



February 6, 2012

City of El Paso
Attn: Assistant City Attorney Bertha Ontiveros
Two Civic Center Plaza, 9th Floor
El Paso, TX 79901

HAND DELIVERED and Regular Mail

RE: Request to Place Resolution on City Council Agenda, Consent Agenda for passage and approval, Tuesday, February 21, 2012, authorizing City Manager to sign a Lessor's Consent to Amendment No. 1 of Sublease between Simon Property Group, L.P., and the El Paso Electric Company. [Block 7, Celina Plaza, El Paso, El Paso County, Texas, 1.681 acres]

Dear Attorney Ontiveros:

The City of El Paso for and on behalf of the El Paso Water Utilities Public Service Board leased certain land for the Cielo Vista Mall to Celina Plaza, Inc., April 14, 1972. Simon Property Group, L.P., ("Simon") successor in interest to Celina Plaza, Inc., subleased to the El Paso Electric Company ("Electric Company") an electrical substation site of approximately 1.681 acres adjacent to the Mall January 16, 1975. The sublease has a thirty-five year primary term with options to extend it four times of five years each.

Simon and the Electric Company desire to make Amendment Number 1 to the sublease to expand the leasehold by 0,242 acres so the electric company can construct additional infrastructure at the site. The current lease site also contains El Paso Water Utilities water well site #49. EPWU's water well Number 49 will not be adversely impacted by the substation expansion. Pursuant to the sublease, the City of El Paso must give Consent of Lessor as follows: approval of the sublease of the leased premises, use of the subleased premises for electric substation purposes and the substitution of the City for the Sublessor in the event the Lease Agreement between the City and Sublessor dates April 14, 1972 shall be terminated for any reason.

The electric company has signed the original of the Amendment Number 1; however, Simon will not execute the sublease until the City signifies its consent by signing the Amendment Number 1 as consenting Lessor.

Enclosed is an agenda packet which includes the original Amendment Number 1 to the Sublease Agreement and the original City Council Resolution authorizing the City Manager to sign same. Also included is the Request for City Council Action addressed to City Manager Wilson, and background material. Would you please review the enclosed, sign approved as to form and route the full packet to the City Clerk for her action in placing the matter on the City Council Consent Agenda for Tuesday, February 21, 2012. I would be happy to meet with you to discuss any concerns.

Sincerely,

A handwritten signature in blue ink that reads "Robert D. Andron".

Robert D. Andron
General Counsel

Enclosures as stated

CC: (without enclosures)
Edmund G. Archuleta, P.E., President/CEO, EPWU
Marcela Navarrete, Vice President, EPWU
John Balliew, Vice President, EPWU
Jim Shelton, Land Administrator, EPWU

El Paso Water Utilities • 1154 Hawkins Blvd. • P.O. Box 511 • El Paso, TX 79961-0001

Phone: 915.594.5500 • Fax: 915.594.5699 • www.epwu.org



TO: Joyce A. Wilson, City Manager
El Paso, Texas

FROM: Robert D. Andron, General Counsel 
El Paso Water Utilities Public Service Board

DATE: February 6, 2012

SUBJECT: Request to place Item on City Council Agenda-Resolution
City Council, Consent Agenda – February 21, 2012

Expansion of El Paso Electric Company Substation adjacent to Cielo Vista Mall, El Paso, Texas.

Consider and approve a Resolution that the City Manager be authorized to execute a Lessor's Consent by Amendment No. 1 to a Sublease Agreement between Simon Property Group, L.P. successor in interest to Celina Plaza, Inc., and the El Paso Electric Company.

(District #3) [El Paso Water Utilities, Jim Shelton, Land Administrator (915) 594-5511]

Background:

The current lease site (1.681 acres near Cielo Vista Mall known as Block 7, Celina Plaza, El Paso, El Paso County, Texas with El Paso Water Utilities water well site #49) was originally leased to Simon Property Group, L.P., April 14, 1972 which lease was signed by Mayor Bert Williams and specified a term of thirty-five years with options to extend four times of five years each. El Paso Electric Company subleased the site from Simon Property Group, L.P. for an electrical substation site. Pursuant to the lease, the City of El Paso must approve any sublease of the leased premises and use of the subleased premises for electric substation purposes.

The parties desire by this Amendment Number 1 to expand the leased premises by 0.242 acres so the El Paso Electric Company can expand its substation and increase and improve the infrastructure of the electric substation. The electric company has signed an original of the Amendment Number 1. Simon Property Group will not execute the sublease until the City signifies its consent by signing the Amendment Number 1 as consenting Lessor.

EPWU's water well Number 49 will not be adversely impacted by the substation expansion.

Please accept the enclosed Resolution for approval and adoption by the City Council at its regular meeting of Tuesday, February 21, 2012.

ACTION REQUESTED

That the City pass and adopt a Resolution authorizing the City Manager to sign a Lessor's Consent by Amendment Number 1 to a Sublease Agreement between Simon Property Group, L.P., successor in interest to Celina Plaza, Inc., and the El Paso Electric Company.

REQUEST TO PLACE ITEM ON THE CITY COUNCIL AGENDA

Attached is a copy of the Resolution. Upon passage and adoption of the Resolution, it is requested that the City Clerk provide to this office an original of the fully executed Resolution.

Please advise this office of the placement of this item on the City Council Agenda and my Secretary will contact the City Clerk and make arrangements to have document packets hand-delivered to the City Clerk's Office and email backup documents as noted to those listed below. If there are any questions, please call me at 594-5607 or email bandron@epwu.org. El Paso Water Utilities Staff will attend the City Council meeting. Thank you for your kind attention to this matter.

Attachments

Cc: The Honorable Mayor John Cook (email)
City Council Representatives (email)
Sylvia Firth, City Attorney (email)
Richarda Duffy-Momsen, City Clerk (hard copies & email)
Marcela Navarrete, Vice President of Strategic, Financial & Management Services PSB (email)
John Balliew, P.E., Vice President Operations and Technical Services, PSB (email)

p:\2011-2012\Feb2012\CityCouncilItems\BackupToCityMgrMemo.Simon Property/EPE. Sublease.Feb.2012

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

DATE: FEBRUARY 6, 2012
DEPARTMENT: El Paso Water Utilities Public Service Board
AGENDA DATE: CONSENT AGENDA
February 21, 2012

A copy of this agenda item with its supporting documentation has been furnished to the City Attorney for review prior to City Council action.

CONTACT PERSON/PHONE: Jim Shelton, Land Administrator EPWU (915) 594-5511

DISTRICT(S) AFFECTED: District #3

SUBJECT:

Expansion of El Paso Electric Company Substation adjacent to Cielo Vista Mall, El Paso, Texas.

Consider and approve a Resolution that the City Manager be authorized to execute a Lessor's Consent by Amendment No. 1 to a Sublease Agreement between Simon Property Group, L.P. successor in interest to Celina Plaza, Inc., and the El Paso Electric Company.

