering report on compaction indicates the soil has not been compacted in accordance with approved plans or if Tenant's Report indicates that the Premises are in violation of applicable Environmental Laws, then Tenant shall perform work as is necessary to cause the Premises to be in compliance with approved plans and applicable Environmental Laws.

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

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

Landlord acknowledges and agrees that all of the improvements on the Premises as of the Effective Date of this Lease and any improvements constructed during the Term of this Lease are the sole property of Tenant and Tenant must remove all such improvements at Tenant's sole cost.

10.07 Landlord's Lien.

It is expressly agreed that in the event of default in the payment of Annual Rent or any other sum due from Tenant to Landlord under the terms of this Lease, Landlord shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Tenant which are placed in, or become a part of, the Premises, as security for Annual Rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Tenant grants to Landlord a security interest in all of Tenant'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. Landlord agrees that Landlord will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Tenant, any subtenant or any assignee of Tenant. In the event Landlord exercises the option to terminate the leasehold as provided herein, Landlord, after providing reasonable notice to Tenant of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Tenant's property on the Premises and sell it at public or private sale after giving Tenant 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 Landlord deems best. The proceeds of the sale shall be applied first to the necessary and proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Tenant.

ARTICLE XI - CONDEMNATION

11.01 Definitions.

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

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.
- B. "Total Taking" means the taking of the fee title to all of the Premises and improvements thereon.
- 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 Tenant;
 - 2. The conduct of Tenant'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 Tenant under this Lease.
- D. "Partial Taking" means the taking of a fee title that is not either a total or substantial taking.
- E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.
- F. "Notice of Intended Taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the

condemning agency or entity a written notice of intent to take containing a description or map reasonably defining the extent of the Taking.

- G. "Award" means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. "Date of Taking" means the date that Tenant is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

11.02 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.

11.03 Rights of Parties During Condemnation Proceeding.

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

11.04 Taking of Leasehold.

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

11.05 Total Taking.

All of Tenant's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any Tenant-owned improvements and the leasehold estate

shall be disbursed to Tenant. All sums awarded for the Premises, as unencumbered by any Tenant-owned improvements, but subject to the Lease, shall be disbursed to Landlord.

11.06 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 Landlord and Tenant as follows: Tenant shall receive all sums awarded for Tenant-owned improvements and the Leasehold estate. Landlord shall receive all sums awarded for the Premises, as unencumbered by the Tenant-owned improvements but subject to the Lease.

11.07 Obligations of Tenant Under Partial Taking.

Promptly after any such Partial Taking, Tenant, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last two (2) years of the initial term or any renewal term, Tenant shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Landlord of its intention to that effect; provided however, that all sums awarded for Tenant owned improvements and the Leasehold estate shall be disbursed to Landlord.

11.08 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 Tenant 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 Tenant's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such Taking, Tenant 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, Tenant 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 XII - GENERAL PROVISIONS

12.01 Continuity of Deed Restrictions and Covenants.

This Lease agreement is subject to the terms, covenants and conditions contained in the Declarations. Landlord reserves the right to revise the Declarations set forth in Exhibit "B" provided, however, that such revisions will not cause a substantial reduction in the value of Tenant's leasehold interest, result in a material cost or expense to Tenant, or be contradictory to the reasonable and prudent operation of property located within the Southern Industrial Park

similar to the Premises. Landlord's right to revise the restrictions and covenants contained in the Declarations, is limited to the right to revise said document because of the development of new concepts, improved construction and architectural techniques, and any re-zoning of the Premises and surrounding area which in the opinion of the Director may result in increased commerce at the Southern Industrial Park; in any event, such revisions shall be operative on a going forward basis only and shall not apply retroactively to any existing improvements.

12.02 Right of Flight.

Landlord 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.

Landlord reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Premises to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at the Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations.

Landlord 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.

12.03 Time Is of the Essence.

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

12.04 Notices.

All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, or by overnight next-afternoon delivery via addressed to the proper party at the following addresses:

LANDLORD: City Clerk
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

Director of Aviation
El Paso International Airport
6701 Convair Rd.
El Paso, Texas 79925-1091

TENANT: Circle K Stores, Inc.
Attn: Real Estate
5500 S. Quebec St., Suite 100
Greenwood Village, CO 80111

COPY TO: Circle K Stores Inc.
Real Estate Legal
19500 Bulverde Road, Suite 100
San Antonio, Texas 78259

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.

