

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

**DEPARTMENT:** Financial Services Department; Sun Metro Department  
**AGENDA DATE:** April 29, 2008  
**CONTACT PERSON/PHONE:** Carmen Arrieta-Candelaria, Chief Financial Officer, (915) 541-4293; Tim Omick, Director of Sun Metro, (915) 533-1220  
**DISTRICT(S) AFFECTED:** District 1

**SUBJECT:**

Resolution authorizing the City Manager to sign a Ground Lease Agreement between the CITY OF EL PASO and the BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM to build a Transit Terminal with Multi-level Parking Garage (referred to as the Glory Road Transit Terminal) on property located on Lots 11 through 20, Block 224, Alexander Subdivision, City of El Paso, El Paso County, Texas, and a Parking Agreement between the CITY OF EL PASO and the UNIVERSITY OF TEXAS AT EL PASO for parking within the Parking Garage, and that the staff be authorized to negotiate, the City Attorney's Office to review, and that the City Manager execute any additional documents as necessary during the term of the contract and execute any budget transfers as necessary.

**BACKGROUND / DISCUSSION:**

The proposed Glory Road Transit Terminal will serve nine local Sun Metro routes, the University of Texas at El Paso (UTEP) campus shuttle and the first phase of a new Rapid Transit System (RTS) express service from the Downtown Area and extending to the Westside Transit Terminal. This project was authorized in December 2003, and a final site selected in January 2005 following a review of the advanced planning documents for the site selection. Its location on UTEP property requires a ground lease with the State of Texas, and enumerates the conditions of such lease over a thirty-year term. A summary of the Agreement between UTEP and the City is as follows:

**Tract Size:** .73 acres on UTEP Campus

**Proposed Land Use:** Transit Terminal and multi-level Parking Facility (approximately 500 parking spaces and up to 5,000 square feet of commercial retail space) operated and maintained by the City

**Ground Lease, Terms:** Thirty (30) year term, beginning the earlier of the first day of the month following the month in which substantial completion of the project occurs and the project commences operation as a Parking Facility or three (3) years from the effective date of the Agreement

Option to extend the lease for the Transit Terminal for two (2) ten-year periods at the end of the term

Fixed base annual rent for ten (10) years of \$79,300 (based on 10% of the fair market land value as determined by an appraisal). Payment within the first year to be made within six (6) months of the term commencement and thereafter payable annually in advance on the anniversary date of the term commencement

Ground lease rental and parking rates will be adjusted every ten (10) years based upon an updated appraisal and an average CPI adjustment respectively; in no event will annual rentals decrease

Revenue sharing of 13% of gross parking & retail subletting revenues collected annually, with a minimum annual guarantee of \$50,000. No revenue sharing related to operation activities of Transit Terminal. Parking revenues shall be paid on a quarterly basis and due within forty-five (45) days after each quarter end, with final reconciliation at the end of each year. Audited financials will be required annually. The minimum of \$50,000 will be adjusted by an average CPI every ten (10) years; in no event will the percentage of gross parking revenue decrease

**Special Provisions:**

Parking Rate Structure

\$5 per space, on designated premium price UTEP event periods; UTEP will be allowed to purchase up to 500 parking spaces for no more than twenty (20) designated athletic event periods annually; except that at least five (5) percent of the total garage parking space shall be retained for City transit ridership and not otherwise utilized

\$4 per space, on designated non-premium price UTEP event periods; UTEP will be allowed to purchase up to 160 parking spaces for no more than eight (8) non-premium UTEP special event periods annually (such as commencement events, distinguished alumni events, presidential galas, etc.)

\$360 per space annually, on designated UTEP days; UTEP will be allowed to purchase up to 220 parking spaces, on an annual basis, for use Monday through Friday, from 7:00 am to 6:00 pm each week (UTEP days)

Parking rental rates will be adjusted every ten (10) years such that ground lease rentals received by UTEP will continue to allow the purchase of the premium special athletic event periods and designated class days

Premium special event rates, non-premium special event rates, commencement rates and class days will escalate based upon an average CPI, every ten (10) years

Other Considerations

At the end of the lease, all improvements will become UTEP property, without compensation

All activities related to project design and construction will be at total cost to City

UTEP will be provided design review of project, including signage

City will provide compatible parking reader cards at Parking Facility for UTEP use

UTEP will provide public safety/security response during designated UTEP days

City will accommodate UTEP parking shuttle at the Transit Terminal

**Ground Rent Schedule:**

No Rent will be due and payable by the City or its agents to UTEP from the Effective Date (date of ground lease execution) to the date of substantial completion of the project and the project commences operation as a Parking Facility

UTEP authorizes a right of entry onto the subject property to the City and its agents, at no cost, for all purposes necessary during design and construction of the Transit Terminal

**Commencement Date:**

Last Quarter 2010 (tentative)

**PRIOR BOARD ACTION:**

Provided below is a chronology of past Mass Transit Board actions relative to this project.

- December, 2003            Mayor's Office issues directive for interdepartmental review to address issues regarding Mesa-Cincinnati traffic concerns
  
- February, 2004            Amendment to The Goodman contract approved to delete the proposed Heritage Park Transit Terminal and include the Mesa Street Transit Terminal and complete advanced planning documents
  
- January, 2005            Advanced Planning Document for Mesa Street Transit Terminal completed; Mesa @ Baltimore site selected as the preferred location
  
- December, 2005            Mesa Street Transit Terminal re-named the Glory Road Transit Terminal
  
- October, 2006            Retail component deleted from the project (Staff and The Goodman Co. initiative)
  
- February, 2007            Individual meetings held with City Representatives to discuss the proposed Sun Metro Capital Program reprioritization / reprogramming
  
- March, 2007              The Glory Road Transit Terminal is designated a Priority I project in the Capital Program
  
- November, 2007            Ground Lease authorized for submission to the UT Board of Regents; UT Board of Regents approves a ground lease and directs UT Counsel to work a coordinated agreement with both parties

**AMOUNT AND SOURCE OF FUNDING:**

The estimated project cost is \$8,555,000 of which an FTA grant will be utilized.

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**SECTION HEAD:**

**APPROVED FOR AGENDA:**

**CITY MANAGER:** Patricia D. Aauto, Deputy City Manager **DATE:** April 22, 2008

**RESOLUTION**

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

That the City Manager be authorized to sign a Ground Lease Agreement between the City and the Board of Regents of the University of Texas System to build a Transit Terminal and Multi-level Parking Garage (referred to as the Glory Road Transit Terminal) on property located on Lots 11 through 20, Block 224, Alexander Subdivision, City of El Paso, El Paso County, Texas and a Parking Agreement between the City and the University of Texas at El Paso for Parking within the Parking Garage, and that the staff be authorized to negotiate, the City Attorney's Office to review, and that the City Manager execute any additional documents as necessary during the term of the contract and execute any budget transfers as necessary.

**ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2008**

THE CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

**APPROVED AS TO CONTENT**

\_\_\_\_\_  
*Carmen Arrieta-Candelaria*  
Carmen Arrieta-Candelaria  
Chief Financial Officer

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
*Patricia D. Adauto*  
Patricia D. Adauto, Deputy City Manager  
Development & Infrastructure Services

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
*Tim Omick*  
Tim Omick, Director  
Mass Transit Department

GROUND LEASE

between

the Board of Regents of The University of Texas System,  
as Lessor,

and

City of El Paso  
for the benefit of its  
Mass Transit Department  
as Lessee

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## GROUND LEASE

THIS GROUND LEASE ("Lease") is executed effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008 ("Effective Date"), by and between the BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM, for the use and benefit of THE UNIVERSITY OF TEXAS AT EL PASO ("Lessor"), and the CITY OF EL PASO, for the benefit of its MASS TRANSIT DEPARTMENT ("Lessee").

### 1. WORDS OF LEASING

1.01. Granting Clause. For and in consideration of the covenants made by Lessee herein, and the Rent reserved hereunder, Lessor hereby leases and demises to Lessee and Lessee hereby leases and takes from Lessor the Premises (hereinafter defined), TO HAVE AND TO HOLD the Premises unto Lessee, its permitted successors and assigns, for and during the Term (hereinafter defined).

1.02. Covenant of Quiet Enjoyment. Lessor covenants and warrants, to the extent permitted under the laws and Constitution of the State of Texas, that, so long as Lessee is not in default hereunder, Lessee shall and may peaceably and quietly have, hold, occupy, use, and enjoy and shall have the full and unrestricted use and enjoyment of the Premises during the Term, subject only to any and all easements, rights-of-way, covenants, conditions, restrictions, and outstanding mineral interests and royalty interests, if any, relating to the Premises, to the extent the same may be in force and effect and either shown of record in the Real Property Records of El Paso County, Texas, or apparent on the Premises, and also subject to the approved Plans and Specifications (as hereinafter defined), and all applicable laws, ordinances, and regulations.

1.03. Premises Condition. Lessee accepts the Premises in their current condition AS IS, WHERE IS, and WITH ALL FAULTS and acknowledges that it has examined or will examine, in accordance with the provisions hereof, the Premises and the condition thereof, and that it has not relied on any representation or warranty by Lessor or Lessor's representatives, except as otherwise expressly stated herein, regarding the Premises, including any warranty or representation relating to value, suitability, fitness for a particular purpose, or condition of the Premises.

### 2. PREMISES

2.01. Definition. Except as expressly provided to the contrary in this Lease, reference to "Premises" is Lots 11 through 20, Block 224, Alexander Addition, City of El Paso, El Paso County, Texas described and shown on Exhibit A-1, which land contains approximately 30,840 square feet (0.708 acres) of land area, more or less, together with all rights, easements, privileges, and appurtenances thereto or in anywise belonging.

### 3. TERM

3.01. Term. This Lease is effective as of the date on which it is signed by the last of the parties to sign. The Construction Period is hereby defined as the period of time beginning on the Effective Date and extending to the Rent Commencement Date. The Rent Commencement Date is hereby defined as the earlier of (i) the first day following the Substantial Completion of the Parking Facilities portion of the Project Improvements; or (ii) the first day following the third anniversary of the Effective Date, provided that this period may be extended by the mutual agreement of both parties, subject to obtaining all necessary approvals. The Parking Facilities portion of the Project Improvements include all of the levels above the ground level, and the Ground Level Parking Facilities, consisting of portions of the ground level including the ground level parking, driveways and aisles on the ground level leading to the ground level parking, as well as ramps and driveways to the upper levels, as illustrated on Exhibit A-2. Subject to the terms and conditions hereof, the term of this Lease (the "Term") is for a period consisting of the Construction Period and the period beginning on the Rent Commencement Date and extending through midnight of the last day of the full calendar month which is thirty (30) years after the Rent Commencement Date. For purposes of this agreement, Substantial Completion is defined as the day on which construction of the Parking Facilities portion of the Project Improvements are sufficiently complete to commence operations and have commenced to be operated as a parking facility.

Option for Terminal Lease. The Lessee shall have the right to enter into a ten (10) year lease in a form acceptable to Lessor and at the then fair market rent as determined by an independent appraisal or as mutually agreed by the parties, renewable for an additional ten (10) years, for the Ground Level Terminal Facilities only, as depicted in Exhibit A-3, at the end of the Term hereof, provided that at the time of such lease, and at the time of the subsequent renewal, (i) there is no current University need for the Premises or the Improvements, (ii) Lessee is not in default under the terms of this Lease or the subsequent terminal lease, and (iii) the Improvements are still useful for the purposes for which they are intended.

### 4. USES

4.01. Use. Lessee shall use the Premises solely for the construction, operation, maintenance, and repair of a transit terminal for vehicles related to the operation of a mass transit system and multi-level parking garage containing approximately 500 parking spaces, and at Lessee's option, up to 5000 square feet of commercial retail space (the "Project"). Lessee shall not, at any time during the Term after construction of the Project Improvements as hereinafter defined begins, abandon the Premises. This Lease specifically does not include any oil, gas, and other minerals owned by Lessor in, on, and under the Premises. Upon substantial completion of the Project Improvements, Lessee shall continuously operate and conduct in 100% of the Premises the uses permitted by this section.

4.02. Special Provisions Related to Use. Lessee will finance a substantial amount of the Project Improvements, as hereinafter defined, through funding granted by the Federal Transit Administration. The federal funding will be secured through a "Grant Agreement" (the

"FTA Agreement") with the Federal Transit Administration ("FTA") which agreement will incorporate the Master Agreement for Federal Transit Administration Agreement authorized by 49 U.S.C 5301 *et seq.* Unless otherwise approved by the FTA, Lessee agrees, as a material covenant to Lessor as well as the to the FTA, to comply with the requirements of the FTA with respect to the Lessee's real property, equipment, and supplies financed by the FTA Agreement. Lessee agrees to use the Premises for the purposes required by the FTA Agreement for the duration of the useful life of the Project, as required by the FTA. Lessee acknowledges that Lessor is neither a party, a subrecipient as defined in the FTA Agreement, nor a third-party contractor to the FTA Agreement and Lessee, to the extent authorized by the laws and Constitution of the State of Texas, shall indemnify and hold Lessor harmless against such obligation. Lessee further agrees to notify Lessor and the FTA immediately when the Premises are withdrawn from the use required by the FTA Agreement or when the Project is used in a manner substantially different from the representations Lessee has made in its Advanced Planning Report dated December 2005. Lessee covenants to Lessor that FTA approval of the Project is evidenced by the FTA's granting of an environmental categorical exclusion status to the Project, and that such approval was based on the Project and uses described in said Advanced Planning Report. As used herein, "useful life" shall mean twenty-six and four tenths (26.4) years from the date that the Project is put in service. In order to provide assurance to the Lessor concerning the Lessee's relationship with the FTA, and the extent of the FTA's interest in the Project, Lessee has obtained from the FTA a written acknowledgement, executed by the Regional Administrator of the FTA that is attached hereto as Exhibit C. The assurances contained in that letter form an essential portion of the consideration to Lessor for this Lease, and any abrogation or cancellation of that letter, partially or as a whole, will constitute a failure of consideration for this Lease and result in the immediate termination of the Lease. Lessee will not make any agreement with the FTA changing the useful life of the Project without the prior written consent of Lessor.