BACKGROUND / DISCUSSION:

The current lease site (1.681 acres near Cielo Vista Mall known as Block 7, Celina Plaza, El Paso, El Paso County, Texas with El Paso Water Utilities water well site #49) was originally leased to Simon Property Group, L.P., April 14, 1972 which lease was signed by Mayor Bert Williams and specified a term of thirty-five years with options to extend four times of five years each. El Paso Electric Company subleased the site from Simon Property Group, L.P. for an electrical substation site. Pursuant to the lease, the City of El Paso must approve any sublease of the leased premises and use of the subleased premises for electric substation purposes.

The parties desire by this Amendment Number 1 to expand the leased premises by 0.242 acres so the El Paso Electric Company can expand its substation and increase and improve the infrastructure of the electric substation. The electric company has signed an original of the Amendment Number 1. Simon Property Group will not execute the sublease until the City signifies its consent by signing the Amendment Number 1 as consenting Lessor.

EPWU's water well Number 49 will not be adversely impacted by the substation expansion.

Copy of Resolution authorizing the City Manager to sign the Amended Number 1 sublease is attached hereto.

PRIOR COUNCIL ACTION:

By City Council action, the City Manager may be authorized to execute an Amended Lease or Sublease Agreement that was originally executed by the Mayor.

Department Head's Summary Form
Agenda Item Request
Page 2.

AMOUNT AND SOURCE OF FUNDING:

Sublease will generate revenue of approximately \$400.00 per year to EPWU.

BOARD / COMMISSION ACTION:

N/A

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD:



(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

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

That the City Manager is authorized to execute a Lessor's Consent to Amendment Number 1 to a Sublease Agreement between Simon Property Group, L.P. successor in interest to Celina Plaza, Inc., and the El Paso Electric Company. The amendment is to expand the leased premises from a 1.681 acre site adjacent to Cielo Vista Mall with El Paso Water Utilities water well site Number 49 to a 1.923 acre electric substation site. The site is legally described as a portion of Block 7, Celina Plaza, El Paso, El Paso County, Texas. The Amendment Number 1 to the Sublease Agreement being substantially in the form as the document attached hereto and made a part hereof for all purposes by this reference.

APPROVED this ____ day of February 21, 2012.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

EXPANSION OF EPEC SUBSTATION

EPEC is requesting to expand their current Substation facility located site located on Surmount Dr. and Viscount Blvd. The site (1.681 Acres) is leased to Simon Properties (Cielo Vista Mall) and Simon Properties is subleasing a portion of the site to EPEC. EPWU has Well #49 located on this site.

Site was originally leased to Simon properties on April 14, 1972 and signed by Mayor Bert Williams for a term of 35 years plus Lessee had option to extend up to 4 consecutive periods of 5 years each for a beginning rental amount of \$3,537.94/Annum plus the rent adjustment at end of 35 year period if renewed. Lease was renewed to CPI which at present is \$17,422.62/Annum. Rent will be additionally adjusted at renewal period.

EPEC under the current Sublease Agreement pays Simon Properties \$6,100 and \$400/Annum to EPWU beginning January 15, 2012.

Scott Reinert and I met with EPEC on the site and Scott determined that the expansion of the EPEC facility would not harm or disturb the operation of EPWU's Well #49.

Reviewed by Bob Andron:

Bob Andron 8/12/2011

Reviewed by Scott Reinert:

Scott Reinert

**AMENDMENT NO. 1
TO SUBLEASE AGREEMENT
BETWEEN
CELINA PLAZA, INC.
AND
EL PASO ELECTRIC COMPANY**

THIS AMENDMENT NO. 1 TO SUBLEASE AGREEMENT (this "**Amendment**") is made effective this ____ day of October, 2011, by and between SIMON PROPERTY GROUP (TEXAS), L.P., a Texas limited partnership (successor in interest to Celina Plaza, Inc.) ("**Sublessor**") and EL PASO ELECTRIC COMPANY, a Texas corporation ("**Sublessee**").

1. Recitals.

- 1.1 By a Sublease Agreement dated January 16, 1975, Celina Plaza, Inc. leased to Sublessee, for a term expiring on April 13, 2007, certain premises consisting of 0.620 acres located in the City and County of El Paso, State of Texas, as more particularly described in said Sublease Agreement (the "**Premises**"). The term of said Sublease Agreement was extended to April 13, 2012, pursuant to a letter dated October 19, 2006, by Sublessee to Sublessor providing notice of the exercise of an option to extend the term. Said Sublease Agreement, as extended, is hereinafter referred to as the "**Sublease**".
- 1.2 The original Premises consists of part of the land leased to Sublessor as lessee under a Lease Agreement dated April 14, 1972 (the "**Lease**"), by and between the City of El Paso, for and on behalf of the Public Service Board of El Paso (El Paso Water Utilities), as Lessor and Celina Plaza, Inc., as Lessee, consisting of approximately 1.681 acres known as Block 7, Celina Plaza, El Paso County, Texas, and designated as Well Site Number 49. The Lease was subsequently amended by a Lease Amendment dated June 22, 1972, and the Lessee's interest under the Lease was assigned to Simon Property Group (Texas), L.P. by Assignment of Lease/Consent to Assignment of Lease dated December 1, 1993, recorded in Book 2667, Page 554 of the Official Public Record of Real Property, El Paso County, Texas.
- 1.3 Pursuant to the Sublease, Sublessor leased to Sublessee the Premises for use as an electric substation site.
- 1.4 Sublessee seeks to expand the electric substation beyond the perimeter of the original Premises in order to increase and improve the infrastructure of the electric substation.
- 1.5 Sublessor and Sublessee desire to amend the Sublease to accommodate such expansion of Sublessee's electric substation by expanding the original Premises, to provide additional compensation to Sublessor for the expansion of the Premises and to modify the Sublease in certain other respects as set forth herein.
- 1.6 By this Amendment and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Sublessor and Sublessee agree to amend the Sublease as set forth in Section 2 below.

2. Agreements.

- 2.1 Section 1 of the Sublease is hereby amended by adding thereto the following:

"Sublessor also leases to Sublessee, and Sublessee leases from Sublessor, that additional certain real property within the aforementioned Well Site Number 49 being more particularly described on Exhibit A-1 attached hereto and made a part hereof, and as shown on the Plat of Survey dated July 8, 2011, attached hereto as Exhibit B."

2.2 Section 3(b) of the Sublease is amended by (i) deleting from line 7 the words "1967-1969" and substituting in place thereof the words "1982-1984", and (ii) deleting from line 11 the words "June 1972" and substituting in place thereof the words "July 2011".