12.05 Attorney's Fees.

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

12.06 Agreement Made in Texas.

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

12.07 General Civil Rights Provision.

Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the transferor.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

12.08 Compliance with Nondiscrimination Requirements.

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (for purposes of this Section 12.08 hereinafter referred to as the "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 contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin 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 Subcontracts, 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 the Lessor (for purposes of this Section 11.08 hereinafter referred to as the "sponsor") 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 the sponsor 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, the sponsor 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.

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 the sponsor 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 the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

12.09 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. Tenant 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, Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations set out in 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, Landlord 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 Lease had never been made or issued. [FAA Order 1400.11, Appendix C]

2. A. The Tenant 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 Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Landlord 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 Lease had never been made or issued. [FAA Order 1400.11, Appendix D]

3. A. During the term of this Lease, Tenant for itself, its successors in interest, and assigns, as a part of the consideration hereof, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits non-discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). Grantee shall take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 U.S.C. 1681 et seq).

B. In the event of breach of any of the covenants in this section 3, Landlord 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]

12.10 Cumulative Rights and Remedies.

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

12.11 Interpretation.

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

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

12.12 Agreement Made in Writing.

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

12.13 Paragraph Headings.

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

12.14 Severability.

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

12.15 Successors and Assigns.

All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Landlord and Tenant and their successors, assigns, legal representatives, heirs, executors and administrators.

12.16 Taxes and Other Charges.

Tenant shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against Tenant or Landlord, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Tenant's use and/or occupancy of the

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

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

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

12.17 Waiver of Warranty of Suitability.

LANDLORD DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. TENANT LEASES THE PREMISES "AS IS - WHERE IS" AND LANDLORD DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO TENANT'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE NOR SHALL LANDLORD BE RESPONSIBLE OR LIABLE FOR ANY CONDITION OF THE PREMISES WHICH SHALL SOLELY BE THE RESPONSIBILITY OF TENANT.

12.18 Survival of Certain Provisions.

All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 6.03 and 7.06.

12.19 Restrictions and Reservations.

Subject to Tenant's right to inspect the Premises and terminate the Lease as set forth in Article IV above, this Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Landlord reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Tenant consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Tenant's use of the Premises in Tenant's reasonable discretion.

Landlord reserves for itself and any authorized agent to, at any reasonable time and upon twenty-four hours' notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all the Environmental Laws and for the purpose of showing the Premises; Landlord shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

12.20 Subordination of Lease.

All rights granted in this Lease shall be subordinate to the rights in any deed from the United States to the City of El Paso. This Lease shall further be subordinate to the provisions of any existing or future agreements between Landlord and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States Government be to substantially destroy the commercial value of the Premises, Tenant may cancel this Lease in its entirety. Should Tenant cancel its lease pursuant to this paragraph, it can pursue any remedies available to it under Section XI of this Lease, if applicable.

12.21 Authorization to Enter Lease.

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

12.22 Renewal and Substitution of Original Lease; Survival of Liabilities.

All provisions of this Lease which expressly or impliedly contemplate or require performance by Tenant after the cessation, expiration, cancellation, or termination of this Lease, such as, by way of example and not in limitation, Tenant's indemnification of Landlord, Tenant's responsibility for compliance with environmental laws, Tenant's duty to provide insurance and defend in the event of third-party litigation, and the like shall survive such cessation, expiration, cancellation, or termination.

12.23 Effective Date/Memorandum.

Regardless of the date signed, this Lease shall be effective as of the Effective Date. Upon request by either party, Landlord and Tenant shall execute and acknowledge a memorandum of this Lease in form and substance reasonably acceptable to Landlord and Tenant. Tenant shall provide to Landlord a copy of any memorandum filed of record in the Real Property records for El Paso County, Texas.

12.24 Brokers.

Landlord and Tenant each do hereby represent and warrant to the other that neither has dealt with any real estate broker, sales person or agent other than R/JL Real Estate as "*Tenant's Broker*", and that no person other than Tenant's Broker is owed any commission as a result of this transaction or any acquisition or purchase set forth herein and each agree to indemnify and hold harmless the other against all costs, expenses, claims, obligations, fees or expenses that may be incurred or arise as a result of any claims by any other broker or sales person for a commission or other fee due or resulting from any transactions included within this Lease. Landlord shall pay all commissions due and owing to Tenant's Broker pursuant to a separate agreement.