In addition, Lessee shall provide Lessor with a title policy at the time of completion of the Project Improvements, in an amount equal to or greater than \$793,000, showing the Premises to be subject only to this Lease.

4.03. Signs. Before erecting or placing any sign upon the Premises, Lessee shall submit the design and specifications of such sign to the Vice President for Business Affairs of The University of Texas at El Paso for approval, which approval shall not be unreasonably withheld.

4.04. Compliance with Laws. Lessee shall comply with all ordinances, laws, and regulations of all governmental authorities applicable to and as are required for Lessee's use and operation of the Premises as such ordinances, laws, and regulations are enforced by any governmental authority having jurisdiction with respect to the Premises, including, without limitation, the Rules and Regulations of the Board of Regents of The University of Texas System, including policies issued pursuant thereto, and the institutional rules and policies of The University of Texas at El Paso (collectively, "Governmental Regulations"). The Board of Regents of The University of Texas System and The University of Texas at El Paso ("UTEP") may enforce and apply Governmental Regulations on the Premises and to any person in or on

the Premises, and may authorize UTEP officers and commissioned peace officers to provide such enforcement, subject to the jurisdictional limitations provided by law.

#### 4.05. Limitation on Detrimental Uses

a. Lessee shall not use the Premises for any unlawful purpose nor cause, permit, or suffer any waste, damages, or injury to, or nuisance upon, any portion of the Premises. Lessee shall not permit any use of the Premises that is unlawful or sexually explicit or that pertains to sexually oriented businesses.

b. Lessee shall comply with all regulations, ordinances, rules, and laws regarding hazardous substances and wastes applicable to the Premises or to Lessee's or any subtenant's occupancy and use of the Premises. Any hazardous substances or wastes located on the Premises and arising out of Lessee's or any subtenant's, contractor's, employee's, or assignee's occupancy and use or activities on the Premises from and after the Effective Date and prior to expiration or earlier termination of this Lease shall be the responsibility of Lessee and Lessee shall be liable and responsible therefor, including, without limitation: (i) removal thereof from the Premises to the extent required by any governmental authority with jurisdiction of any such substances or wastes and the costs therefor; (ii) damages to persons, property, and the Premises caused thereby; (iii) claims resulting therefrom; (iv) fines and costs imposed by any governmental agency in respect thereto; and (v) any other liability as provided by law relating thereto. To the extent authorized by the laws and Constitution of the State of Texas, Lessee shall defend, indemnify, and hold harmless Lessor and Lessor's successors and assigns from any and all such responsibilities, damages, claims, fines, and liabilities, including, without limitation, any costs, expenses and attorney's fees therefor arising out of or relating to this Agreement. This indemnification obligation shall survive the expiration or earlier termination of this Lease. No underground or other storage tanks storing hazardous substances shall be located by Lessee on the Premises. Lessee shall immediately disclose to Lessor any knowledge Lessee may have of any hazardous materials that have been stored, used, or disposed of on the Premises in violation of applicable laws.

### 5. RENT AND OTHER CONSIDERATION

5.01. (a) No Rent will be payable by Lessee from the Effective Date to the Rent Commencement Date. From and after the Rent Commencement Date, Lessee agrees to pay to Lessor annual Rent in the amount of \$79,300.00 per year. Tenant shall pay the Rent to Landlord in annual installments in advance, making the first annual installment payment within six months of the Rent Commencement Date and each subsequent installment each year on or before the anniversary date of the Rent Commencement Date. In the event the Rent Commencement Date occurs on a day other than the first day of a calendar month, Lessee shall pay a daily rental in the amount of \$217.25 for each calendar day from the Rent Commencement Date to the end of the month in which the Rent Commencement Date occurs. This prorated amount will be due simultaneously with the first annual installment payment.

(b) On the first day of the month following the tenth anniversary of the Rent Commencement Date (the "Initial Reset Date") and every tenth anniversary of the Initial Reset Date thereafter (each a "Subsequent Reset Date"), the Rent shall be recalculated as described below. No sooner than 180 days nor later than 90 days prior to the Initial Reset Date or a Subsequent Reset Date, Lessor shall obtain an appraisal, the cost of which will be shared equally by Lessor and Lessee. The appraiser will be selected by Lessor, with the reasonable consent of Lessee, and will determine the current fair market value of the ground rent of the Premises as if vacant land, and the Rent will be set to the greater of the Rent for the preceding ten-year period or the fair market value of the Premises thus determined.

(c) As additional Rent for the Premises, Lessee will pay Lessor a revenue sharing payment equal to 13% of the gross revenues collected or \$50,000 per annum (the "Revenue Floor"), whichever is greater. Gross revenues are defined as that revenue generated as part of the sale of parking spaces to all parties and subleasing of any facility space for any purpose other than the operation of the transit terminal. Lessee will deliver such additional Rent to Lessor on a quarterly basis and it will be due within forty-five (45) days after each quarter end, with a reconciliation at the end of each year.

(d) Within 90 days after Lessee furnishes its reconciliation of gross revenues for any year (the "Audit Election Period"), Lessor may elect to audit Lessee's gross revenues for such year only, subject to the following conditions: (i) the audit shall be prepared by an independent certified public accounting firm of recognized national or regional standing or the state auditor for the State of Texas; (ii) the audit shall commence within 60 days after Lessee makes Lessee's books and records available to Lessor's auditor and shall conclude within 90 days after commencement; (iii) the audit shall be conducted during Lessee's normal business hours at the location where Lessee maintains its books and records and shall not unreasonably interfere with the conduct of Lessee's business; (iv) Lessor and its auditor shall treat any audit in a confidential manner and shall maintain confidentiality except as disclosure is required by law; (v) the accounting firm's audit report shall, at no charge to Lessee, be submitted in draft form for Lessee's review and comment before the final approved audit report is delivered to Lessee, and any reasonable comments by Lessee shall be provided to the auditor for its consideration whether to incorporate into the final audit report; (vi) Lessee shall pay for the costs of the audit if Lessee's reconciliation of gross revenues is 95% or less of the gross revenues determined in the final approved audit report; otherwise, Lessor will pay for the costs of the audit; (vii) Lessee shall pay to Lessor any underpayment determined by the final approved audit report within 30 days of determination. Likewise, Lessor shall refund to Lessee any overpayment determined by the final approved audit report within 30 days of determination; and (viii) the foregoing obligations shall survive the expiration or termination of this Lease. If Lessor does not give written notice of its election to audit Lessee's gross revenues during the Audit Election Period, Lessee's reconciliation of gross revenues for the applicable year shall be deemed accepted for all purposes, and Lessor shall have no further right to audit under this Lease for the lease year at issue. The right of audit in this paragraph is in addition to and separate from any right provided by law or regulation in favor of the State Auditor of the State of Texas.

(e) On the Initial Reset Date and on each Subsequent Reset Date, the Revenue Floor shall be recalculated as described below. The recalculated annual Revenue Floor on the Initial Reset Date and each Subsequent Reset Date shall be an amount calculated by multiplying the initial Revenue Floor by a fraction, the denominator of which is the Consumer Price Index for All Urban Consumers, U.S. City Average ("CPI") for the month which is two (2) months prior to the month and year of the Effective Date of the Lease and the numerator of which is the CPI for the month which is two (2) months prior to the Initial Reset Date or the Subsequent Reset Date, as the case may be.

(f) As additional consideration, from and after the Rent Commencement Date through the expiration or earlier termination of this Lease, Lessor will receive an ongoing right to purchase the exclusive use of parking spaces in the garage from Lessee, at the times, in the quantities, and on the conditions described in the SUN METRO PARKING AGREEMENT of even date herewith and attached hereto as Exhibit D.

5.02. Unrelated Business Income. If Lessor is advised by its counsel at any time that any part of the payments by Lessee to Lessor under this Lease may be characterized under the Internal Revenue Code or its regulations as unrelated business taxable income or may not be excludable from unrelated business taxable income, then Lessee, at the option of Lessor, shall enter into an amendment of this Lease that will enable Lessor to avoid such income, so long as the amendment does not require Lessee to pay more to Lessor or accept fewer services from Lessor than this Lease provides.

## 6. TAXES

6.01. Lessor and Lessee Exempt Organizations. Lessee, with Lessor's reasonable cooperation, shall act diligently to cause the Premises to be recognized as a separate tract for real estate tax purposes. Lessor and Lessee acknowledge that each is an organization exempt from local taxation and that no ad valorem property taxes should be assessed against either in connection with the Premises or Project. However, to the extent that the Premises or the Project are for any reason not exempt from ad valorem taxation, Lessee shall be responsible for the timely payment of all such taxes that accrue during the term of this Agreement prior to their delinquency.

## 7. UTILITIES

7.01. Utilities. Lessee shall pay, or caused to be paid, when due all bills for water, heat, gas, telephone, electricity, garbage disposal and collection, and other utilities used on the Project, including but not limited to those associated with the transit center, parking, and retail.

## 8. NET LEASE

8.01. Net Lease. Lessor shall not be required to make any expenditure, incur any obligation (other than those expressly set forth in this Lease), or incur any liability of any kind whatsoever in connection with this Lease or Lessee's financing, ownership, construction,

maintenance, operation, replacement, or repair of the Premises or the Improvements. It is expressly understood and agreed that this is a completely net lease intended to assure Lessor the Rent herein reserved on an absolute net basis.

## 9. IMPROVEMENTS

9.01. Construction of Project. The "Project Improvements" referred to in this Article 9 shall mean and refer to a transit terminal and multi-level parking garage containing approximately 500 parking spaces, and at Lessee's option up to 5,000 square feet of commercial retail space to be constructed on the Premises by Lessee in accordance with the Plans and Specifications (herein so called) approved by Lessor for the construction of the Project Improvements and for landscaping. "Improvements" shall mean the Project Improvements and any and all other improvements now existing or hereafter placed on the Premises as permitted by this Lease. The Project Improvements shall substantially conform to the preliminary drawings and plans attached hereto as **Exhibit A-2, Exhibit A-3 and Exhibit A-4**, and incorporated herein for all purposes. Improvements will not include any personal property that is not integral to the operation of the parking garage.

9.02. Plans and Specifications. At each of the following stages of the development of the design, Lessee shall submit the Plans and Specifications to Lessor for its approval: Schematic Design, Design Development, 50% Construction Documents, and final Construction Documents. The Plans and Specifications shall be prepared by architects and engineers registered in the State of Texas. Lessor shall respond to each of Lessee's requests for approval of the Plans and Specifications within twenty-one (21) days after receipt by Lessor. If Lessor objects thereto within such 21 day period, Lessee shall provide to Lessor for further review revised copies of such plans within fifteen (15) business days following receipt of such objections. Failure of Lessor to object within such 21 day period will be deemed to indicate Lessor's approval. This process of preparation, submittal, review, and resubmittal shall continue until the Plans and Specifications are approved by Lessor.

9.03. Additional Review Matters. Lessor shall have the right to ensure that the proposed Improvements are compatible with the existing or permitted uses of property in and around the Premises, and that the architectural elements of the Improvements are sympathetic to buildings on adjoining parcels and on the campus generally. To this end, Lessee shall provide to Lessor samples of actual materials (including color) for the following: (a) roofing, (b) masonry, and (c) exterior paint.

9.04. Pre-Construction Requirements. Prior to commencement of construction (or, after completion of the Improvements, prior to undertaking any Remodeling (defined below)), (1) Lessee shall deliver to Lessor a copy of the signed contract between Lessee and the general contractor for construction of the Project Improvements ("Construction Contract") or any contract between Lessee and the general contractor for Remodeling, as applicable; and (2) Lessee shall provide evidence that it has obtained payment and performance bonds from the contractor in an amount equal to the contract price set forth in the Construction Contract or the contract for Remodeling, as applicable, naming Lessee and Lessor as dual obligees,

satisfactory in form and content to Lessor, and issued by a surety satisfactory to Lessor. Lessor shall note in writing any required changes or corrections to the payment bonds and performance bonds for work to be done pursuant to the Plans and Specifications or the Remodeling Plans (defined below) within five (5) business days after receipt thereof. In addition to the foregoing, the Lessee and Lessor shall have entered into such common wall, mutual support, and/or ingress and egress agreements ("Project Common Use and Ownership Agreements") as are determined to be necessary by Lessor's engineers and the Office of General Counsel of Lessor, due to the nature of the Project design and the ownership during this Lease of the Project, the Premises, and the underlying land.