2.3 Section 4 of the Sublease is hereby amended by adding thereto a new paragraph, as follows:

"Commencing on the Effective Date of Amendment No. 1 to Sublease Agreement, as said Effective Date is determined in accordance with Section 4.1 of said Amendment No. 1, the annual rent due and payable by Sublessee to Sublessor on each anniversary date of this Sublease shall be increased to \$6,500, of which \$6,100 shall be paid to Sublessor and \$400 shall be paid to the Public Service Board of El Paso. A pro rata portion of said annual rent shall be paid by Sublessee to Sublessor for (i) the period from the Effective Date to January 15, 2012, and (ii) the period from the last occurring anniversary date of this Sublease to and including the termination date. All future payments of annual rent and all other amounts to be paid under the Sublease by Sublessee to Sublessor following the Effective Date of said Amendment No. 1 shall be paid to Simon Property Group (Texas), L.P. at Cielo Vista Mall – Management Office, Attn: Office Administrator, 8401 Gateway Boulevard West, El Paso, Texas 79925. In the event Sublessee exercises, in sequence, any of the options to extend this Sublease, the annual rent, as increased by this paragraph, shall be adjusted as provided in Section 3(b)."

2.4 Section 14 of the Sublease is amended by replacing the notice addresses for Sublessor and Sublessee as follows:

(i) for Sublessor:

Simon Property Group (Texas), L.P.
225 West Washington Street
Indianapolis, Indiana 46202
Attn: Vice President - Development

(ii) for Sublessee:

El Paso Electric Company
Attention: Land Management
P.O. Box 982
El Paso, Texas 79960

3. Consent to Sublease and Substation Use.

3.1 Pursuant to the Lease, the City of El Paso must approve any sublease of the leased premises and use of the subleased premises for electric substation purposes.

3.2 The City of El Paso, by its joinder hereto, hereby consents to this Amendment and the expansion and use of the subleased premises by Sublessee for electric substation facilities.

4. Effective Date.

4.1 This Amendment is effective upon the date signed below by Joyce Wilson, for and on behalf of the City of El Paso (the "**Effective Date**").

5.

Miscellaneous Provisions.

- 5.1 The parties acknowledge and agree that effective upon the exercise by Sublessee of the initial option to extend the term of the Sublease to April 13, 2012, the annual rent to be paid during the option period commencing on April 14, 2007 is adjusted in accordance with Section 3(b) of the Sublease to be \$5,909.41. Not later than ten (10) days following the Effective Date of this Amendment, Sublessee shall pay to Sublessor any rent arrearage due based upon the difference between the annual rent actually paid to date during said option period and the adjusted rent due and payable as set forth above.
- 5.2 Any words set forth herein with initial capital letters are defined terms and shall have the meaning set forth in the Sublease, unless otherwise modified herein.
- 5.3 This Amendment may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.
- 5.4 In all other respects, except as modified herein, the terms and conditions of the Sublease shall remain unchanged and in full force and effect.
- 5.5 The parties agree not to place this Amendment or the Sublease of record.

[The remainder of this page is intentionally blank; signatures begin on the next page.]

Reviewed and Approved.
Legal Department

F

GS
10/27/11

SUBLESSEE

El Paso Electric Company

By: [Signature]

STEVEN P. BUSSEZ
Name

VICE PRESIDENT TREASURER
Title

10-27-11
Date

State of Texas §
County of El Paso § ss.
§

Before me, the undersigned authority, on this day personally appeared STEVEN P. BUSSEZ, to me known to be the person whose name is subscribed to the foregoing instrument as V.P. TREASURER of El Paso Electric Company, a Texas corporation, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed and in the capacity therein designated and as the act and deed of said corporation.

Given under my hand and seal of office this 27th day of OCTOBER, 2011.



My Commission Expires

[Signature]
Notary Public in and for the
State of Texas

CONSENT OF LESSOR

In accordance with Section 7 of the Lease Agreement dated April 14, 1972, by and between the City of El Paso, for and on behalf of the Public Service Board of El Paso (El Paso Water Utilities), as Lessor and Celina Plaza, Inc., as Lessee, as amended and assigned, which Section 7 requires the consent of Lessor to any sublease, the City of El Paso hereby consents to the Sublease referred to in Section 1.1 of the foregoing Amendment No. 1 to Sublease Agreement, as amended by said Amendment No. 1, the use of the leased premises for electrical substation facilities, and the substitution of the City of El Paso for the Sublessor under the Sublease Agreement in the event the Lease Agreement between the City of El Paso and said Sublessor, dated April 14, 1972, as amended, is for any reason terminated.

City of El Paso

By: _____

Joyce Wilson

Name

City Manager

Title

Date

State of Texas §
 § ss.
County of El Paso §

Before me, the undersigned authority, on this day personally appeared _____, to me known to be the person whose name is subscribed to the foregoing instrument as _____ of the City of El Paso and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed and in the capacity therein designated and as the act and deed of the City of El Paso.

Given under my hand and seal of office this ____ day of _____, 2011.

Notary Public in and for the
State of Texas
My Commission Expires: _____

EXHIBIT A-1

Description of the Additional Premises

Being a portion of Block 7, Celina Plaza as filed in Volume 36, Page 10, El Paso County Plat Records in the City of El Paso, El Paso County, Texas and more particularly described as follows:

COMMENCING for reference at a city monument found at the intersection of the monument line of Viscount Boulevard and Catalpa Lane from which another city monument found at the intersection of the monument line of Viscount Boulevard and Sunmount Drive bears South 75°03'00" East 1311.29 feet; ***THENCE***, along said monument line of Viscount Boulevard South 75°32'18" East (South 78°38'50" East) 1009.20 feet to an angle point on said monument line; ***THENCE***, leaving said monument line, South 14°27'14" West 64.01 feet to a point on the south right-of-way line of Viscount Boulevard and being the northeast corner of Lot 1, Block 2, Young American Subdivision as filed in Volume 44, Page 35, El Paso County Plat Records; ***THENCE***, along the east boundary line of said Young American Subdivision South 31°27'58" West (South 28°21'26" West) passing at 11.50 feet the northwest corner of Block 7, Celina Plaza a total distance of 47.82 feet to a 5/8 inch rebar with cap stamped ZWA set on the common boundary line of the afore mentioned subdivisions and the ***POINT OF BEGINNING***;

THENCE, leaving said boundary line, South 58°51'07" East 232.54 feet to a 5/8 inch rebar with cap stamped ZWA set;

THENCE, South 24°59'10" West 155.90 feet to a 5/8 inch rebar with cap stamped ZWA set;

THENCE, North 58°37'43" West 50.00 feet to an existing 4 inch fence post;

THENCE, North 31°14'37" East 133.72 feet to an existing 4 inch fence post;

THENCE, North 58°32'31" West 199.61 feet to a 60D Nail set on the common boundary line of Celina Plaza and Young American Subdivision;

THENCE, along said common line, North 31°27'58" East 20.00 feet to the ***POINT OF BEGINNING*** containing 10,527 square feet or 0.242 acres.