12.25 Counterparts.

This Lease may be executed in any number of counterparts; each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Lease.

12.26 Effective Date.

Regardless of the date signed, this Lease shall be effective as of October 15, 2019 (the "Effective Date"), being the date this Lease was approved by the City Council of El Paso, Texas. Landlord shall obtain City Council approval within one hundred and eighty (180) days following the date Tenant has signed this Lease. If Landlord is unable to obtain City Council approval within one hundred and eighty (180) days, Landlord shall inform Tenant in writing.

12.27 Memorandum of Lease.

At the same time as the Rent Commencement Date, Landlord and Tenant shall execute and at Tenant's cost, Tenant shall deliver to Escrow Agent for recording in the land records of the county where the Leased Premises is located, a Memorandum of Lease in substantially the form attached hereto as "**Exhibit D**", indicating the existence of the Lease with respect to the Leased Premises. Landlord shall not be responsible for either the cost or the filing of the Memorandum of Lease.


(Signatures begin on following page)

LANDLORD'S SIGNATURE AND ACKNOWLEDGMENT

LANDLORD:
CITY OF EL PASO


Tomás González
City Manager

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Managing Director of Aviation
and International Bridges

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____ 2019,
by Tomás González as City Manager of the City of El Paso (Landlord).

Notary Public, State of Texas

My Commission Expires:

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

TENANT'S SIGNATURE AND ACKNOWLEDGMENT

TENANT:

CIRCLE K STORES, INC.

By: 

Print Name: Mark Tate

Title: Vice President Operations, Rocky Mountain



ACKNOWLEDGMENT

THE STATE OF Colorado)

COUNTY OF Arapahoe)

This instrument was acknowledged before me on this 7 day of October 2019,
by Mark Tate, Vice President Operations, Rocky Mountain of Circle K
Stores, Inc. (Tenant), on behalf of said entity.


Notary Public in and for the State of ~~Texas~~

Colorado

My Commission Expires:

Sept. 25, 2021

EXHIBIT "A"
Depiction of Premises

BEING A PORTION OF LOT 1, AND A PORTION OF LOT 2, BLOCK 13, EL PASO
INTERNATIONAL AIRPORT TRACTS UNIT 6 (REPLAT A), AN ADDITION TO THE CITY OF EL
PASO, EL PASO COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF FILED IN VOLUME
66, PAGE 64, EL PASO COUNTY PLAT RECORDS

TOTAL CONTAINING: 1.6265 ACRES
SCALE 1"=30' JULY 27, 2017

[illegible]

LOCATION MAP SCALE: 1" = 600'



HATHINS BOULEVARD

PORTION OF LOT 2

EL PASO INTERNATIONAL AIRPORT TRACTS
UNIT 6 (REPEAT A)
VOL. 22, PG. 20
A PORTION OF LOT 1
CITY OF EL PASO
1960 RECORDS BUILDING

MONTANA AVENUE

(2007 01.01.01)

[illegible]

• • • • •

DESCRIPTION OF A POLICE, OF LONG BEACH A PORTION OF LOS 1 AND A PORTION OF
LOS 2, BLACK CO. IN PHOTO INFORMATION REPORT TRACKS OUT IN DISPLAY 6, CITY
OF ST. PAUL, ST. LOUIS COUNTY, MISSOURI, AND THERE WERE PARTICULARLY DESCRIBED IT

[illegible]

SEARCHED INDEXED SERIALIZED FILED
JUL 20 1964 FBI - NEW YORK

INVEST ALONG THE VICINITY LINE, THERE BEING- EAST POSITION THE MINIMUM PROPERTY SQUARES OF LAND 1 AND 2 AT A DEPTH OF 50.00 FEET AND A TOTAL DISTANCE OF 200.00 FEET TO A SET IS EQUAL WITH THE SAME 25 FEET DIST OF THE LINE OF EXISTING EASEMENT.

[illegible]

There is no sign of any one, with another, who is known to be in the area of the building. The building is a small, one-story structure, with a flat roof and a small porch. The building is located on a street that is lined with trees and other buildings. The building is in good condition, and there is no sign of any damage or destruction.

Part of 1988-1989 of work done on 1988.