9.05. Completion of Project Improvements. Lessee, at Lessee's sole cost, risk, and expense, shall commence construction of the Project Improvements upon receipt of a building permit from the City of El Paso and shall diligently pursue such construction to completion. In all events, Lessee shall commence construction of the Project Improvements within twelve (12) months following the Effective Date of this Lease and complete the same within eighteen (18) months after the commencement of the construction of the Project Improvements, subject to delays of not more than thirty (30) days (cumulative) resulting from events of Force Majeure (defined below); provided, however, that extensions may be granted by Lessor upon a showing of good cause. Lessee shall not make any change to the Project Improvements as shown in the Plans and Specifications approved by Lessor without the prior written consent of Lessor. Lessee shall, upon written request of Lessor, make, in such detail as may reasonably be required, and forward to Lessor, reports in writing as to the actual progress of the construction or Remodeling. During construction, the work shall be subject to inspection by Lessor's representatives and by City of El Paso inspectors and personnel in order to verify reports of construction, determine compliance with safety, fire, and building codes to the extent applicable to the Project, and determine compliance with approved Plans and Specifications or Remodeling Plans or such other inspections as may be necessary in the reasonable opinion of the Lessor. Lessee must commence operation of the Project Improvements as a parking garage not later than fifteen (15) days after substantial completion.

9.06. Construction Standards. Any and all Improvements shall be constructed, and any and all alteration, renovation, repair, refurbishment, or other work with regard thereto shall be performed, in accordance with the following "Construction Standards" (herein so called):

a. All such work shall be performed without cost, expense, or other liability to Lessor and in a good and workmanlike manner in accordance with good industry practice for the type of work in question and in accordance with the Plans and Specifications or the Remodeling Plan, as applicable. All work shall be performed by Lessee's contractors, subcontractors, or agents and at the sole cost and risk of Lessee. Lessee shall pay all architectural and engineering fees, any permit or license fees, and all other costs and expenses associated with the work;

b. All such work shall be done in compliance with all applicable building codes, ordinances, and other laws or regulations of the Lessor and The University of Texas at El Paso or any other governmental authorities having jurisdiction. The Project Improvements shall

comply with the National Fire Protection Association Life Safety Code 101, and where appropriate 101A, as adopted by the Texas Fire Marshall. Lessee agrees the Project Improvements will comply with these codes on the Rent Commencement Date. All work shall also conform to Lessor's building and architectural standards for the University of Texas at El Paso, including the Bhutanese design theme;

c. No such work shall be commenced until there shall have been first obtained all licenses, permits, and authorizations required by all governmental authorities having jurisdiction;

d. Lessee shall have obtained and shall maintain in force and effect the insurance coverage required in Article 13 with respect to the type of construction or work in question;

e. After commencement, such work shall be prosecuted with due diligence to its completion;

f. Within 120 days after Substantial Completion, Lessee shall provide to Lessor a copy of as-built Construction Documents showing the Project Improvements as they were actually constructed.

g. LESSEE IS EXPRESSLY PLACED ON NOTICE OF THE NATIONAL HISTORICAL PRESERVATION ACT OF 1966 AS AMENDED 16 U.S.C.A. §470 et seq.) AND THE ANTIQUITIES CODE OF TEXAS (CHAPTER 191, TEX. NAT. RES. CODE ANN.). BEFORE BREAKING GROUND AT THE PREMISES, LESSEE SHALL NOTIFY THE TEXAS HISTORICAL COMMISSION. AN ARCHEOLOGICAL SURVEY MIGHT BE REQUIRED BY THE COMMISSION BEFORE CONSTRUCTION OR INSTALLATION OF ANY IMPROVEMENTS CAN COMMENCE. FURTHER, IN THE EVENT THAT ANY SITE, OBJECT, LOCATION, ARTIFACT, OR OTHER FEATURE OF ARCHEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL, OR HISTORIC INTEREST IS ENCOUNTERED DURING THE ACTIVITIES AUTHORIZED BY THIS LEASE, LESSEE WILL IMMEDIATELY CEASE SUCH ACTIVITIES AND WILL IMMEDIATELY NOTIFY LESSOR SO THAT ADEQUATE MEASURES MAY BE UNDERTAKEN TO PROTECT OR RECOVER SUCH DISCOVERIES OR FINDINGS, AS APPROPRIATE. In the event Lessee is required to cease work, Lessor shall not be liable for any costs of Lessee, Lessee's contractors, subcontractors, or any other person or entity as a result of any interruption of Lessee's use of the Premises; and

h. Lessee shall cause all Improvements and alterations to the Premises to be designed, constructed, maintained, and operated in accordance with (i) the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Texas Architectural Barriers Act (Texas Government Code, Chapter 469), and all regulations promulgated thereunder, and (ii) the ordinances and codes of the City of El Paso, Texas, notwithstanding the applicability of such ordinances and codes to construction located on property owned by the State of Texas. Lessee shall obtain a building permit from the City of El Paso and shall cooperate fully with all

inspectors and other officials of the City of El Paso concerning design, construction, maintenance, and operation of all Improvements; nothing herein shall be deemed or interpreted to impose upon the Premises City of El Paso zoning, density, or other development requirements.

9.07. Protection of Lessor against Cost or Claim. Lessee shall not permit to be foreclosed any mechanic's or materialman's lien or other statutory lien against the Premises or Improvements by reason of work, labor, services, or materials supplied to or at the request of Lessee pursuant to any construction on the Premises, or materials or labor supplied to or at the request of Lessee. Lessee shall pay and discharge, cause to be paid and discharged, or bond around any such mechanic's or materialman's lien filed against the Premises or Improvements within twenty (20) days after the filing thereof. Lessee may in good faith and at Lessee's own expense contest the validity of such asserted lien, claim, or demand, in which event Lessee shall bond around such lien or claim. In no event shall Lessee have the right, authority, or power to bind Lessor or any interest of Lessor in the Premises for any claim for labor or material or for any other charge or expense incurred in the construction or alteration of the Improvements.

9.08. Maintenance. Throughout the Term hereof, Lessee, at Lessee's sole cost and expense, shall maintain the Premises and Improvements in good condition and repair (ordinary wear and tear excepted) and operate and maintain the same in accordance with all applicable laws, rules, ordinances, orders, and regulations of federal, state, county, municipal, and other governmental agencies and bodies having jurisdiction over the Premises. Lessor shall have no obligation hereunder to maintain or repair the Premises or any Improvements.

9.09. Ownership of Improvements. Except as otherwise provided herein in respect to Lessee's right to remove certain personal property, legal title to all Improvements shall be owned by Lessee until the expiration or earlier termination of this Lease. All Improvements on the Premises at the expiration or earlier termination of this Lease shall, without compensation to Lessee, become Lessor's property free and clear of all claims to or against them by Lessee or anyone claiming by, through, or under Lessee. Lessee will maintain legal title to the Project throughout the useful life of the Project until the expiration or earlier termination of this Lease. Prior to transfer of legal title to the Lessor for a use other than the provision of public transportation services, Lessee may remove such personal property which is integral to the utilization of the terminal for a transportation facility.

9.10. Alterations. At least sixty (60) days prior to undertaking any material structural alteration, renovation, or remodeling of the Project Improvements ("Remodeling"), Lessee shall submit plans for such Remodeling (the "Remodeling Plans") to Lessor for approval, which approval shall not be unreasonably withheld provided that such changes or alterations (i) are consistent with the Plans and Specifications approved by Lessor, and (ii) do not result in a substantial or material change in the character or the facade of the Improvements existing as of the date of such alterations. Lessor shall either approve or disapprove any such Remodeling Plans within thirty (30) days after receipt of such plans from Lessee.

## 10. ACCESS

10.01. Access for Lessor. Lessee shall permit Lessor's agents, representatives, and employees to enter on the Premises at reasonable times for the purposes of review and inspection as provided in this Lease, to determine whether Lessee is in compliance with the terms of this Lease, and for other reasonable purposes.

## 11. ENCUMBRANCE

11.01. Encumbrance. Lessee shall not have the right to mortgage, pledge, hypothecate, or otherwise transfer or assign the leasehold estate granted hereby as security for a debt or other obligation incurred for the construction, maintenance, operation, repair, or refinancing of the Project Improvements (collectively, a "Mortgage") without consent thereto from Lessor. In no event shall any such Mortgage attach to or become a lien on the Premises or any interest other than Lessee's leasehold estate and other rights, title, and interests granted to Lessee hereunder.

11.02. FTA Rights. Lessor acknowledges the FTA has the rights as set out in the FTA Agreement in respect of Lessee's interest in the Project pursuant to the FTA Agreement. Lessor shall recognize the FTA or other appropriate agency, or its successor or assignee (a "FTA Party") as the "Lessee" hereunder in the event an FTA Party succeeds to Lessee's interest in the Project in accordance with the terms of the FTA Agreement; provided, however, that Lessor has received a reconfirmation from the FTA as to the continuing validity of the assurances given by the FTA in Exhibit C hereto.

## 12. ASSIGNMENT; SUBLETTING

12.01. Assignment and Sublease. Lessee shall not have the right to assign, sublet, or otherwise transfer Lessee's interest in this Lease (other than to an FTA Party pursuant to Section 11.02, provided that the FTA Party has made an attornment to the Lessor in form and substance satisfactory to Lessor) without the prior written approval of Lessor.

## 13. INSURANCE; INDEMNITY

### 13.01. Insurance.

a. Lessee's Insurance. During the Term, Lessee will keep and maintain (or cause to be kept and maintained) in force policies of:

i. Special form property insurance (also called causes of loss-special form insurance) on the Improvements or any replacements or substitutions therefor and Lessee's fixtures and personal property, with deductibles in an amount that Lessee may reasonably

determine and Lessor approves, from and after commencement of construction of the Project Improvements, against Insurable Risks (hereinafter defined), and builder's risk completed value form during construction, in amounts not less than one hundred percent (100%) of actual replacement cost (exclusive of cost of excavation, foundations, footings below the surface of the ground, and costs of underground flues, pipes, and drains). The actual replacement cost shall be confirmed from time to time (but not more frequently than once in any twelve calendar months) at the request of Lessor, by one of the insurers or, at the option of Lessee, by an appraiser, engineer, architect, or contractor approved by the issuer of such insurance policy and paid by Lessee. "Insurable Risks" means those risks covered by an "All Risk" property insurance policy (including fire and direct loss by windstorm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, and land vehicles); sonic shock wave; and leakage from fire protective equipment;

ii. Commercial general liability insurance with the following coverages: (a) premises/operations; (b) independent contractors; (c) broad form contractual liability specifically in support of, but not limited to, the indemnification provisions contained in this Lease; (d) broad form property damage; (e) personal injury liability with employee and contractual exclusions removed; (f) host liquor liability; and (g) a severability of interest endorsement, and with the following limits: limits of not less than One Million Dollars (\$1,000,000) per occurrence and not less than Two Million Dollars (\$2,000,000) in the aggregate for bodily injury, sickness, or death, and property damage; and umbrella liability insurance that provides coverage at least as broad as, applies in excess of, and follows form of the primary liability coverage required hereinabove, with limits of not less than Five Million Dollars (\$5,000,000) per occurrence and in the aggregate. Lessor shall be named as an additional insured. The amounts of such insurance shall be reviewed on the fifth (5th) anniversary date of this Lease and each fifth (5th) year thereafter and shall be increased, if necessary, so that the amount of such coverage is at all times generally equal to the limits described herein measured in 2005 dollars; and

iii. workers' compensation insurance with limits as reasonably approved by Lessor and employer's liability insurance with limits of not less than \$1,000,000 for each accident, \$1,000,000 for disease--policy limit, and \$1,000,000 for disease--each employee.

All such insurance shall be secured and maintained in a company or companies reasonably satisfactory to Lessor, and shall be carried in the name of Lessee. Lessee's insurance shall be primary and not contributory to that carried by Lessor. Lessee shall provide copies of insurance policies required hereunder to Lessor on or before the Rent Commencement Date. The commercial general liability policy shall include an additional insured endorsement naming Lessor as an additional insured. The property insurance policy shall name Lessor as "an insured as its interest may appear."

b. Waiver of Subrogation. Lessee shall secure an appropriate clause in, or an endorsement upon, each policy of insurance required to be provided by it hereunder, except for the commercial general liability policy, pursuant to which the respective insurance companies waive subrogation and rights of recovery or permit the insured to agree with the other party

hereto to waive any claim it might have against such party. The waiver of subrogation or permission for waiver of any claim herein-before referred to shall extend to the agent of each party hereto and their respective contractors and employees and, in the case of Lessee, shall also extend to all the persons occupying or using all or any part of the Improvements from time to time.

To the extent permitted by law, Lessee hereby releases Lessor with respect to any claim (including a claim for negligence) that it might otherwise have against Lessor, its officers, agents, or employees, for loss, damage, or destruction with respect to its property or injury to persons by fire or other casualty or other occurrence, to the extent typically covered under policies of all risk property insurance or workers' compensation or employer's liability insurance. THIS RELEASE SHALL APPLY EVEN IF THE LOSS OR DAMAGE SHALL HAVE BEEN CAUSED BY THE FAULT OR NEGLIGENCE OF LESSOR OR ANY PERSON FOR WHOM LESSOR MAY BE RESPONSIBLE

13.02. Indemnity. Lessee, to the extent authorized by the laws and Constitution of the State of Texas, hereby agrees to defend and indemnify and hold harmless Lessor from and against all claims and all costs, expenses, and liabilities incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of or in any way related to Lessee's, subtenants', and/or Lessee's assignees', employees', contractors', guests', and/or invitees' use or occupancy of the Premises or any of the activities of any such parties in or on the Premises, and/or the design or construction of the Improvements, but not including any actions taken by Lessor or Lessor's agents or employees.