SUBLEASE AGREEMENT

This Sublease Agreement made this 16th day of January, 1975, by and between Celina Plaza, Inc., an Indiana corporation ("Sublessor"), and El Paso Electric Company, a Texas corporation ("Sublessee").

WITNESSETH:

Pursuant to a Lease Agreement dated April 14, 1972, the City of El Paso, for and on behalf of the Public Service Board of El Paso, leased approximately 1.681 acres known as Block 7, Celina Plaza, El Paso County, Texas, and designated as Well Site Number 49, to Celina Plaza, Inc. That lease was amended by the parties by Lease Amendment dated June 22, 1972.

Celina Plaza, Inc., now desires to sublease to El Paso Electric Company a portion of the 1.681 acres (Well Site Number 49) referred to above.

Now, therefore, in consideration of the premises and other good and valuable consideration, it is mutually agreed between Celina Plaza, Inc., as Sublessor and El Paso Electric Company as Sublessee as follows:

1. Premises. Sublessor hereby leases to Sublessee, and Sublessee hereby leases from Sublessor, that certain real property having dimensions of 135 feet by 200 feet located within the aforementioned Well Site Number 49, and more particularly described by metes and bounds on Exhibit A attached hereto and made a part hereof.
2. Term. The term of this Sublease shall commence as of the date hereof and shall end on April __, 2007.
3. Option to Extend Term.
 - (a) Pursuant to its lease with the City of El Paso, Sublessor has the option to extend that lease for one or more of four consecutive periods of five years each. If Sublessor elects to exercise any such option, thus extending its lease term with the City of El Paso, the Sublessee shall have a corresponding option to renew this Sublease for a like period of time under the same terms and conditions as herein set forth. Sublessor shall notify Sublessee concurrently with its notice to the City of El Paso of Sublessor's intent to exercise its option to extend the lease term with the City, and Sublessee shall have sixty (60) days thereafter during which to notify Sublessor of its intent to exercise the corresponding option hereunder.
 - (b) In the event Sublessee exercises, in sequence, any of the options to extend, as heretofore provided, the rental to be paid during each of the five year options shall be adjusted at the commencement of each five year interval by multiplying the same by a fraction, the numerator of which shall be the Consumer Price Index, (United States City Average--All Cities, 1967-1969 equal 100) published by the Bureau of Labor Statistics of the United States Department of Labor for the calendar month preceding the expiration of the then existing term, and the denominator of which shall be Consumer Price Index for the month of June 1972. If the Bureau of Labor Statistics changes the form of the basis for calculating the Consumer Price Index, the parties hereto agree to request the Bureau to make available, for the life of this Agreement, an annual Consumer Price Index in its present form as calculated on the same basis as the Index for the month wherein the initial term of this Sublease Commences.

4. Rent. During the term of this Sublease, Sublessee shall pay Sublessor an annual rental of \$1,200, payable on the anniversary date of this Sublease, said rent being payable to Sublessor at 1712 North Meridian Street, Indianapolis, Indiana 46202.

5. Use. The premises shall be used by Sublessee for an electrical substation site. Sublessee will erect upon the premises appropriate substation facilities, including all equipment necessary to generate and/or transmit electrical energy.

6. Improvements and Insurance. The improvements erected by Sublessee on the leased premises shall remain the property of Sublessee and Sublessee shall have the responsibility of insuring said improvements as it sees fit. Sublessor shall have no liability to Sublessee for any loss, damage or destruction to any of the improvements erected by Sublessee on the leased premises and Sublessee hereby releases Sublessor from any such liability.

7. Indemnification. Sublessee indemnifies and holds harmless Sublessor, the City of El Paso, its Public Service Board and El Paso Water Utilities, from and against all claims, or suits for damage, either to persons or property resulting from the condition of the premises, or from Sublessee's negligence or want of care in the activities engaged in and on said premises, or Sublessee's use of the leased premises, including adjacent streets and any sidewalk.

8. Consent to Sublease and Substation Use. Pursuant to the Lease Agreement between the City of El Paso and Sublessor, the City of El Paso must approve this Sublease and the use of the leased premises for substation purposes. City, by its joinder hereto, hereby consents to this Sublease and to the use of the leased premises by Sublessee for electrical substation facilities. It is further understood that this Sublease is subject to that Lease Agreement and in the event of any conflict between the terms of this Sublease and the Lease Agreement, the provisions of the latter will control.

9. Restrictions. The Sublease is subject to the following restrictions and reservations:

(a) There is reserved for the use and benefit of the public a right of flight for the passage of aircraft in the air space above the surface of the premises demised, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft using said air space, or landing at, taking off from, or operating on, El Paso International Airport.

(b) That no use will be made of the land which would create or cause to be created any hazard to the aeronautical use of the Airport; and

(c) That no structure will be erected and no objects of natural growth will be allowed to grow to a height exceeding an elevation of 4,050 feet MSL upon the leased premises.

The foregoing restrictions and reservations shall be covenants running with the land and, in the event of the violation or threatened or attempted violation of any of said restrictions, it is specifically understood that the City of El Paso shall have the right without bond, to enjoin in any court of competent jurisdiction such violation or threatened or attempted violation.

10. Laws and Ordinances. Sublessee shall comply with all the laws and ordinances of the City, State and County governments applicable to said premises and all the requirements imposed by health, sanitary and police departments for the correction, prevention and abatement of nuisances in or upon or in connection with said premises. Sublessee further agrees to use said leased premises in such a manner as not to contaminate or in any way endanger the water supply or reserves of the City of El Paso and/or the existing well facilities adjacent to the leased premises.

11. Default by Sublessee. If Sublessee defaults in the payment of rent for ten (10) days or if Sublessee defaults in any other covenant and agreement of this Sublease for thirty (30) days after written notice from Sublessor, then Sublessor shall, but not until then, have the right to enforce the performance hereof in any manner provided by law, or Sublessor at its option may declare this Sublease forfeited and Sublessor or its representatives, shall have the right without further notice or demand, to enter and take possession of the leased premises and Sublessee's improvements and equipment and evict Sublessee therefrom without being guilty of trespassing and without prejudice to any other remedies which Sublessor may have for arrears in rent or for breach of contract. Sublessor, or its representatives, may resume possession of the premises and relet the same for the remainder of the term of this Sublease, and at the best rent obtainable, said rents to be applied to the account of the Sublessee, which shall be obligated to make up the deficiency in the event Sublessor cannot rent the premises for as much as herein provided. However, if Sublessee shall pay said rent within ten (10) days, or in good faith commence within said thirty (30) days to correct such other defaults and diligently proceed therewith, Sublessor shall not have the right to exercise the options above provided in the case of default by the Sublessee. No delay on the part of either party in enforcing any of the provisions of this Sublease shall be construed as a waiver hereof, and limitations upon any claim for deficiency in rent where the property is relet for the account of the Sublessee shall not begin to run until the date on which this Sublease would normally have terminated.