CHUCK BERRY-LENN.
ONE EIGHT SEVEN SEVEN
ONE EIGHT SEVEN SEVEN
 CITY OF N. PARK
 200 N. GERRARD ST
 N. PARK MI

[illegible]

RESEARCH AND EVALUATION

THE 2004 & 2005 AG-104 AND 2006 VTA CARRIAGES

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 11-11-2001 BY 60322 UCBAW/SJS

DATE OF PLAT OR MAP MAY 22, 1904



6-2

EXHIBIT 'A-1'
Premises

EXHIBIT "B"
Declarations of Restrictions and Covenants

EXHIBIT "B"
RESTRICTIONS AND COVENANTS
FOR
GLOBAL REACH

El Paso International Airport
El Paso, Texas

**RESTRICTIONS AND COVENANTS
GLOBAL REACH**

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**RESTRICTIONS AND COVENANTS
GLOBAL REACH**

**El Paso International Airport
El Paso, Texas**

THIS DECLARATION, made this ____ day of _____, 2019 by the City of El Paso, a political subdivision of the State of Texas (the "Declarant"),

WITNESSETH:

WHEREAS, Declarant is the owner of El Paso International Airport, located in the City of El Paso, State of Texas (the "Airport");

WHEREAS, Declarant has established a general overall Development Plan for the development of the Airport and has designated certain property for the establishment of a desirable environment for manufacturing, business, or industrial uses, and,

WHEREAS, Declarant desires to encumber the property covered by the Development Plan with certain conditions, restrictions, and covenants in order to ensure that development will be compatible with adjacent land uses on the Airport by performance, appearance, and general operating characteristics.

NOW, THEREFORE, Declarant hereby declares that the property described in this document is and shall be held and conveyed subject to the conditions, restrictions and covenants hereinafter set forth, each and all of which are for the benefit of each tenant of any portion of said property and each and all of which shall inure to and pass with each and every Lot on said property, and each and all of which shall apply to and bind the respective successors in interest of said property and any portion thereof, as follows:

ARTICLE 1 – PROPERTY

The real property subject to this Declaration is situated on the El Paso International Airport, and is more particularly described as follows:

ARTICLE 2 - DEFINITIONS

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

2.01 DIRECTOR OF AVIATION: The Director of Aviation of the El Paso International Airport.

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

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

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

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

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

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

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

2.09 IMPROVEMENTS: Improvements shall mean man-made structures which improve the usability of the Property including but not limited to Buildings, bridges, overpasses, retaining walls, ditches, culverts, lighting supports, earth fills, earth excavations, paving, ground cover, sidewalks, fences, screening walls, signs, and landscaping, constructed, installed, or placed on, under, or above any Lot by or on account of a Tenant.

2.10 LOT: One of the numbered parcels on the map entitled Butterfield Trail Aviation Park, Unit Two as filed with the County Clerk, County of El Paso, Texas.

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

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

2.13 STREET: Any street, highway, or other thoroughfare shown on the map entitled Butterfield Trail Aviation Park, as filed with the County Clerk, County of El Paso, Texas.

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

ARTICLE 3 - PERMITTED USES AND PERFORMANCE STANDARDS

3.01 PERMITTED USES: No Building, structure, or land shall be used for any purpose other than the “permitted uses” set out in the Lease to which these Standards are attached.

3.02 PROHIBITED USES: The following uses shall not be permitted at any time: residential; trailer courts; labor camps; junkyards; mining and quarrying; lumber or building materials yards; dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or refuse; fat rendering; stockyards or slaughtering of animals; smelting of iron, tin, zinc, or other ores; and large animal raising.

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

Hazardous activities,
Vibration or shock,
Noise,
Smoke, dust, or other forms of air pollution, in violation of applicable ordinance
Heat or glare,
Electronic or radio interference,
Illumination,
Liquid or solid refuse or waste, or
Other substances, conditions, or elements in such amount as to affect the surrounding area or adjoining premises.

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

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

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

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

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

2. Any use producing atmospheric emissions shall comply with the standards of the U. S. Environmental Protection Agency, the Texas Commission on Environmental Quality (“TCEQ”),

any local environmental regulatory body, or any successor organizations performing similar functions, as such regulations exist at the date of the lease to which this Declaration is attached, or which may be enacted during the term of such lease.