13.03. Contractor's Insurance. Lessee shall cause any contractor of Lessee performing work on the Premises or managing the Project to maintain insurance as follows, with such other terms, coverages, and insurers as Lessor shall reasonably require from time to time:

a. commercial general liability insurance, including contractor's liability coverage, contractual liability coverage, completed operations coverage, All Risk property damage endorsement, and contractor's protective liability coverage, to afford protection with limits, for each occurrence, of not less than One Million Dollars (\$1,000,000) with respect to personal injury, death, or property damage; and

b. workers' compensation insurance in form and amounts required by law, and employer's liability insurance with not less than the following limits:

Each Accident	\$1,000,000
Disease--Policy Limit	\$1,000,000
Disease--Each Employee	\$1,000,000

Such insurance shall contain a waiver of subrogation provision in favor of Lessor and its employees and agents.

c. builder's risk insurance during the original construction of the Premises or any Remodeling or material reconstruction of the Premises.

d. business automobile liability insurance covering all owned, non-owned or hired automobiles to be used by contractor, with coverage for at least \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

Lessee's contractor's insurance shall be primary and not contributory to that carried by Lessee, Lessor, their agents, or Lender. Lessee and Lessor shall be named as additional insureds on Lessee's contractor's insurance policies.

#### 14. CASUALTY

14.01. Damage to Improvements. Should the Improvements or any other fixtures on the Premises be wholly or partially destroyed or damaged by fire or any other casualty whatsoever during the Term, Lessee shall commence the work of repair, reconstruction, or replacement of the damaged or destroyed Improvements and fixtures and prosecute the same with reasonable diligence to completion, so that the same shall, at the sole expense of Lessee, be restored to substantially the same size, function, and value as existed prior to the damage.

14.02. No Abatement of Rental. In no event shall Lessee be entitled to any abatement, allowance, reduction, or suspension of Rent or other charges herein reserved.

#### 15. CONDEMNATION

##### 15.01. Condemnation.

a. Definitions. The following definitions apply in construing provisions of this Lease relating to a taking of all or any part of the Premises or the Improvements or any interest in them by eminent domain or inverse condemnation:

i. Taking means any taking by eminent domain or by inverse condemnation or 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 authority or entity under threat of condemnation in avoidance of an exercise of eminent domain. The Taking shall be considered to take place as of the later of (x) the date actual physical possession is taken by the condemnor or (y) the date on which the right to compensation and damages accrues under the law applicable to the Premises.

ii. Total Taking means the Taking of the fee title to all the Premises and the Improvements.

iii. Substantial Taking means the Taking of so much of the Premises or Improvements or both that the remaining Premises would not be economically and feasibly

usable, in Lessee's reasonable opinion, by Lessee, or the Improvements would be, in Lessee's reasonable opinion, other than reasonably efficient or economic for Lessee's use.

b. Notice to Other Party. The party receiving any notice of the kinds specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- i. Notice of intended Taking.
- ii. Service of any legal process relating to condemnation of the Premises or Improvements.
- iii. Notice in connection with any proceedings or negotiations with respect to such condemnation.
- iv. Notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

c. Representative of Each Party; Effectuation. Lessor and Lessee shall each have the right to represent its respective interests in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of his or its claims. Lessor and Lessee each agrees to execute and deliver to the other any instruments that may be required to effectuate or facilitate the provisions of this Lease relating to condemnation.

d. Total or Substantial Taking. On a total Taking, Lessee's obligation to pay Rent shall terminate on the day of Taking. If Lessee determines that the Taking is substantial under the definition appearing in Subsection 15.01.a.iii. above, Lessee may, by notice to Lessor given within one hundred twenty (120) days after Lessee receives notice of intended Taking, elect to treat the Taking as a Substantial Taking. If Lessee does not so notify Lessor, the Taking shall be deemed a Partial Taking. A Substantial Taking shall be treated as a Total Taking if (1) Lessee delivers notice to Lessor within one hundred twenty (120) days after Lessee receives notice of intended Taking, as provided above, and (2) Lessee is not in default under this Lease and has complied with all Lease provisions concerning apportionment of the award. If these conditions are not met, the Taking shall be treated as a Partial Taking.

e. Delivery of Possession. So long as Lessee is not in Default under this Lease, Lessee may continue to occupy the Premises and Project Improvements until the day of Taking.

f. Award for Total Taking. On a Total Taking, the award therefor shall be distributed and paid to Lessee and Lessor as their respective interests under this Lease (as if the same had not been terminated) may appear. In determining their respective interests:

- i. The interest of Lessor shall be based on the value of Lessor's reversionary interest in the Premises and Improvements taking into account the leasehold estate created by this Lease, the amount of rental paid by Lessee and the value of non-monetary

consideration, if any, to Lessor hereunder, and all of the other terms and provisions of this Lease; and

ii. The interest of Lessee shall be based on the value of Lessee's interest in the Premises and Improvements, including the value of the improvements for the Term and the value of Lessee's leasehold estate and interests under this Lease.

g. Partial Taking. In the event of a Partial Taking, Lessor shall be entitled to a portion of the award equal to the value of the fee simple title to the portion of the Premises taken, exclusive of the value of the Improvements and Lessee shall be entitled to the balance of the award. In such event, this Lease shall remain in full force and effect covering the remaining portion of the Premises. Lessee shall, subject to the rights of each Lender, promptly commence reconstruction of the Improvements damaged by such Partial Taking to as near the condition as existed prior to such Taking as is reasonably practicable and diligently prosecute the same to completion.

h. Taking of Less than Fee Title. On any Taking of the temporary use of all or any part or parts of the Premises or Improvements or both for a period, or of any estate less than the fee, ending on or before the expiration date of the Term, neither the Term nor the Rent shall be reduced or affected in any way, and Lessee shall be entitled to any and all awards for the use or estate taken. 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.

## 16. DEFAULT; REMEDIES

16.01. Lessee's Default. Each of the following events shall be a default by Lessee and a breach of this Lease:

a. Failure to timely and fully perform Lessee's obligations under Article 9 of this Lease.

b. Failure or refusal to pay when due the Rent as provided in Article 5 of this Lease.

c. Failure or refusal to pay when due any other sum required by this Lease to be paid by Lessee if such failure to pay is not cured within twenty (20) days after written notice thereof is provided to Lessee.

d. Failure by Lessee to perform as required any other covenant, agreement, or obligation (other than the payment of a liquidated sum of money) of Lessee under this Lease if the same is not cured within thirty (30) days after notice of such failure from Lessor to Lessee; provided, that, if such default is of a nature that cannot reasonably be expected to be cured within said thirty (30) days, then for such longer time as may be reasonably necessary so long as

Lessee commences the cure within said thirty (30) days and thereafter diligently prosecutes the same to completion.

e. The taking by execution of Lessee's leasehold estate for the benefit of any person other than a Lender or purchaser at a foreclosure under a Mortgage.

f. The filing of a petition for relief against Lessee, as debtor, under the Federal Bankruptcy Code (the "Code"), as now or hereafter constituted, or any other applicable federal or state law of similar import, or the entry of a decree or order by a court having jurisdiction over the Premises, appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of or for Lessee or any substantial part of the properties of Lessee or ordering the winding up or liquidation of the affairs of Lessee, and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days.

g. The commencement by Lessee of a voluntary case under the Code, as now or hereafter constituted, or any other applicable federal or state law of similar import, or the consent or acquiescence by Lessee to the commencement of a case under the Code or such similar law or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of or for Lessee or any substantial part of the property of Lessee.

16.02. Lessor's Remedies. Upon default hereunder by Lessee, Lessor has the following remedies in addition to all other rights and remedies provided by law or equity, to which Lessor may resort cumulatively or in the alternative:

a. Lessor may, at Lessor's election, terminate this Lease by giving Lessee notice of termination. On the giving of the notice, all of Lessee's rights in the Premises and in all Improvements shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises and all Improvements and Lessor may re-enter and take possession of the Premises and all Improvements and eject all parties in possession or eject some and not others or eject none. Termination under this Section 16.02.a shall not relieve Lessee from the payment of any sum then due to Lessor or from any claim for damages previously accrued or then accruing against Lessee.

b. Lessor may, at Lessor's election, re-enter the Premises, and, without terminating this Lease, at any time and from time to time relet the Premises and improvements or any part or parts of them for the account and in the name of Lessee or otherwise. Lessor may, at Lessor's election, eject all persons or eject some and not others or eject none. Lessor shall apply all rents from reletting, if any, first to the reasonable costs and expenses incurred by Lessor in reletting the Premises, then to the reasonable costs and expenses incurred by Lessor in operating and maintaining the Improvements, and the balance to rents and other sums payable by Lessee to Lessor. Lessor shall have no duty to remit any sums thus collected to Lessee. Any reletting may be for the remainder of the term or for a longer or shorter period. Lessor may execute any leases made under this provision either in Lessor's name or in Lessee's name and shall be entitled to all rents from the use, operation, or occupancy of the Premises or

Improvements or both. No act by or on behalf of Lessor under this provision shall constitute a termination of this Lease unless Lessor gives notice of termination. Nothing contained herein shall be deemed to place any obligation on Lessor to relet the Premises.

16.03. Mitigation of Damages. If Lessee abandons the Premises or vacates the Premises, or if Lessor terminates Lessee's right to possession of the Premises as a result of a default by Lessee, Lessor shall not have any obligation to relet or attempt to relet the Premises, or any portion thereof, unless applicable law imposes such an obligation on Lessor and prohibits a waiver of that obligation. To the fullest extent allowed by law, Lessee hereby waives any obligation on the part of Lessor to mitigate damages. If applicable law requires Lessor to mitigate damages under any circumstances and prohibits a waiver by Lessee of that obligation, the parties hereby agree that Lessor shall have taken objectively reasonable efforts to so mitigate if Lessor has done either of the following within one hundred twenty (120) days after Lessee no longer occupies the Premises: (a) announce the availability of the Premises for lease in a suitable trade journal or El Paso, Texas newspaper once a month, or request proposals for lease of the Premises by a request for proposals process as determined by Lessor; or (b) show the Premises to prospective lessees. Lessee acknowledges the unique nature of the Premises and the permitted use and its significance to campus life at UTEP and agrees that Lessor shall have no obligation to lease the Premises to any willing lessee. Rather, the lessee must be suitable under the circumstances and in Lessor's sole discretion, considering such factors, among others, as financial responsibility, the identity and business reputation of the proposed lessee, and the experience of the proposed lessee in operating similar projects.

16.04. Notice of Lessor's Default. Lessor shall not be considered to be in default under this Lease unless (a) Lessee has given written notice specifying the default and (b) Lessor has failed for thirty (30) days after receipt of such notice to cure the default or to commence cure within such time and then pursue the same diligently. To the extent permitted by applicable law, Lessee hereby waives the provisions of § 91.004(b) of the Texas Property Code (or any successor thereto) and any other laws that may grant to Lessee a lien on any of Lessor's property or on any rental due to Lessor.

16.05. Unavoidable Default or Delay; Waiver. Any prevention, delay, nonperformance, or stoppage due to any of the following causes shall excuse nonperformance for the period of any such prevention, delay, nonperformance, or stoppage, except the obligations imposed by this Lease for the payment money. The causes referred to above are strikes, lockouts, labor disputes, failure of power, acts of God, acts of public enemies of this State or of the United States, riots, insurrections, civil commotion, inability to obtain labor or materials or reasonable substitutes for either, governmental restrictions or regulations or controls, casualties, or other causes beyond the reasonable control of the party obligated to perform (collectively, "Force Majeure").

No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel, or otherwise. If either party brings any action or proceeding to enforce,

protect, or establish any right or remedy, the prevailing party shall be entitled to recover reasonable attorney's fees; provided, however, that Lessor shall be so obligated only to the extent permitted under the laws and Constitution of the State of Texas and Lessor's attorney's fees for Lessor's attorneys shall be the actual amount paid or an amount calculated at a rate equal to the average rate charged by attorneys for comparable services in law firms offering similar services with at least twenty (20) partners, shareholders, or members with offices in Austin, Texas, whichever is greater.

16.06. Payment on Default. If Lessor is compelled or elects to pay any sum of money or do any acts that require the payment of money by reason of Lessee's failure or inability to perform any of the provisions of this Lease after passage of any notice and cure period provided under any other provisions of this Lease, which Lessor may elect in its sole discretion, Lessee shall promptly, upon demand, reimburse Lessor for such sums, and all such sums shall bear interest at the highest allowable rate under the laws of the State of Texas (the "Default Rate") from the date of expenditure until the date of such reimbursement. Other sums payable hereunder that are not paid by Lessee when due shall bear interest at the Default Rate from and after the date of demand therefor by Lessor until the date of payment thereof.