12. Termination of Lease with City. In the event that Sublessor's lease with the City of El Paso is terminated for any reason whatsoever, the City of El Paso, by its joinder herein, agrees to be substituted for Sublessor hereunder, and in all respects will recognize the validity of this Sublease including Sublessee's right to exercise up to four option periods of five years each so long as Sublessee is not in default hereunder.

13. If any portion of the leased premises shall be taken by condemnation, deed in lieu of condemnation or foreclosure, making it impossible for Sublessee to operate the electrical substation, this Sublease shall terminate as of the date Sublessee is deprived of possession making it impossible for Sublessee to operate the substation, and there shall be a pro rata refund by the Sublessor to the Sublessee of any rentals theretofore paid for the periods subsequent to the date of loss of possession and neither party shall have any further liability or obligation to the other party hereunder.

14. Notices. Whenever by the term of this Sublease notice shall be given either to Sublessor or to Sublessee, such notice shall be in writing and shall be sent by certified mail, postage pre-paid:

If intended for Sublessor, addressed to it at

Celina Plaza, Inc.
1712 North Meridian Street
Indianapolis, Indiana 46202

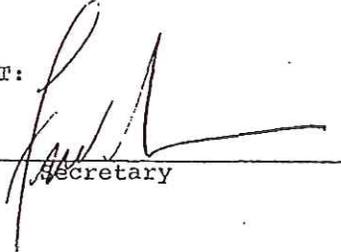
or if intended for Sublessee, addressed to it at

El Paso Electric Company
P. O. Box 982
El Paso, Texas 79999

Executed this 16 day of January, 1975.

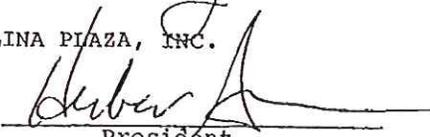
ATTEST:

By


Secretary

CELINA PLAZA, INC.

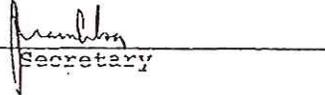
By


President

SUBLESSOR

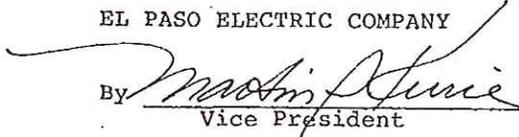
ATTEST:

By


Secretary

EL PASO ELECTRIC COMPANY

By

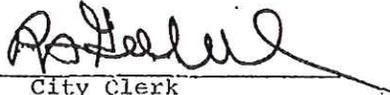

Vice President

SUBLESSEE

The City of El Paso hereby consents to the above Sub-lease, the use of the leased premises for electrical substation facilities, and for the substitution of the City of El Paso for Sublessor above in the event the lease between the City of El Paso and Sublessor dated April 14, 1972, as amended, is for any reason terminated.

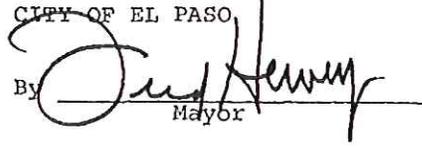
ATTEST:

By


City Clerk

CITY OF EL PASO

By


Mayor

APPROVED AS TO FORM

 4/1/75
PHILIP T. COLE DATE
ATTORNEY FOR PUBLIC SERVICE BOARD

STATE OF TEXAS X
 X SS.:
COUNTY OF EL PASO X

Before me, the undersigned authority, on this day personally appeared MARTIN P. KURIC, to me known to be the person whose name is subscribed to the foregoing instrument as Vice President of El Paso Electric Company, a corporation, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein designated and as the act and deed of said corporation.

Given under my hand and seal of office this 16th day of January, 1975.

R. G. COOPER, Notary Public
In and for the County of El Paso, Texas
My Commission Expires June 1, 1978

R. G. Cooper
Notary Public in and for
El Paso County, Texas

STATE OF INDIANA X
 X SS.:
COUNTY OF MARION X

Before me, the undersigned authority, on this day personally appeared HERBERT SIMON, to me known to be the person whose name is subscribed to the foregoing instrument as President of Celina Plaza, Inc., a corporation, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein designated and as the act and deed of said corporation.

Given under my hand and seal of office this 31st day of January, 1975.

Diane L. Dickinson
Notary Public in and for
Marion County, Indiana
my Commission Expires July 4, 1975

STATE OF TEXAS X
 X SS.:
COUNTY OF EL PASO X

Before me, the undersigned authority, on this day personally appeared Fred Harvey Mayer of the City of El Paso, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged before me in my county aforesaid that he had executed the same for the purposes and consideration and in the capacity therein expressed, and as the act and deed of the City of El Paso.

Given under my hand and official seal this 10 day of April, 1975

Angela C. Guillen
Notary Public in and for
El Paso County, Texas
ANGELA C. GUILLEN, Notary Public
In and for the County of El Paso, Texas
My Commission Expires June 1, 1975

Description of a parcel of land in Tract 7, Celina Plaza - being a portion of Tract 4A, Block 2, Ascarate Grant otherwise known as Public Service Board Well Site 49.

BEGINNING at a point on the westerly boundary line of Celina Plaza, said point also being the southwesterly corner of said well site;