E. Dust Control: All ground areas not covered by structures shall be landscaped or surfaced with concrete, asphaltic concrete, or other comparable dust-free surfacing; shall be maintained in good condition, free of weeds, dust, trash, and other debris; and shall be properly drained and graded. Such development shall have been completed within ninety (90) days from the date the certificate of occupancy has been filed.

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

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

H. Illumination:

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

2. The maximum height of any lighting standard shall be limited to fifty (50) feet above curb level.

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

4. Exterior Lighting. The design and location of exterior lighting shall comply in all respects to the requirements of the FAA and other governmental agencies having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from, and around the Airport. Further the design and location of exterior lighting shall comply with the applicable requirements of the City's Municipal Code Outdoor Lighting Code, as amended, including without limitation its "Dark Skies" provisions.

I. Refuse and Trash: Refuse or trash shall be kept, stored at the rear of building, not visible from the street.

J. Sewage Disposal Systems: All sewage shall be disposed of by connection to a sanitary wastewater system; no other method of disposal is allowed.

ARTICLE 4 - REGULATION OF IMPROVEMENTS

The Airport's intent for these Development Standards, to include in particular Landscaping, Signs, and Type of Construction, is that high quality engineering and architectural design consistent with the look, feel and style of the Butterfield Trail Golf Course be continued throughout other nearby Airport-owned land to include the Global Reach Retail Park. Other factors to be considered include

individual look and feel to help certain businesses stand out with their branding, and encourage use of architectural guidelines that give an opportunity to creatively design facilities that will meet the needs of the tenants and the Airport while establishing a unique feel for the development. To this end, the Director of Aviation and staff, together with City staff, shall participate in the development of architectural guidelines and conduct architectural design reviews.

4.01 MINIMUM SETBACK LINES: No structure of any kind and no part thereof shall be placed on any Lot closer to a property line than hereby described.

All Building shall be setback in compliance with Title 20 Zoning Ordinance of the City of El Paso, Texas, as amended from time to time. This provision applies to the entirety of the Premises, unless the requirements of the City of El Paso, through its planning and zoning requirements or otherwise, shall be more restrictive, in which case the more restrictive requirements shall apply.

4.02 EXCAVATION: No excavation shall be made by a Tenant unless the excavation is directly related to the construction of an Improvement. When construction is complete, all disturbed ground shall be filled or graded and shall be landscaped in accordance with and shall conform to the below Landscaping Standards and the approved building plans.

4.03 LANDSCAPING: Every Lot on which a Building shall have been placed shall have landscaping according to plans prepared in accordance with the standards established in this Paragraph 4.03 and any amendments or successor standards thereto. The first phase of such landscaping, as approved, shall have been completed within ninety (90) days from the date the certificate of occupancy has been filed, with a copy sent to the Director of Aviation, on the initial Building.

Setback areas shall be landscaped to the minimum extent outlined in Paragraph 4.01(A) and (B). In addition, paving or landscaping shall extend from the property line to the curb, such paving and landscaping to be compatible with treatment for this area on other lots on the same block.

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

The use of native, drought tolerant or adaptive plant material, native rock and palm species plants is encouraged.

Tenants are also encouraged to expand landscape development plans to include such elements as pools, fountains, sculpture, rock arrangements, sheltered outdoor seating areas, all subject to design approval by the Declarant or its authorized agent prior to installation.

Where specific plants are named on the plan, only those species and varieties may be planted on the locations shown. These are within public areas only.

All landscaping shall be designed and installed pursuant to Chapter 18.46 of the City's Municipal Code known as the "Landscape Ordinance for the City of El Paso, Texas" as amended, and in accordance with FAA Regulations Part 77, as amended, to include wildlife hazards. This provision applies to the entirety of the Premises, unless the requirements of the City of El Paso, through its

planning and zoning requirements or otherwise, shall be more restrictive, in which case the more restrictive requirements will apply.

4.04 SIGNS: The number, size, design, and location of all signs displayed for observation from outside a Building whether displayed on, near, or within a Building shall be subject to approval by the Director of Aviation. Further, all such signs shall comply with the applicable requirements of the City's Municipal Code Chapter 20.18 known as the "Sign Ordinance for the City of El Paso, Texas" as amended, and with all rules and regulations of the FAA. In any event, any sign not located on a building shall be a monument sign, pole signs are specifically prohibited.