## 17. REPRESENTATIONS AND WARRANTIES

17.01. Lessee's Representations and Warranties. Lessee represents and warrants that:

a. As of the execution date of this Lease, Lessee is a home rule Municipal Corporation duly organized and validly existing under the laws of the State of Texas and is duly qualified to transact business under the laws of the State of Texas and has the power and authority to carry on its business as presently conducted and as contemplated to be conducted on the Premises by this Lease and to enter into and perform its obligations under this Lease; and the execution, delivery, and performance by Lessee of this Lease has been duly authorized by all necessary City of El Paso action.

b. As of the execution date of this Lease, the execution, delivery, and performance of this Lease by Lessee will not violate any law or Lessee's organizational documents.

17.02. Lessor's Representations and Warranties. Lessor represents and warrants that:

a. Except as disclosed to Lessee, as of the execution date of this Lease, Lessor is the record owner of the Premises and Lessor has all power and authority necessary to enter into this Lease.

b. As of the execution date of this Lease, to Lessor's current actual knowledge, there is no pending or threatened condemnation action pertaining to the Premises.

c. Except as disclosed to Lessee, Lessor has not executed any lease covering the Premises that has not been terminated or the term of which has not expired.

## 18. EXPIRATION; TERMINATION

18.01. Lessee's Duty to Surrender. At the expiration or earlier termination of this Lease, Lessee shall surrender to Lessor possession of the Premises and all portions of the Project located on or over the Premises, together with all fixtures, trade fixtures, equipment, and personal property located on the portions of the Premises owned by Lessee and used in connection with the operation of the Project, but specifically excluding Lessee's inventory, computers, maintenance equipment, furniture, furnishings, and other office equipment, and any personal property integral to the operation of the transit center, all of which Lessee shall have the right and option to remove. Lessee shall leave the surrendered Premises, improvements, and any other property reasonably necessary to operate the Premises and portions of the Project located on or over the Premises in good condition. All property that Lessee is required to surrender shall become Lessor's property at the expiration or earlier termination of this Lease without compensation to Lessee. All property that Lessee is not required to surrender but that remains on the Premises for thirty (30) days following the expiration or earlier termination of this Lease shall, at Lessor's election, become Lessor's property at the expiration or earlier termination of this Lease without compensation to Lessee.

If Lessee fails to surrender as aforesaid at the expiration or sooner termination of this Lease, Lessee shall defend and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding lessee founded on or resulting from Lessee's failure to surrender.

18.02. Lessor's Option to Require Demolition. Lessor shall have the option to require Lessee to demolish the portions of the Project located on or over the Premises and clear the Premises of all rubble and debris at Lessee's sole cost and expense upon the expiration or earlier termination of this Lease (all of such demolition and clearing being herein referred to as the "Demolition"). The Demolition shall be performed in accordance with the Construction Standards in Section 9.06 to the extent they are applicable to demolition work. Lessor shall give Lessee notice of its exercise of this option no later than sixty (60) days before the expiration of the Term or thirty (30) days after the termination of this Lease for reasons other than the expiration of the Term. If Lessor exercises its option to require demolition, Lessee shall complete Demolition within sixty (60) days after the expiration of the Term or, if this Lease is terminated before the expiration of the Term, within ninety (90) days after Lessor's notice exercising its option to require Demolition. During such Demolition period, Lessee's obligations under this Lease to indemnify Lessor and to maintain insurance shall remain in full force and effect. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

18.03. Holding Over. This Lease shall terminate without further notice at the expiration of the Term. Any holding over by Lessee after expiration shall not constitute a renewal or extension or give Lessee any rights in or to the Premises and/or the Project Improvements, except as otherwise expressly provided in this Lease, and Lessee shall pay, as liquidated damages, the then current fair market rental value of the Premises and the Project

Improvements, calculated on a per diem basis, multiplied by two (2) for the period during which Lessee possesses such property beyond the expiration hereof.

19. GENERAL CONDITIONS; MISCELLANEOUS PROVISIONS

19.01. Transactions Between Parties.

a. Approval of Ancillary Agreements. Lessor agrees that if it becomes necessary or desirable for Lessor to approve in writing any ancillary agreements or documents concerning the Premises or concerning the construction, operation, or maintenance of the Project Improvements or to alter or amend any such ancillary agreements between Lessor and Lessee or to give any approval or consent of Lessor required under the terms of this Lease, Lessor hereby authorizes, designates, and empowers the following officers of The University of Texas at El Paso to execute any such agreement, approvals, or consents necessary or desirable: the President or the Vice President for Business Affairs of UTEP or their successors in function, subject to required approvals (if any) by appropriate University of Texas System officials. The City Manager or her/his designee is authorized, designated, and empowered to execute any agreements, approvals, amendments, or consents necessary to effectuate the intent of this Agreement, provided that such amendment, approval, consent, or agreement does not increase the City's costs.

b. Notice. As used in this Lease, notice includes but is not limited to the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, and appointment. No notice of the exercise of any option or election is required unless the provision giving the election or option expressly requires notice. All notices must be in writing. Notice is considered given either (a) when delivered in person or by facsimile transmission (however, if a facsimile transmission is received after 5:00 p.m. Central Time, it shall be deemed received the following business day) to the recipient named as below, or (b) three (3) days after deposit in the United States mail in a sealed envelope, wrapper, or container, either registered or certified mail, return receipt requested, postage and postal charges prepaid, addressed by name and address to the party or person intended as follows:

Notice to Lessor:

The University of Texas at El Paso  
Administration Building Room 301  
El Paso, Texas 79968  
Attention: Vice President for Business Affairs  
Telephone: 915-747-5113  
Fax: 915-747-5068

With a copy to:

The University of Texas System  
Real Estate Office  
201 West 7th Street, Suite 416  
Austin, Texas 78701  
Attention: Executive Director  
Telephone: (512) 499-4333  
Fax: (512) 499-4388

Notice to Lessee:

City Of El Paso  
ATTN: City Manager  
2 Civic Center Plaza  
El Paso, Texas 79901  
Telephone – 541-4844  
Fax: 541-4866

With a copy to:

City of El Paso  
ATTN: City Engineer  
2 Civic Center Plaza  
El Paso, Texas 79901  
Telephone – 541-4423  
Fax: 541-4441

Facsimile notices shall be followed by delivery by first class mail as provided above. Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another person whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

c. Nonmerger of Fee and Leasehold Estates. Notwithstanding any other provision of this Lease to the contrary, if both Lessor's and Lessee's estates in the Premises or the Project Improvements or both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger or any contrary provision of this Lease except at the express written election of the owner.

d. Estoppel Certificates. At any time and from time to time, within thirty (30) days after notice of request by Lessor or Lessee, the other party shall execute, acknowledge, and deliver to the other or to such recipient as the notice shall direct, a statement certifying that this Lease is unmodified and in full force and effect, or, if there have been modifications, that it is in full force and effect as modified in the manner specified in the statement. The statement shall

also state the dates to which the Rent and any other charges have been paid in advance and that there are no defaults hereunder, or if there are, specifying those defaults with particularity. The statement shall be such that it can be relied on by any auditor, creditor, commercial banker, and investment banker and by any prospective purchaser or encumbrancer of the Premises or all or any part or parts of Lessor's or Lessee's respective interests under this Lease.

e. Joint and Several Obligations. If either Lessor or Lessee consists of more than one person, the obligation of all such persons is joint and several.

19.02. Interpretation of Lease.

a. Captions, Table of Contents. The table of contents, if any, of the Lease and the captions of the various Articles, Sections, and Subsections of this Lease are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this Lease or of any part or parts of this Lease.

b. Gender. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the neuter, and each includes corporation, partnership, or other legal entity when the context so requires.

c. Singular and Plural. The singular number includes the plural whenever the context so requires. References herein to "person" means one or more persons, or one or more entities, or any combination of persons and entities.

d. Exhibits, Addenda. The following **Exhibits A-D** are incorporated herein for all purposes, whether or not they are actually attached, provided that any not attached have been signed or initialed by the parties:

- Exhibit A-1 - Map of Premises
- Exhibit A-2 - Ground Level Parking Facilities
- Exhibit A-3 - Ground Level Terminal Facilities
- Exhibit A-4 - Rendering
- Exhibit B - Memorandum of Lease
- Exhibit C - FTA Acknowledgement Letter
- Exhibit D - Sun Metro Parking Agreement

No promise, representation, warranty or covenant not included in this Lease has been or is relied on by either party. Each party has relied on his own examination of this Lease, the counsel of his own advisors and the warranties, representations, and covenants in this Lease. The failure or refusal of either party to inspect the Premises, to read the Lease or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice. This Lease may not be changed except by written instrument signed by both Lessor and Lessee.

e. Severability. The invalidity or illegality of any provision shall not affect the remainder of the Lease.

f. No Partnership, Joint Venture, or Principal-Agent Relationship. Nothing in this Lease or any acts of the parties hereto shall be construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the parties.

g. Time of Essence. Time is of the essence with respect to the performance of each of the terms, provisions, covenants, and conditions contained in this Lease.

h. Texas Law to Apply. This Lease shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas.

19.03. Successors. Each and all of the covenants and conditions of this Lease shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties. References herein to "Lessor" shall mean the person who is the owner at the time in question of the Premises, whether singular or plural in number, and whether named in this Lease as Lessor or having become the successor in interest of the named Lessor, or the successor of a successor, whether by assignment, foreclosure, or other transfer, and whether intentional or inadvertent or by operation of law. References herein to "Lessee" shall mean the person named as Lessee in this Lease, whether singular or plural in number, or the person who at the time in question is the successor in interest of Lessee, or the successor of a successor, whether by assignment, foreclosure, or other transfer, and whether intentional or inadvertent or by operation of law. It does not, however, include any person claiming under any assignment or sublease or other transfer prohibited by this Lease, and this definition does not alter the provisions of this Lease relating to assignment or subletting.

19.04. Nondiscrimination. Any impermissible discrimination by Lessee or its agents or employees on the basis of race, color, sex, age, religion, national origin, veteran's status, or disability in employment practices or in the performance of the terms, conditions, covenants and obligations of this Lease is prohibited. Lessee acknowledges the policy of The University of Texas System Board of Regents to provide practical opportunities for women-owned and minority-owned business enterprises to participate in contracts awarded by component institutions of The University of Texas System. Accordingly, Lessee will exercise its reasonable efforts in good faith, consistent with prudent business practices, to include women-owned and minority-owned small business enterprises as material suppliers, as contractors, and/or as subcontractors in planning, designing, developing, constructing, operating, and maintaining the Premises during construction and following completion.

19.05. Conflict of Interest. Lessee acknowledges that it is informed that Texas law prohibits contracts between Lessor and its officers, and that the prohibition extends to contracts with any partnership, corporation, or other organization in which any such officer has an

interest. Lessee certifies (and this Lease is made in reliance thereon) that neither Lessee nor any person having an interest in this Lease by, through, or under Lessee is an officer of Lessor.

19.06. No Broker. Lessor and Lessee each indemnifies and agrees to hold the other harmless from any claims for real estate leasing commissions or finders fees in respect to the transaction entered into under this Lease alleged to be due because of any act of the indemnifying party and from any loss, liability, damage, cost, or expense (including attorney's fees) of defending or settling such claims. Lessor's obligation to indemnify Lessee shall apply to the extent authorized by the Constitution and laws of the State of Texas.

## 20. EXECUTION; MEMORANDUM OF LEASE

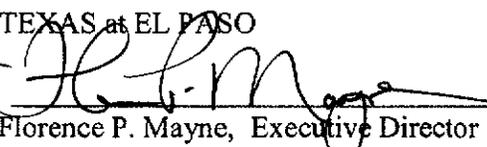
20.01. Execution in Counterparts. This Lease, or the memorandum of this Lease, or both, are executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

20.02. Recordation of Memorandum Only. Only a memorandum of this Lease in the form attached hereto as Exhibit B shall be recorded (the "Lease Memo"). The Lease Memo shall be recorded only on or after the Rent Commencement Date. Lessee's recordation of this Lease or any other memorandum of this Lease (other than the Lease Memo) shall be a default hereunder.

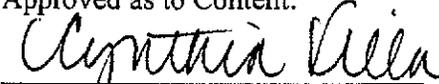
This Lease is executed on the dates shown below, to be effective for all purposes on the date first written above.