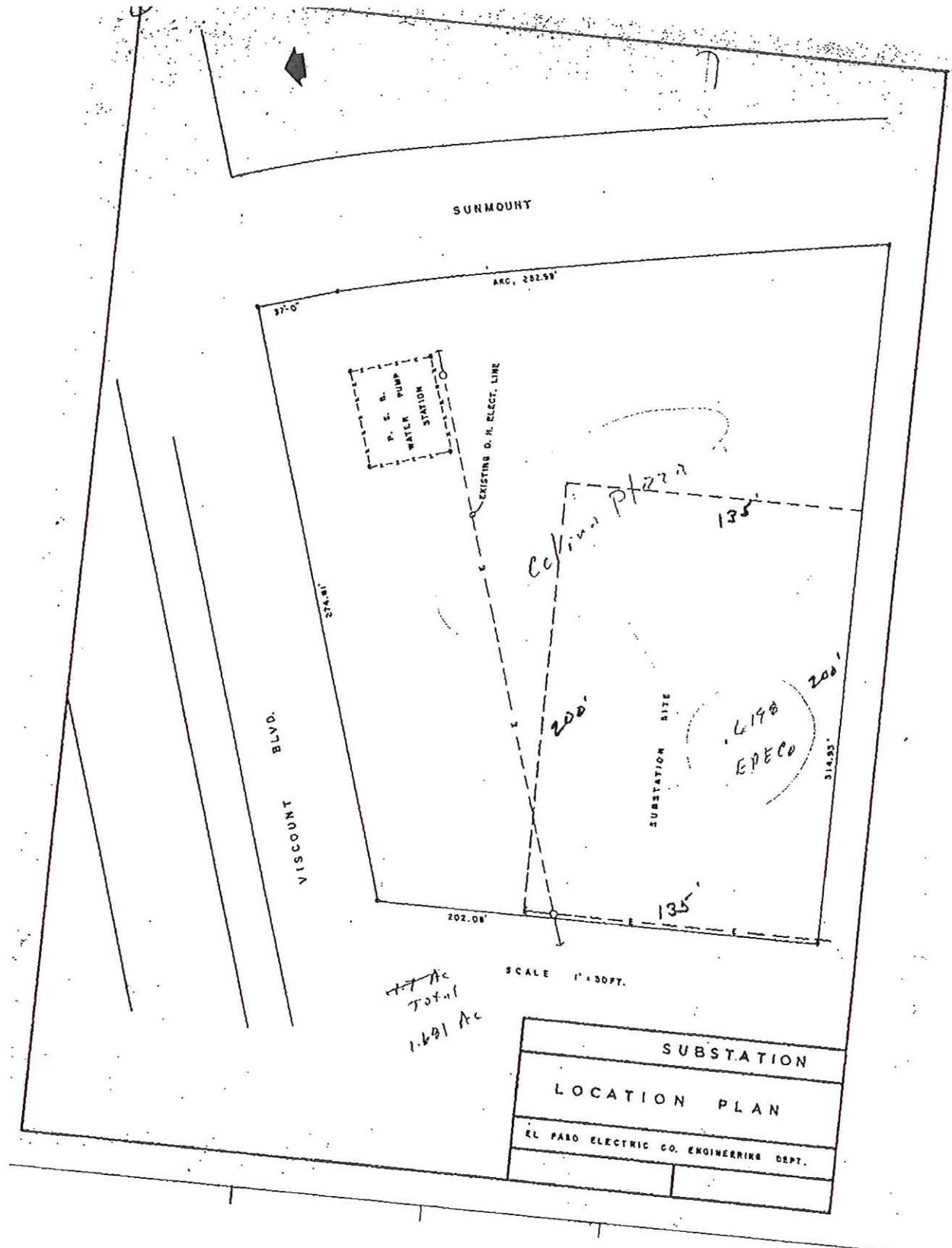
Thence North 28° 21' 26" East along the westerly boundary line of said well site a distance of 135 Feet, to a point;

Thence South 61° 38' 34" East a distance of 200 Feet to a point;

Thence South 28° 21' 26" West a distance of 135 Feet to a point lying on the southerly boundary line of said well site;

Thence North 61° 38' 34" West along the southerly boundary line of said well site a distance of 200 feet to THE POINT OF BEGINNING and contains 27,000 square feet of land more or less.

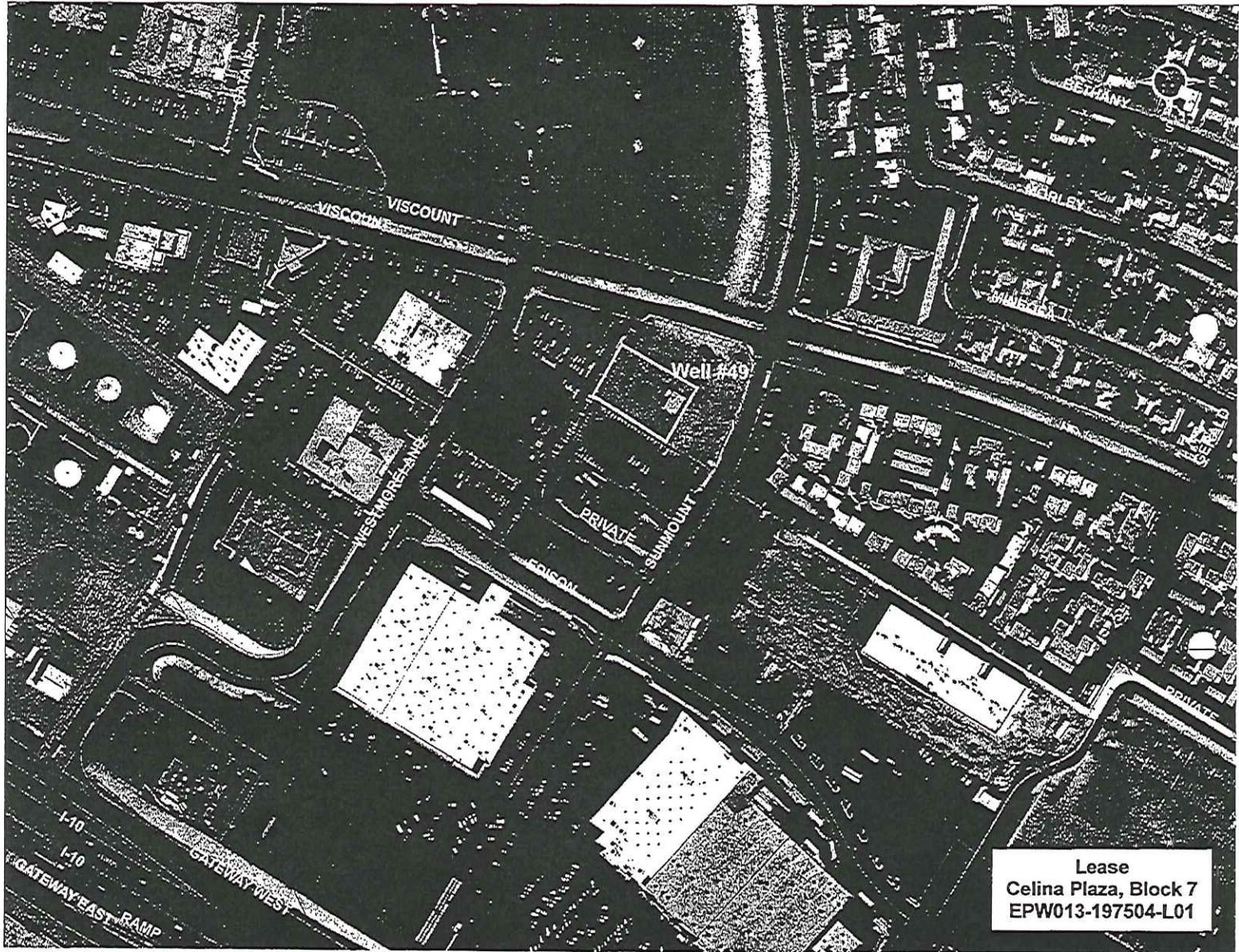
EXHIBIT "A"



~~1.77~~ Ac
 Total
 1.681 Ac

SCALE 1"=30 FT.

SUBSTATION	
LOCATION PLAN	
EL PASO ELECTRIC CO. ENGINEERING DEPT.	