Signs on the Premises shall be limited to those identifying the uses conducted on the Premises and to those necessary for directional purposes. Notwithstanding anything to the contrary contained herein, the Director of Aviation will not unreasonably withhold approval of signs that, when applicable, are consistent with the prototype design of a nationally/regionally recognized retail brand licensor/franchisor; provided however, that no outdoor advertising, billboards or flashing lighting, to include digital signage, shall be permitted.

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

Parking shall not be permitted on the public Streets and between the Street pavement and property line. If visitor parking is provided in the front Setback area, all Buildings shall be set back a minimum of twenty five (25) feet from the Lot line. If visitor parking is permitted in the front Setback area(s), such parking shall be screened from the Street(s) by trees or shrubbery specified in the Airport Landscaping Standards pursuant to Section 4.03 herein or such other screening as may be approved by the Declarant or its authorized agent.

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

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

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

4.07 BUILDING HEIGHTS: Building heights shall be limited to the height requirements established in Federal Aviation Regulations Part 77 or successor regulations for the Airport.

4.08 BUILDING COVERAGE: All Buildings and structures, or portions thereof, placed on the Lot(s) shall not cover more than forty percent (40%) of a Building Site.

4.09 BUILDING REGULATIONS:

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

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

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

4.10 TYPE OF CONSTRUCTION:

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

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



B. Roof Screening: All heating and cooling towers, equipment, etc., placed on the roofs of Buildings shall be screened or enclosed from view so that they are architecturally compatible with the main portion of the Building.

C. Accessory Buildings, Enclosures, and Fences: Accessory Buildings, enclosures, and fences shall enhance the design of and be of the same quality of materials as the Buildings they serve. Chain-link fencing is specifically prohibited.

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

E. Approval by Director of Aviation: The type of building construction proposed shall be subject to the written prior approval of the Director of Aviation as authorized agent of Declarant. Tenant is encouraged to use natural material and native rock in the exterior elevations of Improvements.

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

ARTICLE 5 - SUBMISSION OF PLANS FOR IMPROVEMENTS

5.01 SUBMISSION OF PLANS: All plans for Improvements shall be prepared by registered engineers, architects, and landscape architects; shall be of contemporary design; and shall require prior written approval by the Declarant or its authorized agent before any construction may begin.

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

The following plans shall be required for submission to the Declarant within the time schedule determined:

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

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

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

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

C. Landscape Plans: Landscape plans shall be submitted in accordance with the Landscape Ordinance (Chapter 18.46 of the El Paso City Code).

D. Materials and Color Samples: Samples, no smaller than one (1) foot square, of all materials and/or paint or other coating colors to be used on the exterior of all Improvements that are visible from any point on any Lot line. The Declarant reserves the right to approve all said materials and/or

colors and further reserves the right to suggest alternative materials and/or colors that, in the sole opinion of the Declarant, shall be determined to be more compatible with the Declarant's objectives for the overall aesthetic character and quality of Improvements on the Airport.

E. Other Plans: Any other plans, specifications, or design features that the Declarant or its authorized agent may deem necessary and request.

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

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

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

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

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

5.05 FAILURE TO APPROVE: If the Declarant fails to approve or disapprove plans and specifications within thirty (30) working days after the same have been submitted, it shall be conclusively presumed that the Declarant has disapproved said plans and specifications.

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

Approval of these plans by the Declarant shall constitute a commitment on the part of the Tenant to erect and maintain the Improvements as proposed and approved within the time schedule established in Paragraph 5.01.

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

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

5.08 LANDSCAPING PLANS: Trees, shrubs, fences, hedges, or other landscaping shall not be planted, placed, or maintained on any Lot until a complete plan thereof has been submitted to and approved by the Declarant or its authorized agent in writing. The landscaping plans shall comply with the El Paso City Code and FAA regulations, and shall be submitted at the same time as the other plans and specifications for proposed Improvements.

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

5.09 PLANS FOR ALTERATIONS TO IMPROVEMENTS: All plans for alterations to the leased Lot(s), either for the construction of additional facilities or alterations to existing Buildings, shall be prepared, submitted, and approved as outlined in Paragraphs 5.01 through 5.08 and shall be subject to the same restrictions as herein provided. This paragraph shall apply only to exterior or structural changes; alterations to the interior of Buildings shall not be considered unless they affect the performance standards in Article 3.