Date: April 17, 2008

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

YST  
By:   
Florence P. Mayne, Executive Director  
Real Estate Office, "Lessor"

Approved as to Content:

  
Cynthia Villa  
Vice President for Business Affairs  
The University of Texas at El Paso

**SIGNATURES CONTINUE ON FOLLOWING PAGE**

Date: \_\_\_\_\_, 2008

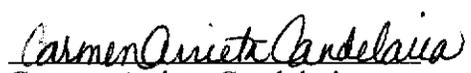
**CITY OF EL PASO "Lessee"**

  
\_\_\_\_\_  
Joyce Wilson, City Manager

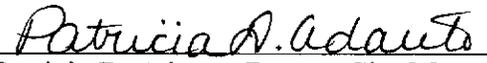
**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

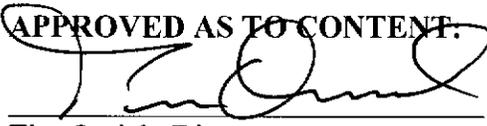
**APPROVED AS TO CONTENT**

  
\_\_\_\_\_  
Carmen Arrieta-Candelaria  
Chief Financial Officer

**APPROVED AS TO CONTENT:**

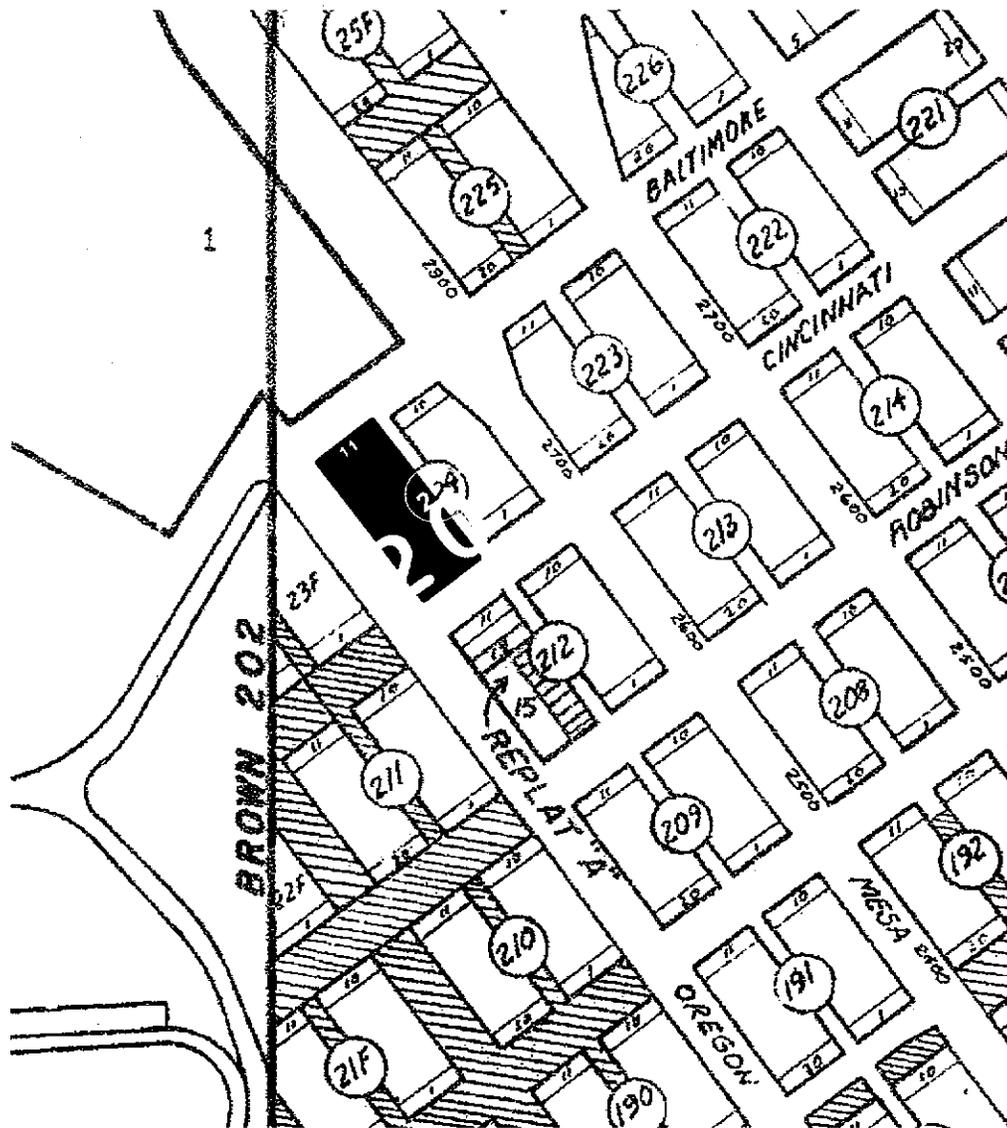
  
\_\_\_\_\_  
Patricia D. Adauto, Deputy City Manager  
Development & Infrastructure Services