Lease
Celina Plaza, Block 7
EPW013-197504-L01

\$17,422.62 - \$400⁰⁰

6-8-72

LEASE AMENDMENT

THIS AGREEMENT made and entered into this 22nd day of June, 1972, by and between the CITY OF EL PASO, for and on behalf of the PUBLIC SERVICE BOARD OF EL PASO (El Paso Water Utilities), hereinafter designated as "Lessor"; and CELINA PLAZA INC., an Indiana corporation duly qualified to do business in the State of Texas, with offices at 1712 North Meridian Street, Indianapolis, Indiana 46202, hereinafter designated as "Lessee".

W I T N E S S E T H:

WHEREAS, by an Agreement of Lease dated April 14, 1972, Lessor leased unto Lessee, for a period of thirty-three (33) years certain premises of approximately 1.681 acres, more or less, designated as Well Site #49, located in the City of El Paso, County of El Paso, and State of Texas, as in said lease more particularly described; and

WHEREAS, the parties now desire to amend that Lease and extend the term therein,

NOW, THEREFORE, in consideration of the premises and of the sum of ONE DOLLAR (\$1.00) each in hand to the other paid, the receipt and sufficiency of which is hereby acknowledged, it is mutually hereby agreed as follows:

1. Said Lease is amended in the following respects:

A. So much of Paragraph 2.a) as refers to a term of "thirty-three (33) years" is herewith deleted and in its place and stead is substituted "thirty-five (35) years".

B. So much of Paragraph 2.b) as, in two places, refers to "thirty-third (33rd) anniversary" is herewith deleted and in its

Executed Copy

1972
35

2007
5 mt

2012

place and stead is substituted "thirty-fifth (35th) anniversary".

C. After Paragraph 2.d) shall be inserted a new sub-paragraph as follows:

"e) Lessee shall have the option to extend this lease for one or more of four (4) consecutive periods of five (5) years each upon the same terms and conditions, other than the payment of rent, as herein set forth except that the number of extended terms permitted hereunder shall be reduced by one upon each such extension. If the Lessee elects to exercise any such option, it shall give notice thereof to the Lessor not less than six (6) months before the date of expiration of the then existing term. Should the Lessee fail to exercise any one of the options herein conferred upon it, the Lessee shall not have the right to thereafter exercise any succeeding options."

D. Paragraph 3. shall now be numbered Paragraph "3.a)" and at the end thereof shall be inserted the following language: "b) In the event Lessee exercises, in sequence, any of the options to extend, as heretofore provided, (the rental to be paid during each of the five (5) year options shall be adjusted at the commencement of each five (5) year interval by multiplying the same by a fraction, the numerator of which shall be the Consumer Price Index, (United States City Average - All Cities, 1967-69 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor for the calendar month preceding the expiration of the then existing term, and the denominator of which shall be such Consumer Price Index for the month of June, 1972. If the Bureau of Labor Statistics changes the form or the basis for calculating The Consumer Price Index the parties hereto agree to

In June 2007 C.P.I. - U = $\frac{\text{May 2007}}{\text{June 1972}}$

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Melvin Simon and Herbert Simon, to me personally known as the President and Secretary, respectively, of CELINA PLAZA INC., who acknowledged execution of the foregoing Lease Amendment for and on behalf of said corporation by authority of its Board of Directors.

WITNESS my hand and Notarial Seal this 13th day of June, 1972.

Patricia J. Killian
Notary Public

My Commission Expires:

August 20, 1975

APPROVE AS TO FORM

Philip T. Cole 6/19/72
PHILIP T. COLE DATE
ATTORNEY FOR PUBLIC SERVICE BOARD

This document prepared by William J. Burke, Esq.

LEASE AGREEMENT

THIS LEASE AGREEMENT made this 14th day of April, 1973, by and between the CITY OF EL PASO, for and on behalf of the PUBLIC SERVICE BOARD OF EL PASO (El Paso Water Utilities), hereinafter designated as "Lessor" and CELINA PLAZA, INC., an Indiana corporation duly qualified to do business in the State of Texas, hereinafter designated as "Lessee".

WITNESSETH:

WHEREAS, by Contract of Sale dated September 30, 1971, the City of El Paso agreed to convey by Warranty Deed to Lessee a certain parcel of land containing approximately 127 acres, more or less, being a portion of Tract 4-A, Block 2, JUAN AND JACINTO ASCARATE GRANT in the City of El Paso, State of Texas, on the map and plat prepared by Cremans, Inc., hereto attached and labeled Exhibit "A"; and

WHEREAS, as one of the conditions of said conveyance the City of El Paso on behalf of Lessor herein was required to lease to the Purchaser herein two (2) portions of land within said Tract identified as Well Site 49 and Well Site 50; respectively, for a certain period of time, at a rental therein specified; and

WHEREAS, the parties hereto now wish to enter into individual leases for each Tract,

NOW, THEREFORE, in consideration of the premises and of the sum of ONE DOLLAR (\$1.00) each in hand to the other paid, the receipt and sufficiency of which is hereby acknowledged, it is mutually hereby agreed as follows:

1. The Lessor hereby leases to the Lessee, and the Lessee hereby hires from the Lessor all that certain plat, piece or parcel of land

(subject, however, to the conditions hereinafter set forth) described as Well Site 49 Public Service Board, and as outlined in red on the survey attached hereto, prepared by Cremans, Inc., dated March 3, 1972, and labeled Exhibit "B".

2. a) The Tenant shall have and hold the leased premises for a term of thirty-three (33) years (plus the partial months, if any, immediately following the commencement of the term hereof).

b) The term of this lease shall commence upon the date of execution herein and shall run to the thirty-third (33rd) anniversary of the commencement date; provided, however, that if the term of this lease commences upon a date other than the first (1st) day of a calendar month, the term of this lease shall run to the last day of the calendar month in which falls the thirty-third (33rd) anniversary of the commencement date.

c) At the expiration of this lease, Lessee shall surrender the leased premises in good condition, reasonable wear and tear and damage by unavoidable casualty excepted.

d) Any holding over by Lessee shall not operate, except by written agreement, to extend or renew this lease, and in the event of any such holding over without written agreement, such possession shall be construed to be upon a month to month tenancy and at such monthly rental as may be fixed by Lessor.

3. Lessee covenants and agrees to pay the Lessor at such address as is, from time to time, designated by Lessor an annual rental of THREE THOUSAND FIVE HUNDRED THIRTY SEVEN and 94/100 DOLLARS (\$3,537.94) in advance, the first of such annual installments being due and payable on the first (1st) day of the month next succeeding the month within which the term commences, and thereafter in advance

on the annual anniversary date of the first (1st) day of the month next succeeding the month within which the term commences. If there be an initial fractional month of the term, only a pro-rated rental therefor shall be paid, which shall be due upon the execution of this document.

4. The Lessee may use the leased premises for the purpose of parking motor vehicles and for no other purpose whatever. No building or structure of any kind shall be located by the Lessee upon the leased premises, except as may be appropriate and necessary for the construction and maintenance of a parking lot for motor vehicles.