ARTICLE 6 - ENFORCEMENT

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

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

6.02 ABATEMENT AND REMOVAL: If the Declarant determines that this Declaration is being violated by any Tenant on a Lot or Lots, the Declarant shall have the right after giving notice as required by the Lease to which these Standards are attached to the remedies provided in such Lease.

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

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

6.05 ATTORNEY'S FEES: In any legal proceeding for the enforcement of this Declaration or prevention of a violation of this Declaration or any part hereof, the party against whom judgment

is rendered shall bear the reasonable expense of attorneys' fees of the prevailing party in the amount to be specified by the Court.

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

ARTICLE 7 - MISCELLANEOUS PROVISIONS

7.01 ASSIGNMENT OF DECLARANT'S RIGHT AND DUTIES: The Declarant has certain rights, powers, and reservations as herein established by this Declaration and may assign to any person, firm, or corporation these rights, powers, and duties evidencing its consent in writing to accept such an assignment and assume such duties. The person, firm or corporation having accepted the rights of the Declarant shall also be bound to the obligations in this Declaration.

7.02 HOUSEKEEPING: If accumulations of weeds, rubbish, or items of equipment or supplies are permitted to remain on a Lot more than ten (10) days after a request in writing from the Director or its authorized agent to have them removed, the Declarant or its authorized agent may enter on any Lot to remove same by whatever means it deems necessary. Such entry shall not be deemed a trespass, and the Declarant shall not be subject to any liability therefor. The cost of such work shall be borne by the Tenant.

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

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

7.05 RESERVATION OF RIGHTS: Declarant hereby reserves the right to modify, amend and revoke any or all portions of these Covenants at any time, at its sole discretion, with or without notice to any person other than by filing notice of such modification, amendment or revocation in the Deed Records of El Paso County, Texas.

EXHIBIT "C"
Depiction of Staging Area

EXHIBIT "D"
Memorandum of Lease

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

MEMORANDUM OF LEASE

This Memorandum of Lease is made this ____ day of _____, 2019 by and between the **CITY OF EL PASO** ("Landlord"), and **CIRCLE K STORES INC.**, a Texas corporation ("Tenant").

WITNESSETH:

WHEREAS, the Landlord entered into a Southern Industrial Site Lease, effective October 15, 2019 ("Lease"), with **CIRCLE K STORES INC.**, a Texas corporation (the "Lease"); and

WHEREAS, the Lease covers real property municipally located at 1600 Hawkins Boulevard, El Paso, Texas being more particularly described as follows:

Portions of Lots 1 and Lot 2, Block 13, El Paso International Airport Tracts Unit 8, Replat A, City of El Paso, El Paso County, Texas, generally depicted as Exhibit "A", attached hereto and incorporated herein by reference, and commonly known and numbered as 1600 Hawkins Blvd., El Paso, Texas (the "Premises"). .

WHEREAS, Landlord and Tenant now desire to give notice of the Lease.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the parties hereto agree as follows:


1. Landlord and Tenant hereby acknowledge the existence of that certain Lease, which became effective October 15, 2019, pertaining to the above-described Premises.
2. It is agreed that the purpose of this instrument is to give notice of the Lease and rights of the parties thereunder.
3. The term of the Lease commenced on October 15, 2019, and the initial term of the Lease is forty (40) years with an option to extend the Lease for one additional terms of ten (10) years each.
4. All rights and obligations of the Landlord and Tenant hereunder are governed by the terms, conditions, and covenants contained in the Lease.

Signatures Begin on Next Page.

IN WITNESS WHEREOF, this Memorandum of Lease has been executed by the parties hereto as of the date, month and year first noted above.

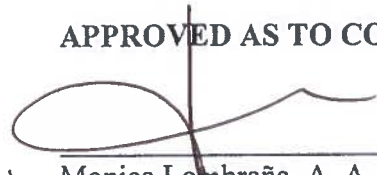
Tomás González
City Manager

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



for: Monica Lombraña, A. A. E.
Managing Director of Aviation and
International Bridges

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____ 2019
by Tomás González, as City Manager of the City of El Paso.

Notary Public, State of Texas

My Commission Expires:

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

By: _____
Printed Name: _____
Title: _____

THE STATE OF _____)
)
COUNTY OF _____)

Notary Public

15-1003-569/PL#920059/Circle K Stores Inc - Memorandum of Lease/JF
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