**APPROVED AS TO CONTENT:**

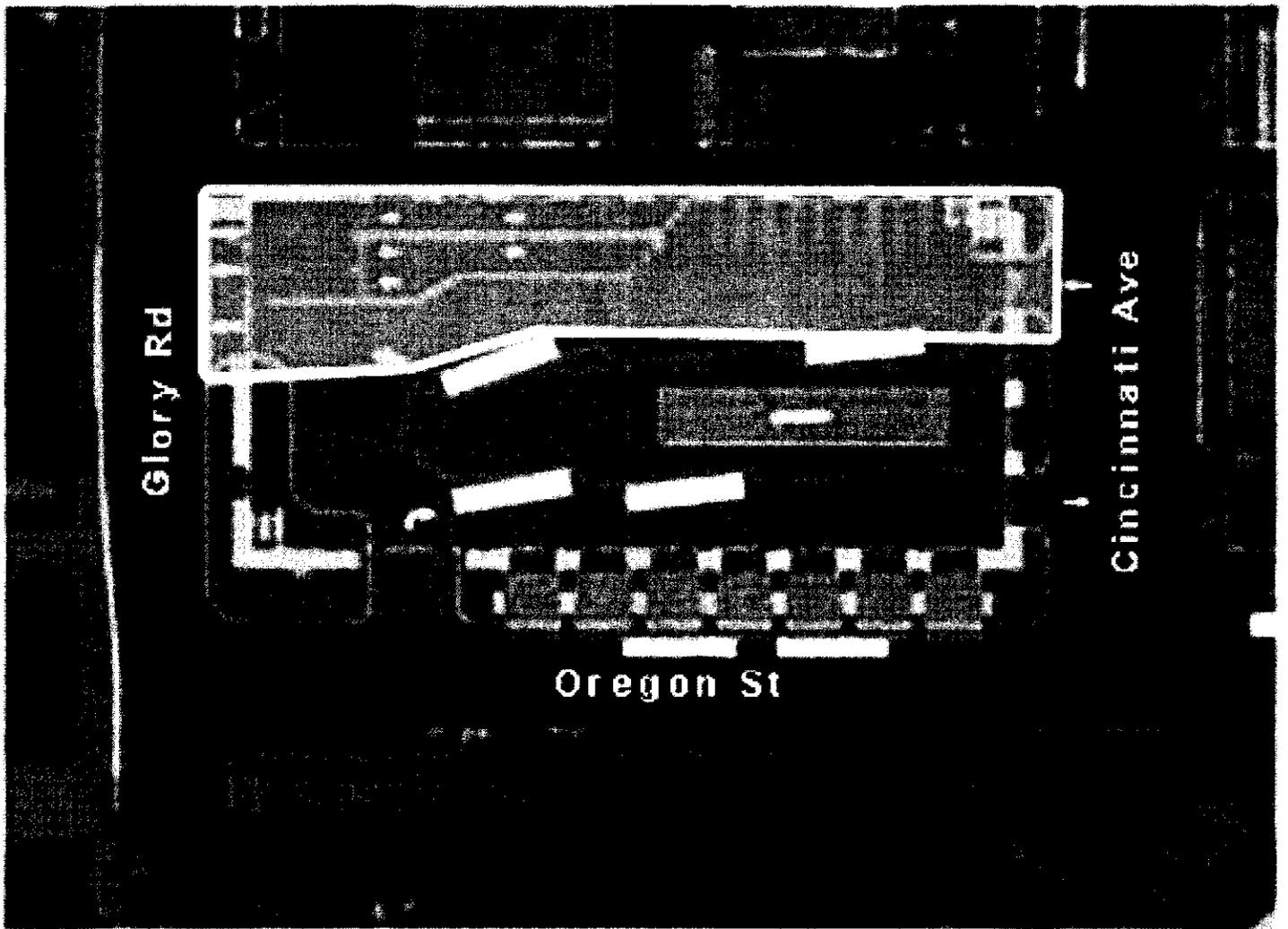
  
\_\_\_\_\_  
Tim Omick, Director  
Mass Transit Department

# Exhibit A-1

## Map of Premises

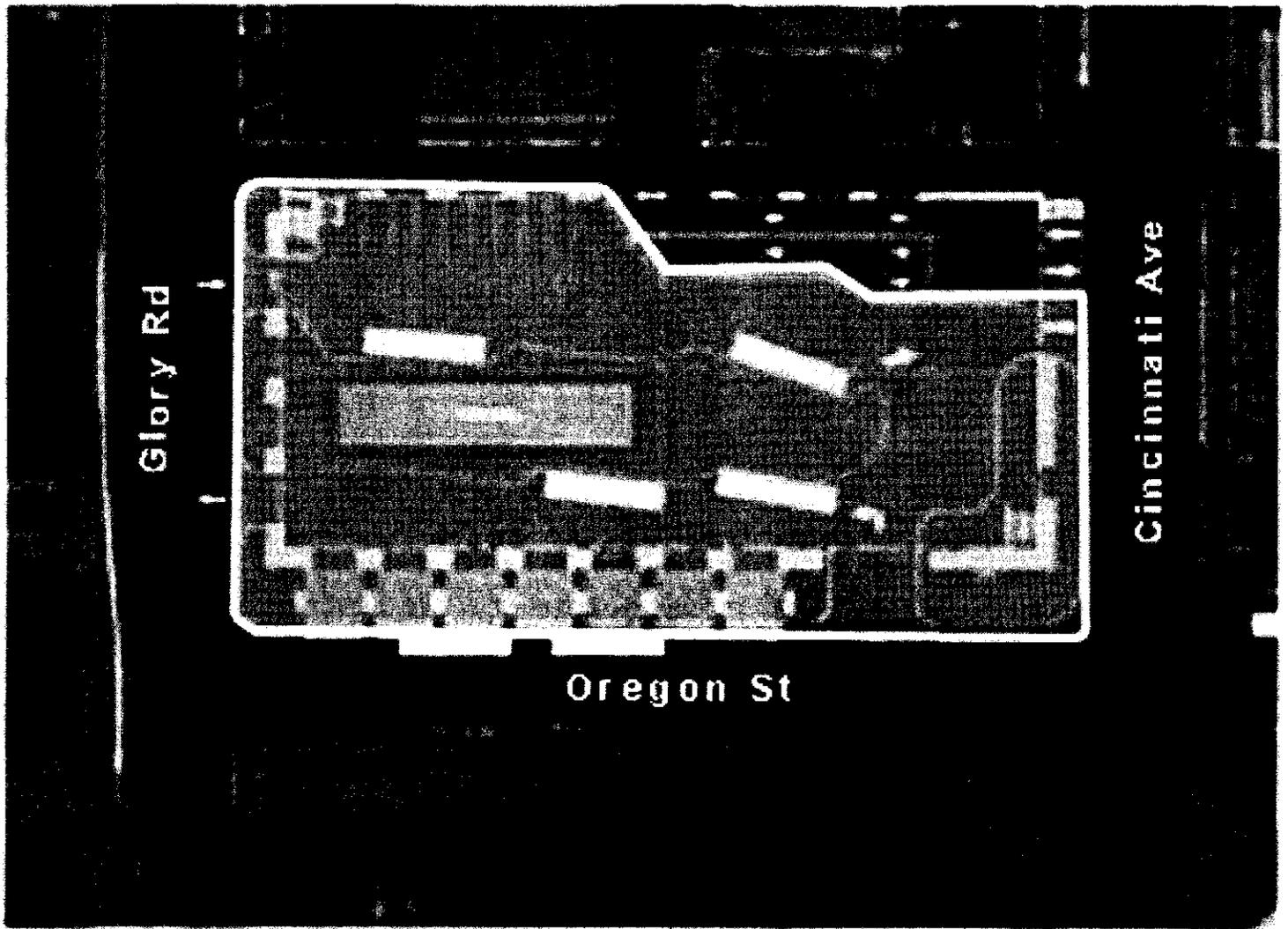


# EXHIBIT A-2



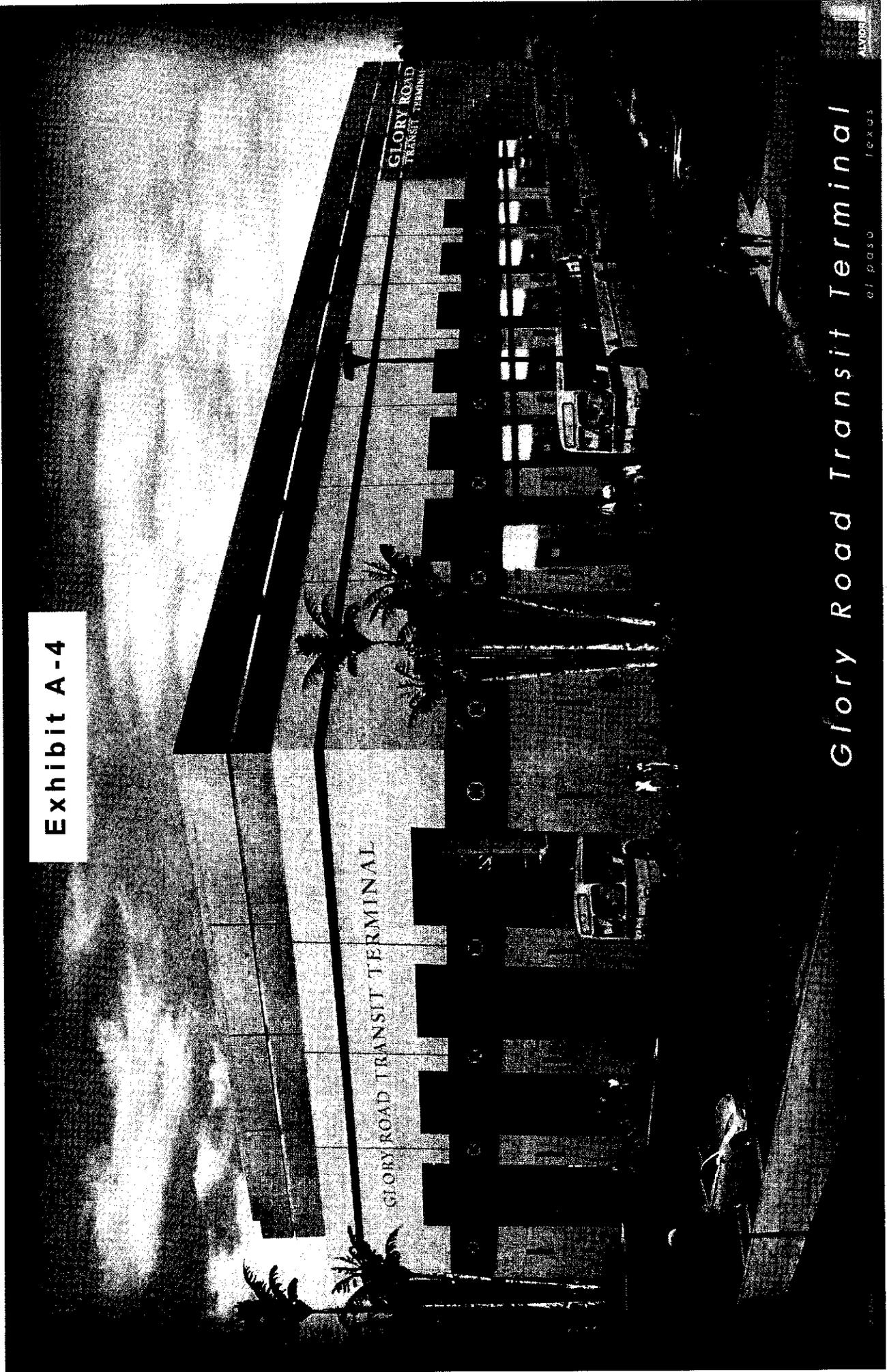
**Ground Level Parking Facilities**

# EXHIBIT A-3



**Ground Level Terminal Facilities**

Exhibit A-4



Glory Road Transit Terminal  
el paso Texas

ALVORD

EXHIBIT B

MEMORANDUM OF LEASE

This is the Lease Memo referred to in Section 20.02 of that certain Ground Lease dated effective \_\_\_\_\_, 2008, between the BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM, for the use and benefit of THE UNIVERSITY OF TEXAS AT EL PASO ("Lessor") and the CITY OF EL PASO ("Lessee"), a \_\_\_\_\_, concerning the Premises described in Exhibit A, hereto attached and hereby made a part hereof.

For good and adequate consideration, Lessor leased the Premises and appurtenances to Lessee, and Lessee leased and hired them from Lessor, for the term and on the provisions contained in the Lease, which is incorporated in this memorandum by reference.

The Term is thirty (30) years, and a partial month if the Term does not begin on the first day of a month, beginning \_\_\_\_\_, and ending \_\_\_\_\_. Any third party entering into a contract with Lessee for improvements to be located on the Premises, and any other party under said third party, is hereby put on notice that Lessor shall have no liability for satisfaction of any claims of any nature in any way arising out of a contract with Lessee.

This memorandum is not a complete summary of the Lease. Provisions in this memorandum shall not be used in interpreting the Lease provisions. In the event of conflict between this memorandum and other parts of the Lease, the other parts shall control.

EXECUTED effective as of \_\_\_\_\_, 2008.

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

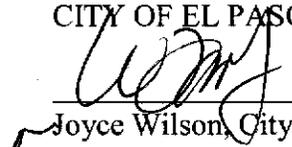
"Lessor"

By: \_\_\_\_\_

*KST*  
Florence P. Mayne  
Executive Director  
Real Estate Office

CITY OF EL PASO

"Lessee"

  
\_\_\_\_\_  
Joyce Wilson, City Manager

*ACKNOWLEDGEMENTS ON FOLLOWING PAGE*

Exhibit A - Premises

ACKNOWLEDGEMENTS

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

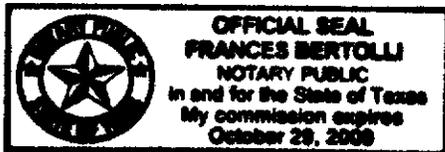
This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by Florence P. Mayne, Executive Director of Real Estate, on behalf of the Board of Regents of The University of Texas System.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF EL PASO  §

This instrument was acknowledged before me on the 21<sup>st</sup> day of April, 2008, by Joyce Wilson, City Manager of the City of El Paso, on behalf of said such city.  
*William F. Studer Jr., on behalf of*

*Frances Bertolli*  
\_\_\_\_\_  
Notary Public in and for  
The State of Texas



# Exhibit C to Ground Lease



U.S. Department  
of Transportation  
Federal Transit  
Administration

REGION VI  
Arkansas, Louisiana,  
New Mexico, Oklahoma,  
Texas

819 Taylor St. Suite 8A30  
Fort Worth, TX 76102  
817-978-0660  
817-978-0575 (fax)

February 14, 2006

Terry Lee Scott  
Director, Mass Transit Department  
Sun Metro  
700-A San Francisco  
El Paso, Texas 79901

Re: Application of Master Agreement

Dear Mr. Scott:

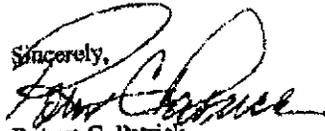
The Federal Transit Administration (FTA) acknowledges receipt of a letter dated August 23, 2005, from Sun Metro concerning its intention and plans to construct a transit terminal on real property that is owned by the University of Texas System (UT). Sun Metro advises that it intends to negotiate a long-term lease with UT for property which will be necessary to accommodate this transit facility. As you know, where property is leased rather than purchased for the site of a transit facility, the FTA will require that a grant recipient, such as Sun Metro, enter into a long-term lease in order to comply with the statutory requirement in 49 U.S.C. §5307 (d)(1)(B) that a grant recipient maintain "satisfactory continuing control" of Federally funded equipment and facilities.

Sun Metro has further advised the FTA that the lessor in this case (i.e., UT) has requested clarification concerning whether it might be subject to any liabilities or responsibilities to the FTA by virtue of it possibly being deemed a third party contractor under the terms of the FTA's Master Agreement. This is to inform you; however, that the FTA does not consider a lessor of real property to be a "third party contractor" as that term is used in the Master Agreement and in FTA Circular 4220.1P, "Third Party Contracting Requirements".

In addition, FTA has completed its review of Sun Metro's technical report dated February 3, 2006, that has addressed the useful service life of the transit facility that will be constructed on the leased premises and FTA concurs with Sun Metro's determination that the transit facility will have a 26.4-year useful service life and after this time period, unless otherwise agreed, FTA will not retain an interest in the improvement.

I trust that this information is responsive to the issue that you have addressed in your letter. If you have any further questions on this matter, please feel free to call Regional Council Eldridge Onco or me at (817) 978-0550.

Sincerely,

A handwritten signature in black ink, appearing to read "R. C. Patrick", written in a cursive style.

Robert C. Patrick  
Regional Administrator

**SUN METRO  
PARKING AGREEMENT**

THIS PARKING AGREEMENT ("Agreement") is entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008 (the "Effective Date"), by and between THE UNIVERSITY OF TEXAS AT EL PASO ("UTEP"), located at Administration Building Room 301, El Paso, Texas 79968 and CITY OF EL PASO, a Texas municipal corporation ("Sun Metro"), for the benefit of its Mass Transit Department, Sun Metro, located at 700-A San Francisco, El Paso, Texas 79901.

**WITNESSETH:**

WHEREAS, Sun Metro will build, own, operate and maintain certain parking facilities on UTEP property pursuant to a ground lease from UTEP dated effective \_\_\_\_\_, 2008; and

WHEREAS, UTEP desires use of such parking facilities for the ease and convenience of provision of parking for the vehicles of its students, employees, staff, and invitees ("UTEP Parties");

NOW, THEREFORE, for the purposes and consideration hereinafter expressed, the parties hereto agree as follows:

**ARTICLE I**

**General**

1.1 Use. Subject to the terms and provisions of this Agreement, Sun Metro hereby agrees to provide to UTEP, and UTEP agrees to pay for, parking rights in the Glory Road Transit Terminal and multi-level parking garage located on Lots 11 through 20, Block 224, Alexander Addition, City of El Paso, El Paso County, Texas in the manner provided in Section 1.2 herein and in the quantity provided in Article III herein:

The above-referenced parking garage shall hereinafter be referred to as the "Parking Facilities."

1.2 Manner. UTEP will have an ongoing right, to purchase parking spaces for its exclusive use in the Parking Facilities in the quantities and for the prices as noted below. At least six months earlier, Sun Metro shall notify UTEP in writing of the anticipated substantial completion date of the Parking Facilities and no later than 30 days prior to the anticipated date of substantial completion of the Parking Facilities, UTEP shall inform Sun Metro in writing of how many weekday parking spaces UTEP wishes to purchase for the period from the Commencement Date though the following 31<sup>st</sup> of July. On or before the 1<sup>st</sup> of June following the Commencement Date and annually thereafter, UTEP shall inform Sun Metro in writing of how many weekday parking spaces UTEP wishes to purchase for the annual period beginning on August 1st following such notice and extending though July 31st of the following calendar year. Parking

related to designated premium price UTEP event periods, and designated non-premium price UTEP event periods, will be designated on a quarterly basis by written notice from UTEP to Sun Metro at least 30 days prior to the beginning of each calendar quarter to which the notice relates. Once such notice has been given, amendments to the dates and times designated in the notice must be given to Sun Metro at least 30 days prior to the affected dates.

1.3 Construction of Parking Facilities. Sun Metro will be responsible for constructing the Parking Facilities. Sun Metro will provide written notice to UTEP of the anticipated date of substantial completion of the parking facilities and opening of the Parking Facilities no later than six months prior thereto.

## ARTICLE II

### Term and Termination

2.1 Term. This Agreement is and shall be effective on the Effective Date hereof. The initial term of this Agreement shall be for a period of ten (10) years (the "Initial Term"), commencing on the first day of the substantial completion and commencement of parking operations of the Parking Facilities (the "Commencement Date") and extending through the end of the full calendar month which is ten (10) years thereafter. This Agreement may be renewed at UTEP's option for two (2) additional ten (10) year periods. Each such ten (10) year extensions shall be exercised by UTEP giving Sun Metro written notice of such exercise no later than 90 days prior to the expiration of the Initial Term or the first renewal term as the case may be. The Initial Term and any renewal terms are collectively called the "Term."

2.2 Termination. If either party materially defaults in the performance of its obligations under this Parking Agreement and fails either (i) to substantially cure such default within fifteen (15) days after receiving written notice specifying the default, or (ii) for those defaults that cannot reasonably be cured within fifteen (15) days, to promptly commence curing such default and thereafter proceed with due diligence to substantially cure the default, then the non-defaulting party may terminate this Parking Agreement by written notice to the defaulting party.

## ARTICLE III

### Parking Quantity and Compensation Arrangement

3.1 Compensation Arrangement. As consideration for parking services provided by Sun Metro, UTEP shall compensate Sun Metro as follows:

- a. Weekday Parking. From and after the Commencement Date, UTEP will be allowed to purchase at UTEP's option up to 220 parking spaces for use Monday through Friday, 7:00 am to 6:00 pm each day. UTEP will pay a per space fee in the amount of \$360 per space per year, due and payable in quarterly installments, beginning on the first day of the first full quarter following the month in which the Commencement Date occurs. If the Commencement Date is on a day other than the first day of a

calendar month, then for the first partial month, from the Commencement Date to the end of the month in which the Commencement Date occurs, UTEP will pay a fee in the amount of \$1.00 per space per calendar day.

- Weekday parking fees will be adjusted on the day following the end of the full calendar month which is ten years after the Commencement Date (the "Initial Reset Date") and every tenth anniversary of the Initial Reset Date thereafter (each a "Subsequent Reset Date") such that the purchase price of 220 weekday parking spaces annually will continue to be equivalent to the lease rentals received by UTEP under the related ground lease between the Board of Regents of The University of Texas System, for the use and benefit of UTEP as lessor, and Sun Metro as lessee (the "Ground Lease"). The recalculation will be rounded to the nearest quarter dollar.
- b. Premium Price and Non-Premium Price UTEP Event Parking. UTEP will pay for parking use at times outside the weekday use periods quarterly, as follows:
  - Premium price UTEP events: \$5 per space per event, on designated UTEP athletic event periods, or other event periods as may be approved by Sun Metro;
    - Each lease year, UTEP will be allowed at UTEP's option to purchase up to 500 parking spaces for a period of no more than a total of 6 hours per event, which includes preparation, set up and take down for the event, for up to 20 athletic events, or other events approved by Sun Metro, on days and at times designated by UTEP ; but at least five percent (5%) of the total garage parking spaces must be retained for City transit ridership at all times during the event and not otherwise utilized;
  - Non-premium price UTEP events: \$4 per space per event, on non-premium price UTEP event periods such as Commencement events, Distinguished Alumni Dinners, Presidential Galas, etc.;;
    - Each lease year, UTEP will be allowed at UTEP's option to purchase up to 160 parking spaces for a period of no more than 6 hours per event, which includes preparation, set up and take down for the event, for no more than eight (8) non-premium price UTEP event periods on days and at times designated by UTEP;
    - Premium price event parking rates and non-premium price event parking rates will escalate based upon the CPI, every ten years.

On the day following the end of the full calendar month which is ten (10) years after the Commencement Date (the "Initial Reset Date") and every tenth anniversary of the Initial Reset Date thereafter (each a "Subsequent Reset Date"), the premium price and non-

premium price event parking fees shall be recalculated as described below. The recalculated event parking fees on the Initial Reset Date and each Subsequent Reset Date shall be an amount calculated by multiplying the initial event parking fees by a fraction, the denominator of which is the Consumer Price Index for All Urban Consumers, U.S. City Average ("CPI") for the month which is two (2) months prior to the month and year of the Effective Date of this Agreement and the numerator of which is the CPI for the month which is two (2) months prior to the Initial Reset Date or the Subsequent Reset Date, as the case may be. The recalculations will be rounded to the nearest quarter dollar.

3.2 Tax. As an agency of the State of Texas, UTEP may be exempt from the collection and payment of sales taxes on this transaction. Sun Metro will pay any and all sales taxes or similar taxes arising out of the transactions contemplated herein.

3.3 Invoices. Compensation for a partial first month's parking services shall be due and payable by UTEP to Sun Metro fifteen business days after the date the Parking Facilities are available for use as a parking facility. Sun Metro shall invoice UTEP for quarterly payments due under this Parking Agreement, and each such quarterly payment shall be due within fifteen business days of the receipt of such invoice by UTEP. In conjunction therewith, UTEP shall provide Sun Metro with a tax exemption certificate, if applicable.

## ARTICLE V

### UTEP Covenants

4.1 Parking Permits. UTEP covenants that it shall be responsible for the maintenance, distribution, collection and custody of all parking permits associated with the UTEP parking spaces pursuant to this Parking Agreement, and shall be responsible for payment of applicable fees associated with such parking permits. As such, UTEP shall maintain control of all its allocated parking permits and shall regulate their use in accordance with its standard policies. It is understood that UTEP may issue and assign more permits for the Parking Facilities than the number of spaces allocated to it hereunder, provided that no additional parking spaces shall be utilized than those spaces agreed upon under this Parking Agreement.

## ARTICLE V

### Sun Metro Covenants

5.1 Sun Metro will maintain the Parking Facilities in a safe and high quality condition at its cost and respond promptly to concerns or complaints from UTEP regarding the condition of the Parking Facilities.

5.2 Sun Metro covenants to provide maintenance services to the Parking Facilities identified herein in accordance with commercially reasonable standards. Sun Metro will not provide security services to the Parking Facilities on UTEP class days during the hours of 7:00 AM and

6:00 PM, El Paso time. At all other times, Sun Metro covenants to provide security services to the Parking Facilities identified herein in accordance with commercially reasonable standards.

5.3 Sun Metro will provide parking reader cards compatible with UTEP identification devices or other parking control devices for use at the Parking Facilities. At UTEP's option, Sun Metro will accommodate UTEP Shuttle service at the Transit Terminal.

## **ARTICLE VI**

### **Fire & Casualty**

During the Parking Agreement term, if any of Sun Metro's Parking Facilities are wholly or partially destroyed or damaged by fire or any other casualty whatsoever to such extent as to make all or a part of Sun Metro's Parking Facilities unusable for the purposes herein outlined, or, if Sun Metro's Parking Facilities, or any portion thereof, be taken by eminent domain, this Parking Agreement may be terminated as to any such affected proportion of the Parking Facility by either of the parties upon the giving of written notice by the party desiring to terminate to the other party within fifteen (15) business days after the party has knowledge of the occurrence of any such event; provided, however, that if Sun Metro has a duty under the Ground Lease to rebuild or repair the parking facilities, this Parking Agreement will not terminate, but instead will be suspended during such rebuilding or repair. After any such termination, neither party shall be further liable or responsible under the Parking Agreement with respect to such affected Parking Facilities. Sums or amounts awarded or received if the Parking Facilities are taken by eminent domain or for other public purpose shall be distributed as provided in the Ground Lease. If this Parking Agreement is not terminated, UTEP shall be entitled to a reduction in rent by reason of the loss of parking contracts caused by any casualty or act of eminent domain, on the basis of the proportion of the Parking Facilities involved, during the time UTEP is deprived of the use of such parking.

## **ARTICLE VII**

### **Responsibility for Operations**

7.1 Sun Metro shall operate the Parking Facilities at its own cost and in accordance with the standards prevailing in the industry for the operation of similar parking garage facilities in the El Paso area, and the employees or representatives used in the operation of the Parking Facilities shall be employees or representatives of Sun Metro and therefore subject to its direction and control. Sun Metro shall furnish sufficient numbers of employees or representatives to satisfy its obligations under this Parking Agreement during the hours of Parking Facilities operations, and shall fix the hours of their work and direct the methods of performance of their work. Hours of operation for the Parking Facilities shall be determined by Sun Metro, but UTEP reserved spaces shall be available as and when agreed upon herein. UTEP police, fire, and safety personnel shall have access to and jurisdiction within the Parking Facilities concurrent with El Paso Police, fire, and safety and Sun Metro security personnel, and may, but will not be required to, furnish enforcement, safety, and security services within the Parking Facilities except as may be provided by separate agreement between the parties.

7.2 Waiver of Subrogation. Notwithstanding the provisions of Section 7.1, in the event either Sun Metro or UTEP sustains a loss by reason of any casualty which is covered by insurance maintained by the party suffering such loss, and such casualty is caused, in whole or in part, by acts or omissions of the other party or its agents, employees or representatives, then the party incurring such loss agrees to the extent authorized by the Constitution and the laws of the State of Texas to look solely to the insurance proceeds (if any) from its insurance policies, and such party shall have no right of action against the other party or the agents, employees or representatives of such other party, and no third party (including any insurance carrier) shall have any such right by way of assignment, subrogation or otherwise.

7.3 Disability Acts. Sun Metro acknowledges that the Parking Facilities are subject to the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 42 U.S.C.A. Chapter 126) and to Chapter 469, *Texas Government Code*, concerning accessibility for the disabled, (the "Disability Acts") and agrees to comply with the requirements thereof. Sun Metro, and not UTEP, shall be responsible for compliance with the Disability Acts in the Parking Facilities. Any and all costs incurred by Sun Metro to comply with the Disability Acts that are in effect on the Commencement Date shall be borne by Sun Metro and not included as an item of Operating Expense, if and when Sun Metro incurs such costs.

7.4 Accessibility Inspection. Pursuant to the Disability Acts, Sun Metro acknowledges the following:

(a) The Texas Commission of Licensing and Regulation ("TCLR") is required to perform an on-site inspection of the Premises, before occupancy by UTEP, to ensure compliance with the standards and specifications adopted by TCLR (Title 16, Texas Administrative Code, Chapter 68) under authority of §469.106, *Texas Government Code*.

(b) If inspection by TCLR discloses any condition not in compliance with TCLR accessibility standards and specifications, UTEP shall have a right to cancel and shall cancel this Agreement, unless Sun Metro corrects non-complying conditions no later than the 60th day after TCLR delivers the inspection results to Sun Metro or its agent, or by a later date set by TCLR, if circumstances justify a later compliance date.

Sun Metro and UTEP shall provide to TCLR all necessary cooperation and information concerning inspection of the Premises and any corrective action required. UTEP shall pay any fees charged by TCLR for its inspection of the Premises under Section 469.106. Cancellation of this Agreement for noncompliance with TCLR accessibility standards shall be effective on written notice to Sun Metro, and shall not subject UTEP to any claim by Sun Metro for damages or liability arising therefrom, that are hereby expressly waived by Sun Metro.

7.5 Fire and Life Safety Review. UTEP's use of the Parking Facilities is conditioned on the compliance of the Parking Facilities with the National Fire Protection Association Life Safety Code 101, and where appropriate 101A, as adopted by the Texas State Fire Marshal. Sun Metro agrees the Parking Facilities will comply with these codes on the Commencement Date.

## **ARTICLE VIII**

### **Use of Parking Facilities**

The Parking Facilities shall be used only for the parking of passenger vehicles and UTEP vehicles, including maintenance vehicles and police cars. Sun Metro shall have the right to issue notices of violations to UTEP Parties.

## **ARTICLE IX**

### **Compliance with Applicable Laws**

Sun Metro agrees that it will comply at all times with such ordinances, laws and/or regulations of any city, county, state or federal government that are applicable to the management and operation of the Parking Facilities by Sun Metro.

## **ARTICLE X**

### **Assignment or Sublease; Financing**

10.1 Notwithstanding anything herein to the contrary, UTEP shall have the right to assign this Agreement and the rights and obligations hereunder to an entity that is controlled by, under common control with, or that controls UTEP, or that is formed as the result of an internal restructuring of The University of Texas System, UTEP, and/or its affiliates, or to any other agency of the State of Texas. Any such assignment by UTEP shall be effective without the need for any action on the part of any party other than UTEP and the party to which such permitted assignment is made in order for such assignment by UTEP to be effective.

10.2 Non-Disturbance Agreement. In the event a first lien mortgage lender of Sun Metro shall request that UTEP (i) subordinate its interests under this Agreement to the lien of such mortgage and/or (ii) agree to attorn to and recognize any purchaser of the Parking Facilities at any foreclosure proceedings (whether judicial or by power of sale) relating to such lien, UTEP agrees to do so (but only as to the interest created by this Agreement) provided that such mortgage lender shall contemporaneously enter into a non-disturbance agreement with UTEP stating that so long as UTEP is not in default under this Agreement, UTEP's right to the use, possession, tenancy, and occupancy hereunder shall remain undisturbed and survive any and all foreclosures or conveyances in lieu thereof or other actions taken or entered into to enforce any such lien. In no case will such agreement subordinate any fee interest of UTEP in and to the land on which the Parking Facilities are constructed.

## **ARTICLE XI**

### **Benefit**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, and assigns where permitted by this Agreement. Nothing in this

section shall be construed to waive the conditions elsewhere contained in this Agreement applicable to assignment and subletting by UTEP.

## **ARTICLE XII**

### **Governing Law**

This Agreement shall be construed in accordance with Texas law, and all obligations of the parties are performable in El Paso, El Paso County, Texas.

## **ARTICLE XIII**

Loss of Funding. Performance by UTEP under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then UTEP shall issue written notice to Sun Metro and Sun Metro may terminate this Agreement without further duty or obligation hereunder. Provider acknowledges that appropriation, allotment, and allocation of funds are beyond the control of UTEP.

## **ARTICLE XIV**

### **Severability**

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

## **ARTICLE XV**

### **Time of Essence**

Time is of the essence in this Agreement, and of each term and provision hereof.

## **ARTICLE XVI**

### **Entirety**

This instrument constitutes the entire agreement and understanding between Sun Metro and UTEP. There are no oral understandings, terms or conditions, and neither party has relied upon any representations, express or implied, not contained in this Agreement. This Agreement may not be altered, changed or amended, except by a subsequent instrument in writing, executed by Sun Metro and UTEP.

**ARTICLE XVII**

**Notices**

Any notice permitted or required to be given by either party hereto shall be given in writing and may be effected by registered or certified United States mail properly addressed, return receipt requested, postage prepaid, as follows:

- (a) In the case of Sun Metro, addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (b) In the case of UTEP, addressed to:

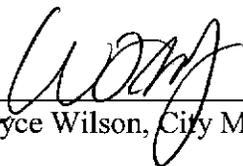
The University of Texas at El Paso  
Administration Building Room 301  
El Paso, Texas 79968  
Attention: Vice President for Business Affairs

Any written notice given to either party by certified or registered U.S. mail as provided shall be deemed to have been received by such party and to be effective on the date the notice is delivered into the care of the United States Postal Service for delivery, as shown by the date stamped, with the understanding that notice by personal delivery shall always be acceptable and shall be effective on actual delivery to such party. Either party hereto may change its own address for the receipt of notices by giving the other party thirty (30) days written notice of such change.

IN WITNESS WHEREOF, the parties have signed and sealed this Agreement on the dates of their respective signatures.

**CITY OF EL PASO, TEXAS**

**THE UNIVERSITY OF TEXAS  
AT EL PASO**

By:   
Joyce Wilson, City Manager

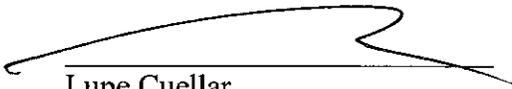
By:   
Cynthia Vizcaíno Villa  
Vice President for Business Affairs

Date: \_\_\_\_\_

Date: 4/18/08

**(SIGNATURES CONTINUE ON FOLLOWING PAGE)**

**APPROVED AS TO FORM:**



Lupe Cuellar  
Assistant City Attorney

**APPROVED AS TO CONTENT:**



Patricia D. Adauto, Deputy City Manager  
Development & Infrastructure Services

**APPROVED AS TO CONTENT**



Carmen Arrieta-Candelaria  
Chief Financial Officer

**APPROVED AS TO CONTENT:**



Tim Omick, Director  
Mass Transit Department