5. It is understood that there is presently located on the leased premises pumps, wells, motors and transformer stations situated above ground, and enclosed by fencing. The Lessor expressly reserves the right to continue to operate the wells and equipment located upon the leased premises and further reserves the right to ingress and egress for the purpose of operation and maintenance of said wells and equipment. Lessor further reserves the right to all underground water on the leased premises. It is further understood and agreed that the Lessor reserves the right to redrill and relocate either or both of the existing wells anywhere on the leased premises, in which case the existing equipment and facilities will be abandoned and removed and such facilities will be reconstructed and fenced on an area similar in size at the new well location.

6. Lessee shall comply with all of the laws and ordinances of the City, Federal, State and County governments applicable to said premises and all the requirements imposed by health, sanitary and police departments for the correction, prevention and abatement of nuisances in or upon or in connection with said premises. Lessee

further agrees to use said leased premises in such a manner as not to contaminate or in any way endanger the water supply or reserves of Lessor or Lessor's existing well facilities on said premises.

7. Lessee shall not sublet any part of the leased premises or assign this lease without the written consent of the Lessor first obtained, however, Lessor agrees not to arbitrarily withhold its consent. In the event of any assignment or sublease, with the express written consent of the Lessor, Lessee shall remain jointly and severally liable for the payment of the rent and fulfillment of all the terms and conditions hereof.

8. Lessee agrees to save Lessor harmless and to protect Lessor from any and all claims or suits for damage, either to persons or property resulting from the condition of the premises, or from Lessee's negligence or want of care in the activities engaged in on said premises or in Lessee's use of the leased premises, including adjacent streets and any sidewalks. During the term of this lease, Lessee at its own expense, shall procure and keep in force public liability and property damage insurance covering its operations at said location, with limits of at least \$100,000.00 for death of, or injury to, any one person, and at least \$300,000.00 for death of, or injury to, any number of persons resulting from any one accident or event, and with limits of at least \$25,000.00 as to property damage. Such insurance shall provide that Lessee and Lessor are thereby protected as named insureds against the claims of any persons who may sustain injury to their persons or property as a result of negligence or other wrongful act or omission arising out of Lessee's operations, except that such insurance need not protect Lessee against claims of its own employees.

9. If the Lessee defaults in the payment of rent for ten (10) days, or if Lessee defaults in any of the other covenants and agreements of this lease for thirty (30) days after written notice from the Lessor, then Lessor shall, but not until then, have the right to enforce the performance hereof in any mode provided by law, or Lessor at its option may declare this lease forfeited, and Lessor, or its representatives, shall have the right, without further notice or demand, to enter and take possession of the premises, removing all persons therefrom, without being guilty of trespassing, and without prejudice to any remedies which it may have for arrears in rent or for breach of contract. Lessor, or its representatives, may resume possession of the premises and relet the same for the remainder of the term of this lease, and at the best rent obtainable, said rents to be applied to the account of the Lessee, who shall be obligated to make up the deficiency in the event Lessor cannot rent the premises for as much as herein provided. However, if Lessee shall pay said rent within ten days, or in good faith commence within said thirty (30) days to correct such other defaults and diligently proceed therewith, Lessor shall not have the right to exercise the options above provided in the case of default by the Lessee. No delay on the part of either party in enforcing any of the provisions of this lease shall be construed as a waiver hereof, and limitations upon any claim for deficiency in rent where the property is relet for the account of the Lessee shall not begin to run until the date upon which this lease would normally have terminated.

10. This lease is also subject to the following restrictions and reservations:

a) There is reserved for the use and benefit of the

public a right of flight for the passage of aircraft in the air space above the surface of the premises demised, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or to be used in the future for navigation of or flight in the air, using said air space, or landing at, taking off from, or operating on, the El Paso International Airport;

b) That no use will be made of the land which would create, or cause to be created, any hazard to the aeronautical use of the Airport; and

c) That no structures will be erected, and no objects of natural growth will be allowed to grow to a height exceeding an elevation of 4,050 feet MSL upon the demised premises.

The foregoing restrictions and reservations shall be covenants running with the land and, in the event of the violation or threatened or attempted violation of any of said restrictions, Lessor shall have the right, without bond, to enjoin in any court of competent jurisdiction such violation or threatened or attempted violation.

11. a) If the entire leased premises shall be taken by condemnation, deed in lieu of foreclosure or the right of eminent domain, the within lease shall terminate as of the date Lessee is deprived of full possession of the leased premises and there shall be a pro-rata refund by the Lessor to the Lessee of any rentals theretofore paid for the period subsequent to the date of loss of possession.

b) If any portion, but not all, of the leased premises is taken by condemnation, deed in lieu of foreclosure or the right of eminent domain, the within lease shall continue and there shall

be a pro-rata refund by the Lessor to the Lessee of any rentals theretofore paid for the period subsequent to the date of the loss of possession and the rental for each lease year of the term thereafter remaining shall be equitably diminished in accordance with the ratio which the land taken bears to the original area of the leased premises.

12. Whenever by the term of this lease notice shall or may be given either to Lessor or to Lessee, such notice shall be in writing and shall be sent by Registered or Certified Mail, postage prepaid:

If intended for Lessor, addressed to it at

El Paso Water Utilities
320 Campbell - P. O. Box 511
El Paso, Texas 79999

(or to such other address or addresses as from time to time hereafter be designated by Lessor by like notice);

If intended for Lessee, addressed to it at

Celina Plaza Inc.
1712 North Meridian Street
Indianapolis, Indiana 46202

and a copy to the demised premises (or to such other address or addresses as may from time to time hereafter be designated by Lessee by like notice).

13. Lessee, subject to the terms and provisions of this lease, on payment of the rental (including any additional rental), and observing, keeping and performing all of the terms and provisions of this lease on its part to be observed, kept and performed shall lawfully, peaceably and quietly have, hold and enjoy the leased

property during the term hereof without hindrance or ejection by any persons lawfully claiming under Lessor; but it is understood and agreed that this covenant, and any and all other covenants of Lessor contained in this lease shall be binding upon Lessor and its successors only with respect to breaches occurring during its and their respective ownership of Lessor's interest hereunder.

EXECUTED this 30 day of March, 1970

CITY OF EL PASO, Lessor

Attest:

[Signature]
City Clerk

By:

[Signature]
Mayor

CELINA PLAZA, INC., Lessee

Attest:

[Signature]

By:

[Signature]
President

STATE OF TEXAS)
) SS:
COUNTY OF EL PASO)

BEFORE ME, the undersigned authority, on this day personally appeared BERT WILLIAMS, known to me to be the person whose name is subscribed to the foregoing instrument as Mayor of the City of El Paso, a Municipal Corporation, and he acknowledged to me that he executed the same for the purposes and consideration therein expressed in his official capacity, and as the act and deed of the City of El Paso.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 30 day of March, 1970

[Signature]
Notary Public in and for El Paso County,
Texas

My Commission Expires:
