

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

DEPARTMENT: City Development Department

AGENDA DATE: June 4, 2013 Regular Agenda

CONTACT PERSON/PHONE: Mathew McElroy, Director, 541-4193

DISTRICT(S) AFFECTED: ALL

SUBJECT:

Discussion and action on a resolution that the City Manager be authorized to sign the Chapter 380 Economic Development Program Agreement and Hotel and Convention Services Agreement by and between the City of El Paso and EP Vida, LLC. [City Development, Mathew McElroy, Director, 541-4193].

BACKGROUND/DISCUSSION:

The City of El Paso and EP Vida are entering into a Chapter 380 Economic Development Program Agreement for the development of a hotel and specialty retail center on City property located at the southwest corner of Airway Boulevard and Boeing Drive. The subject property is currently vacant. The Chapter 380 agreement provides a 100% property tax rebate, a 100% rebate of the City's 1% Sales and Use tax and Mixed Beverage Tax, and a 50% Hotel Occupancy Tax rebate for a ten-year period. In consideration for the incentives in the 380 agreement, EP Vida, LLC, a Texas limited liability company, will develop a full-service Four Star Rating hotel or higher and Specialty Retail Center conforming to Smart Code design. The hotel development will be a total of 140,000 sq. ft., which includes 21,500 sq. ft of retail space; 15,000 sq. ft. of conference space; and contains approximately two-hundred and twenty (220) rooms with a minimum expenditure of Sixty Four Million Dollars (\$64,000,000), and resulting in Three Hundred (300) new jobs.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

No.

AMOUNT AND SOURCE OF FUNDING:

General Fund

BOARD/COMMISSION ACTION:

Enter appropriate comments or N/A.

N/A

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

DEPARTMENT HEAD: _____

RESOLUTION

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

That the City Manager be authorized to sign the Chapter 380 Economic Development Program Agreement and Hotel and Convention Services Agreement by and between the City of El Paso and EP VIDA, LLC.

ADOPTED this the _____ day of _____ 2013.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Mathew K. Behrens
Assistant City Attorney

APPROVED AS TO CONTENT

Mathew S. McElroy, Director
City Development Department

CITY OF EL PASO
AND
EP VIDA, LLC,

CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (this "Agreement") is made and entered into by and between the **CITY OF EL PASO, TEXAS** ("hereinafter referred to as "**CITY**"), a Texas home rule municipal corporation, and **EP VIDA, LLC**, (hereinafter "**EP VIDA**"), a Texas limited liability company, for the purposes and considerations stated below:

WHEREAS, the **EP VIDA** desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code (hereinafter referred to as "Chapter 380"); and

WHEREAS, the **CITY** desires to provide, pursuant to Chapter 380, an incentive to **EP VIDA** to develop the Hotel as defined below; and

WHEREAS, the **CITY** has the authority under Chapter 380 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of El Paso; and

WHEREAS, the **CITY** determines that a grant of funds to **EP VIDA** will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the **CITY**; and

WHEREAS, the **CITY** and **EP VIDA** desire that development of the Hotel and Specialty Retail Center, includes construction and/or installation of certain infrastructure, as set forth in this Agreement, and the creation of Three Hundred (300) Full-Time Employment positions at the Hotel and Specialty Retail Center; and

WHEREAS, the creation of Three Hundred (300) Full-Time Employment positions will encourage increased economic development in the **CITY**, provide significant increases in the **CITY'S** sales tax revenues, and improve the **CITY'S** ability to provide for the health, safety and welfare of the citizens of El Paso; and

WHEREAS, the **CITY** has concluded and hereby finds that this Agreement clearly promotes economic development in the City of El Paso and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the **CITY** and **EP VIDA**.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. TERM.

This Agreement shall be effective for thirteen (13) years from the Effective Date of this Agreement. However, EP VIDA's eligibility for reimbursement for certain activities pursuant to Section 3 shall be limited to forty (40) consecutive quarters within the term of this Agreement.

SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Agreement.** The word "Agreement" means this Chapter 380 Economic Development Program and Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (b) **CITY.** The word "**CITY**" means the City of El Paso, Texas. For purposes of this Agreement, City's address is City of El Paso, P.O. Box 1890, El Paso, Texas 79950-1890.
- (c) **Development.** The word "Development" means the planned Hotel and Specialty Retail Center more specifically described in **Exhibit A**.
- (d) **EP VIDA.** The words "EP VIDA" mean the EP VIDA, LLC, a Texas limited liability company. For the purposes of this Agreement, EP VIDA's address is 8411 Lockheed, Suite 7, El Paso, Texas 79925.
- (e) **Full-Time Employment.** The words "Full-Time Employment" mean a job requiring a minimum of One Thousand Eight Hundred Twenty (1,820) hours of work averaged over a twelve (12) month period, including allowance for vacation and sick leave, with full company benefits, including 75% payment of the required health insurance premium (exclusive of any supplemental insurance), and receipt of a sustainable wage in an amount of at least \$10.00 per hour, and employed at the Hotel in the City of El Paso, Texas.
- (f) **Grant.** The word "Grant" means a payment to **EP VIDA** under the terms of this Agreement computed with reference to Sales and Use Taxes, and Mixed Beverage Taxes generated by Hotel, and payable from the **CITY'S** general revenue fund.
- (g) **Grant Submittal Package.** The words "Grant Submittal Package" mean the documentation required to be supplied to **CITY** on a quarterly or yearly basis as a condition of receipt of any Grant.

- (h) **Hotel.** The word "Hotel" means the Four Star Rating or higher hotel, more specifically described in *Exhibit A* and as depicted in *Exhibit B*, owned and operated by *EP VIDA*. Four Star Rating is defined in *Exhibit E*.
- (i) **Mixed Beverage Tax.** The words "Mixed Beverage Tax" or "Mixed Beverage Taxes" have the same meaning as defined by Section 183.021 of the Texas Tax Code, as amended.
- (j) **Property Tax Rebate.** The words "Property Tax Rebate" means on hundred percent (100%) rebate of the **CITY'S** portion of the incremental ad valorem property tax revenue, not to exceed the total cumulative value of the **CITY'S** portion of the incremental ad valorem property tax revenue generated by the subject **REAL PROPERTY** including personalty added to the Hotel and located on the **REAL PROPERTY** above the base year value for the Grant Period and payable from the **CITY'S** general revenue fund. Property Tax Rebate is only available on properties from which the **CITY** receives ad valorem taxes (*i.e.* taxes cannot be diverted through Historic Tax Credits, Transportation Reinvestment Zone (TRZ), prior 380 agreements, Tax Increment Reinvestment Zones (TIRZ) or other means).
- (k) **REAL PROPERTY.** The words "**REAL PROPERTY**" means the Hotel and Specialty Retail Center owned and operated by *EP VIDA*, more specifically described in *Exhibit A*, and further depicted in *Exhibit B* of this Agreement.
- (l) **Retailer(s)** The word "Retailer(s)" means tenants and lessees of the **REAL PROPERTY** required by the State Comptroller to collect Sales and Use Tax or Mixed Beverage Tax on taxable sales consummated in the City at the **REAL PROPERTY** covered by Chapter 151 and Chapter 183 of the Texas Tax Code.
- (m) **Sales and Use Tax.** The words "Sales and Use Tax" or "Sales and Use Taxes" mean the **CITY'S** municipal sales and use tax, at the rate of one percent (1.0%), pursuant to Section 321.103(a) of the Texas Tax Code, as amended.
- (n) **Specialty Retail Center.** The words "Specialty Retail Center" means approximately 87,000 sq. ft. for a specialty retail center consisting of 66,000 sq. ft. of retail, 14,000 sq. ft. of restaurant space and approximately 7,000 sq. ft. of office and service space, more specifically described by *Exhibit A* owned and operated by *EP VIDA*.
- (o) **State Comptroller.** The words "State Comptroller" means the Office of the Texas Comptroller of Public Accounts, or any successor agency.

SECTION 3. OBLIGATIONS OF *EP VIDA*.

During the term of this Agreement, *EP VIDA* shall comply with the following terms and conditions:

- (a) **EP VIDA** agrees to develop, construct, at its sole cost, the Hotel and the Specialty Retail Center. The Hotel shall meet the Four Star Rating Criteria of **Exhibit E**, which includes, but is not limited to the following services and amenities, on-site restaurant and bar, room service, swimming pool, concierge, banquet/meeting room and other amenities common in a Four Star Rating hotel. **EP VIDA** shall commence construction on the Development within twelve (12) months of the effective date of this Agreement. **EP VIDA** shall receive a certificate of occupancy, and be open for business to the general public within twenty four (24) months from the commencement of construction and/or improvements to Hotel. The Hotel shall be an approximately two hundred (200) room Hotel. The Specialty Retail Center shall be approximately 87,000 sq. ft. for a specialty retail center consisting of 66,000 sq. ft. of retail, 14,000 sq. ft. of restaurant space and approximately 7,000 sq. ft. of office and service space.

EP VIDA shall notify the **CITY** of its intent to obtain a certificate of occupancy at least one year before it expects to obtain a certificate of occupancy. Failure to provide such notice will result in a forfeiture of the first four quarters of benefits from the Grant and the first year of benefits from the Property Tax Rebate.

EP VIDA agrees the acquisition, design, and construction to the **REAL PROPERTY** and **PERSONALTY** added to and located on the **REAL PROPERTY** shall equal or exceed Sixty Four Million Dollars and No/100 (\$64,000,000.00). The base year value of the **REAL PROPERTY**, as reflected by the El Paso Central Appraisal District records on January 1, 2013, is Four Million Three Hundred Eighty Thousand Eight Hundred Sixteen Dollars and No/100 (\$4,380,816.00). **EP VIDA** shall submit receipts to the **CITY** for expenditures made towards the purchase, construction, design and/or improvement of Hotel and Specialty Retail Center, in a minimum amount of Sixty Four Million Dollars (\$64,000,000.00) within thirty-six (36) months of the effective date of this Agreement.

- (b) **EP VIDA** agrees that it shall create, staff, and maintain Three Hundred (300) Full-Time Employment positions for its Hotel and Specialty Retail Center within twelve (12) months from the date of the issuance of the Certificate of Occupancy for the Development, and shall maintain Three Hundred (300) Full-Time Employment positions for its Hotel and Specialty Retail Center through the entire Grant Period of this Agreement. **EP VIDA** shall maintain the full-time jobs for each quarter of each fiscal year with the total per day hours worked averaged over each fiscal quarter.

EP VIDA shall provide an annual report by April 30th certifying the status of compliance through the life of the Agreement of new jobs created, new investments and any other relevant information. Documentation for jobs may be in the form of quarterly IRS 941 returns, Texas Workforce Commission Employer Quarterly Reports, or employee rosters that show the hours worked and the positions filled, and such other reports as may reasonably be required.

EP VIDA, during normal business hours, at its principal place of business, shall allow **CITY** reasonable access to its employment records and books, and other books and records that are related to the other described economic development consideration and incentives, to verify employment records and any other records related to other economic development consideration and incentives, but the confidentiality of such records will be maintained.

- (c) During the term of this Agreement beginning after the Certificate of Occupancy has been issued to **EP VIDA**, **EP VIDA** shall provide the **CITY**, and maintain during the term of this Agreement, a list of each **Retailer** that occupies or occupied the **REAL PROPERTY** during the term of this agreement including the taxpayer identification number, taxpayer outlet number (as shown on the Texas Sales Tax Permit), Texas Alcohol Beverage Commission number (as shown on the Texas Liquor Permit or Texas Beer License), taxpayer name, and taxpayer location as reported to the State Comptroller, and any other information required by the State Comptroller to generate and provide the **CITY** with the Comptroller's Sales Tax Report and Mixed Beverage Tax Report for the Grant Period.

EP VIDA shall cause the **Retailers** to provide the **CITY** and **EP VIDA**, and maintain during the term of this Agreement a Waiver of Sales Tax or Mixed Beverage Tax Confidentiality from each **Retailer** which authorizes the State Comptroller to release to the **CITY** and **EP VIDA** Sales and Use Tax and Mixed Beverage Tax information pertaining to taxable sales by **Retailers** at the **REAL PROPERTY** during the term of this Agreement substantially in the form attached hereto as **Exhibit F**. APPLICANT will be responsible for obtaining the Waivers of Sales Tax Or Mixed Beverage Tax Confidentiality from **Retailers** and providing the Waivers of Sales Tax or Mixed Beverage Tax Confidentiality to the **CITY**. **EP VIDA** shall cause the **Retailers** to maintain an effective Waiver of Sales Tax or Mixed Beverage Tax Confidentiality during the term of this Agreement. The **CITY** will verify all such information, but the **CITY** shall not have an obligation to otherwise collect sales tax information and will have no obligation to make payments under this Agreement without such sales and use tax or mixed beverage tax payment confirmation from the State Comptroller.

The confidential sales tax information provided or reported by the State Comptroller to the **CITY** shall be used to determine in the amount of the Grant payment that applicant is eligible to receive. For any particular Grant Submittal Package and Grant amount determination, the **CITY** shall only consider the Sales and Use Tax or Mixed Beverage Tax Receipts attributable to **Retailers** that appear on the Retailers Report and that have a valid and effective Waiver of Sales Tax or Mixed Beverage Tax Confidentiality on file with the **CITY**.

While agreement is in effect, **EP VIDA** shall, upon request of the **CITY**, provide such additional documentation as may be reasonably requested by the **CITY** to evidence, support and establish the Sales and Use Tax or Mixed Beverage Tax Receipts.

- (d) On or before the 28th day of the first calendar month after the month in which **EP VIDA** and its **Retailers** make their final payment of Sales and Use Tax and Mixed Beverage Tax to the State Comptroller for their first full or partial calendar quarter of sales at the Hotel and Specialty Retail Center and continuing on or before the 28th day of the second calendar month after each successive calendar quarter thereafter, but not to exceed forty (40) consecutive quarters (the "Grant Period") **EP VIDA** agrees to submit to the **CITY** a Sales Tax Grant Submittal Package containing the following:
- (1) **EP VIDA'S** grant request letter (or fax) stating the gross amount of the **CITY'S** one percent (1%) Sales and Use Tax paid by **EP VIDA** and its **Retailers** for the Hotel and Specialty Retail Center for the applicable quarter, and the amount due **EP VIDA** by the **CITY** upon remittance from the State Comptroller for such quarter;
 - (2) **EP VIDA'S** grant request letter (or fax) stating the gross amount of the Mixed Beverage Taxes paid by **EP VIDA** and its **Retailers** (presently equals fourteen percent (14.0%) of the mixed beverage tax receipts) for the Hotel and Specialty Retail Center for the applicable quarter, and the amount due **EP VIDA** (presently equals 10.7143 percent of the mixed beverage tax receipts) by the **CITY** upon remittance from the State Comptroller for such quarter;
 - (3) **EP VIDA'S** certification of the documentation required by Section 3(d)(4) of this Agreement, evidencing the amount of Sales and Use Taxes and Mixed Beverage Taxes paid by the Hotel and Specialty Retail Center to the State Comptroller for the applicable quarter; and
 - (4) **EP VIDA'S** documentation identifying the taxable "sales and use tax-eligible" sales and Mixed Beverage Taxes from the Hotel and Specialty Retail Center for the preceding quarter including the **Retailer** information required in Section 3(c) of this Agreement.
- (e) On or before March 1st of the year after the issuance of the Certificate of Occupancy for **REAL PROPERTY** and continuing on or before March 1st of each year thereafter, but not to exceed ten (10) consecutive years (the "Property Tax Rebate Period"), **EP VIDA** agrees to submit to the **CITY** a Property Tax Rebate Submittal Package containing the following:
- (1) **EP VIDA'S** property tax rebate request letter (or fax) stating the **CITY'S** portion of the incremental ad valorem property tax paid by **EP VIDA** for the applicable year, and the amount due **EP VIDA** by the **CITY**.
 - (2) **EP VIDA'S** property tax payment receipts for the **REAL PROPERTY** and **PERSONALTY** added to the **REAL PROPERTY** by **EP VIDA**.

- (f) Unless otherwise agreed by the **CITY** and **EP VIDA**, each Grant Submittal Package and Property Tax Rebate Package shall be in the form attached hereto as **Exhibit C** and **Exhibit D**. Failure to timely submit a Grant Submittal Package or Property Tax Rebate Package is a waiver of the Grant or Property Tax Rebate due to **EP VIDA** for the period that would have been covered by a timely submitted Grant Submittal Package or Property Tax Rebate Submittal Package. If **EP VIDA** shall fail to timely submit a Grant Submittal Package or Property Tax Rebate Package for a particular period, then the **CITY** may, but is not obligated to, give **EP VIDA** written notice of **EP VIDA'S** failure to timely submit such package, and **EP VIDA** shall have thirty (30) calendar days calculated from the date on which such written notice is given in which to submit such package. The **CITY'S** determination of the amount of the Grant payment or Property Tax Rebate due to **EP VIDA** is final; provided, however **EP VIDA** may appeal to the El Paso City Council within thirty (30) days of payment, the City Council shall hear the appeal within thirty (30) days and the City Council's determination of the amount of the Grant payment or Property Tax Rebate shall be final; provided, however, nothing herein shall limit (or be construed to limit) **EP VIDA'S** rights and remedies as described in Section 5 of this Agreement.
- (g) **EP VIDA** shall pay by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on the Hotel and Specialty Retail Center referenced in **Exhibit A**. **EP VIDA** shall have the right to contest the appraised value of the Hotel and Specialty Retail Center as provided by law, but in no event shall **EP VIDA** contest the value of the Hotel and Specialty Retail Center on the tax rolls of the El Paso Central Appraisal District during the term of this Agreement at an amount of Four Million Three Hundred Eighty Thousand Eight Hundred Sixteen Dollars and No/100 (\$4,380,816.00) for years prior to completion of the construction and improvements; Twenty Two Million Dollars (\$22,000,000.00) or lower for the first five (5) years after completion of the construction and improvements; Twenty Four Million Dollars (\$24,000,000.00) or lower for the following three (3) years; and Twenty Six Million Dollars (\$26,000,000.00) or lower for the last two (2) years.
- (h) Property Value:

The parties to this Agreement agree that the taxable value of the **REAL PROPERTY AND PERSONALTY** after completion of the construction and improvements will have a base value of Twenty Two Million Dollars (\$22,000,000.00) or lower for the first five (5) years after completion of the construction and improvements; Twenty Four Million Dollars (\$24,000,000.00) or lower for the following three (3) years; and Twenty Six Million Dollars (\$26,000,000.00) or lower for the last two (2) years. **EP VIDA** covenants and agrees that during the term of this Agreement it shall not challenge or permit anyone else to take actions on its behalf to challenge any assessments by the Central Appraisal District at Four Million Three Hundred Eighty Thousand Eight Hundred Sixteen Dollars and No/100

(\$4,380,816.00) for years prior to completion of the construction and improvements; Twenty Two Million Dollars (\$22,000,000.00) or lower for the first five (5) years after completion of the construction and improvements; Twenty Four Million Dollars (\$24,000,000.00) or lower for the following three (3) years; and Twenty Six Million Dollars (\$26,000,000.00) or lower for the last two (2) years. It is the intent of the parties that the assessed value of the **REAL PROPERTY AND PERSONALTY** on the tax rolls have a base value of Four Million Three Hundred Eighty Thousand Eight Hundred Sixteen Dollars and No/100 (\$4,380,816.00) for the years prior to completion of construction and improvements; Twenty Two Million Dollars (\$22,000,000.00) or lower for the first five (5) years after completion of the construction and improvements; Twenty Four Million Dollars (\$24,000,000.00) or lower for the following three (3) years; and Twenty Six Million Dollars (\$26,000,000.00) or lower for the last two (2) years, during the term of this Agreement and any affirmative act by **EP VIDA** to reduce the assessed value to amount lower than Four Million Three Hundred Eighty Thousand Eight Hundred Sixteen Dollars and No/100 (\$4,380,816.00) for the years prior to completion of construction and improvements; Twenty Two Million Dollars (\$22,000,000.00) or lower for the first five (5) years after completion of the construction and improvements ; Twenty Four Million Dollars (\$24,000,000.00) or lower for the following three (3) years; and Twenty Six Million Dollars (\$26,000,000.00) or lower for the last two (2) years, will be an event of default that will result in termination of this agreement.

- (i) As consideration for the agreement of **CITY** contained herein, **EP VIDA** agrees that it will diligently and faithfully in a good and workmanlike manner pursue the commencement and completion of new construction on the **REAL PROPERTY** consistent with the requirements set forth herein. **EP VIDA** agrees that construction to the **REAL PROPERTY** will be in accordance with all applicable federal, state, and local laws and regulations. Moreover, **EP VIDA** agrees to give preference and priority to local manufacturers, suppliers, contractors and labor by ensuring that 65% of the total manufacturers, suppliers, contractors and labor come from local sources, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency. The **REAL PROPERTY** shall be limited in its use to uses consistent with the development and operation of the Hotel and the Specialty Retail Center and consistent with the **CITY'S** development goals, which is the encouraging of development or redevelopment of the zone.

SECTION 4. OBLIGATIONS OF CITY.

During the term of this Agreement and so long as an event of default has not occurred and is continuing as set forth in Section 6 of this Agreement (provided, however, an event of default hereunder shall not be deemed to have occurred until after the

expiration of the applicable notice and cure period), **CITY** shall comply with the following terms and conditions:

- (a) For each calendar quarter during the term of this Agreement and beginning in the second full or partial calendar quarter after the date **EP VIDA** first opens to business to the general public at the Hotel and Specialty Retail Center, an amount equal to the **CITY'S** one percent (1%) Sales and Use Tax revenue, and Mixed Beverage Taxes, generated by and attributed solely to the Hotel's and Specialty Retail Center's sales in the immediately prior calendar quarter and remitted from the State Comptroller to **CITY**, shall be tendered from the **CITY'S** general fund as a Grant by the **CITY** to **EP VIDA** on a quarterly basis upon **EP VIDA'S** satisfaction of the requirements of Section 3(c) of this Agreement. Such Grant payments will continue until the earlier of: expiration or termination of this Agreement or expiration of the Grant Period.
- (b) For each calendar year during the term of this Agreement and beginning in the first calendar year after the date **EP VIDA** obtains a Certificate of Occupancy, an amount equal to one hundred percent (100%) of the **CITY'S** share of the ad valorem taxes above the base amount on the **REAL PROPERTY** and **PERSONALTY** attributable to the Hotel located on the **REAL PROPERTY**, shall be tendered from the **CITY'S** general fund as a Property Tax Rebate by the **CITY** to **EP VIDA** on a yearly basis upon **EP VIDA'S** satisfaction of Section 3(d).
- (c) The **CITY** agrees to process any Grant payments for Sales and Use Tax and Mixed Beverage Tax rebates to **EP VIDA** within thirty (30) days after receipt of the later of:
 - (1) Sales and Use Tax funds from the State Comptroller's office;
 - (2) Mixed Beverage Tax funds from the State Comptroller's office; and
 - (3) **EP VIDA'S** Grant Submittal Package.
- (d) The **CITY** agrees to process any Property Tax Rebate payments to **EP VIDA** within thirty (30) days after receipt of **EP VIDA'S** Grant Submittal Package.

SECTION 5. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **Failure to Maintain Development.** Failure to operate a Hotel and Specialty Retail Center on the Property for the term of this Agreement, and if **EP VIDA** fails to cure such failure within sixty (60) days after written notice from the **CITY** describing such failure, or if such failure cannot be cured within such sixty (60) day period in the exercise of all due diligence, then if **EP VIDA** fails to commence such cure within

such sixty (60) day period or fails to continuously thereafter diligently prosecute the cure of such failure.

- (b) **False Statements.** Any written warranty, representation or statement made or furnished to the **CITY** by **EP VIDA** under this Agreement or any document(s) related hereto furnished to the **CITY** by **EP VIDA** is/are false or misleading in any material respect, either now or at the time made or furnished, and **EP VIDA** fails to cure same within sixty (60) days after written notice from the **CITY** describing the violation, or if such violation cannot be cured within such sixty (60) day period in the exercise of all due diligence, then if **EP VIDA** fails to commence such cure within such sixty (60)day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if **EP VIDA** obtains actual knowledge that any such warranty, representation or statement has become false or misleading after the time that it was made, and **EP VIDA** fails to provide written notice to the **CITY** of the false or misleading nature of such warranty, representation or statement within ten (10) days after **EP VIDA** learns of its false or misleading nature.
- (c) **Insolvency.** The dissolution or termination of **EP VIDA'S** existence as a going business or concern, **EP VIDA'S** insolvency, appointment of receiver for any part of **EP VIDA'S** portion of the Property, any assignment of all or substantially all of the assets of **EP VIDA** for the benefit of creditors of **EP VIDA**, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against **EP VIDA** unless, in the case of involuntary proceedings, such proceedings are discharged within sixty (60) days after filing.
- (d) **Construction of Development.** **EP VIDA'S** failure to comply with its construction obligations set forth in this Agreement and **EP VIDA** fails to cure same within sixty (60) days after written notice from the **CITY** unless such failure cannot be cured within such sixty (60) day period in the exercise of all due diligence, then if **EP VIDA** fails to commence such cure within such sixty (60) day period or fails to continuously thereafter diligently prosecute the cure of such failure, except to the extent such failure is caused by any act or failure to act on the part of the **CITY**.
- (e) **Property Taxes.** If **EP VIDA** allows its property taxes owed to the **CITY** to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within thirty (30) days after written notice thereof from the **CITY** and/or El Paso Central Appraisal District. **EP VIDA** shall have the right to contest the appraised value of the Hotel, but in no event shall **EP VIDA** contest the value of the Hotel on the tax rolls of the El Paso Central Appraisal District during the term of this Agreement at an amount of Four Million Three Hundred Eighty Thousand Eight Hundred Sixteen Dollars (\$4,380,816.00) prior to completion of the construction and improvements; Twenty Two Million Dollars (\$22,000,000.00) or lower for the first five (5) years after completion of the construction and improvements; Twenty Four Million Dollars (\$24,000,000.00) or lower for the following three (3) years;

and Twenty Six Million Dollars (\$26,000,000.00) or lower for the last two (2) years.

- (f) **Other Defaults.** Failure of *EP VIDA* or *CITY* to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, or failure of *EP VIDA* or *CITY* to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement between the *CITY* and *EP VIDA*, and *EP VIDA* or *CITY* fails to cure such failure within sixty (60) days after written notice from the *CITY* or *EP VIDA*, as the case may be, describing such failure, or if such failure cannot be cured within such 30-day period in the exercise of all due diligence, then if *EP VIDA* or *CITY* fails to commence such cure within such sixty (60) day period or fails to continuously thereafter diligently prosecute the cure of such failure.
- (g) **Failure to Cure.** If any Event of Default by *EP VIDA* shall occur, and after *EP VIDA* fails to cure same in accordance herewith, then this Agreement is terminated and the *CITY'S* obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.

SECTION 6. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT.

CITY may terminate this Agreement without an event of default by *EP VIDA* and effective immediately if (i) any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including case law holding that a Chapter 380 Economic Development Agreement rebating Sales and Use Taxes such as this Agreement is an unconstitutional debt; or (ii) the federal government implements the Streamlined Sales and Use Tax or similar legislation in such a manner as to change the consummation of a sales and use tax event to a tax site outside of the *CITY* thereby eliminating the *CITY'S* rights in the sales tax proceeds paid by *EP VIDA* for the Hotel.

SECTION 7. LIMITED RETURN ON INVESTMENT (ROI).

During the term of this Agreement if *EP VIDA* realizes an ROI in excess of 20% per annum, the total package of incentives arising from this Agreement and the Hotel and Convention Services Agreement shall be reduced by an amount to result in a yield of only 20% per annum.

SECTION 8. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in

writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed 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. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.
- (c) **Assignment.** *EP VIDA* understands and agrees that the *CITY* expressly prohibits *EP VIDA* from selling, transferring, assigning or conveying in any way any rights to receive the Grant proceeds without the *CITY'S* prior written consent.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. *CITY* warrants and represents that the individual executing this Agreement on behalf of *CITY* has full authority to execute this Agreement and bind *CITY* to the same. *EP VIDA* warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (f) **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the date of the later to execute this Agreement by *EP VIDA* and *CITY*.
- (g) **Execution of Agreement.** City Council shall authorize the El Paso City Manager to execute this Agreement on behalf of *CITY*.
- (h) **Filing.** This Agreement shall be filed in the deed records of El Paso County, Texas. The provisions of this Agreement shall be deemed to run with the land and shall be binding on heirs, successors and assigns of *EP VIDA*. Upon any sale or other transfer of ownership rights in the Property, *EP VIDA* shall notify the *CITY* in writing of such sale or transfer within thirty (30) business days of such sale or transfer. Such provision is a material term of this Agreement and the failure to notify the *CITY* of such sale or transfer within the applicable period shall constitute a default.
- (i) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

- (j) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.
- (k) **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the **CITY**, whether now existing or in the future arising; provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Hotel unless specifically enumerated herein.
- (l) **Revenue Sharing Agreement.** The **CITY** designates this Agreement as a revenue sharing agreement, thereby entitling the **CITY** to request Sales and Use Tax information from the State Comptroller, pursuant to section 321.3022 of the Texas Tax Code, as amended.
- (m) **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- (n) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.
- (o) **Employment of Undocumented Workers.** For the term of this Agreement, but only to the extent required by state law and only so long as Texas Government Code Section 2264.001 is in effect, **EP VIDA** agrees to the following terms:
 - (i) **EP VIDA** agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001;
 - (ii) If convicted of a violation under 8 U.S.C. Section 1324a(f), **EP VIDA** shall repay the amount of the Grant payments received by **EP VIDA** from the **CITY** as of the date of such violation not later than one hundred twenty (120) days after the date **EP VIDA** is notified by **CITY** of a violation of this section, plus interest from the date the Grant payment(s) was paid to **EP VIDA**, at the rate of five percent (5%) per annum. The interest will accrue from the date the Grant payment(s) were paid to **EP VIDA** until the date the reimbursement payments are repaid to **CITY**. **CITY** may also recover court costs and reasonable attorneys' fees incurred in an action to recover the Grant payment(s) subject to repayment under this section; and

- (iii) **EP VIDA** is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom **EP VIDA** contracts.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

(SIGNATURES BEGIN ON NEXT PAGE)

EP VIDA:

EP VIDA, LLC,
a Texas limited liability company

By: _____
Name: William Correa
Title: President
Date: _____

By: _____
Name: Ajay Kothari
Title: Vice President
Date: _____

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2013, by _____ as _____ of **EP VIDA, LLC**, a limited liability company, organized and existing under the laws of the State of Texas.

Notary Public, State of Texas

My Commission Expires:

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

CITY:

CITY OF EL PASO, TEXAS

By: _____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT



Matthew K. Behrens
Assistant City Attorney

Mathew S. McElroy, Director
City Development Department

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This Instrument was acknowledged before me on the ____ day of _____, 2013, by Joyce A. Wilson, City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas.

Notary Public, State of Texas

EXHIBIT A

[Hotel and Commercial/Retail Parcel Description]

Exhibit A

Prepared for: The City of El Paso
April 29, 2013

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being a portion of Lot 9A, Block 5, El Paso International Airport Replat of Unit 3 Replat A as recorded in File No. 20130028872, Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

THE "TRUE POINT OF BEGINNING" being a found chiseled x on the intersection of the westerly right of way line of Airway Boulevard with the southerly right of way line of Boeing Drive;

Thence along the southerly right of way line of Airway Boulevard, South 01°01'53" East a distance of 73.24 feet to a point;

Thence leaving said right of way line and along said easement, South 88°58'07" West a distance of 55.00 feet to a point;

Thence, South 01°01'53" East a distance of 25.00 feet to a point on the common line of Lots 9A and 9B, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

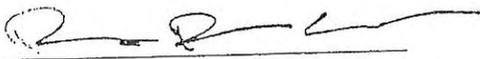
Thence along said line, South 88°58'07" West a distance of 357.20 feet to a point;

Thence, North 01°01'53" West a distance of 120.00 feet to a point on the southerly right of way line of Boeing Drive;

Thence along said right of way line, North 88°58'07" East a distance of 348.20 feet to a point of curve;

Thence along said right of way line, 68.82 feet along the arc of a curve to the right which has a radius of 105.00 feet a central angle of 37°33'18" a chord which bears South 72°16'45" East a distance of 67.60 feet to the TRUE POINT OF BEGINNING" and containing 47,647 Sq. Ft. or 1.0938 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.


Ron R. Conde
R.P.L.S. No. 5152
Job No. 413-43



CONDE INC
ENGINEERING / LAND SURVEYING / PLANNING
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905
(915) 592-0283 FAX (915) 592-0286

Exhibit A

Prepared for: The City of El Paso
April 29, 2013

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being a portion of Lot 9B, Block 5, El Paso International Airport Replat of Unit 3 Replat A as recorded in File No. 20130028872, Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

COMMENCING FOR REFERENCE at a found chiseled x on the intersection of the westerly right of way line of Airway Boulevard with the southerly right of way line of Boeing Drive; Thence along the southerly right of way line of Airway Boulevard, South $01^{\circ}01'53''$ East a distance of 73.24 feet to a point; Thence leaving said right of way line, South $88^{\circ}58'07''$ West a distance of 55.00 feet to a point; Thence, South $01^{\circ}01'53''$ East a distance of 25.00 feet to a point on the common line of Lots 9A and 9B, Block 5, El Paso International Airport Replat of Unit 3 Replat A for THE "TRUE POINT OF BEGINNING"

Thence leaving said line, South $01^{\circ}01'53''$ East a distance of 151.42 feet to a point;

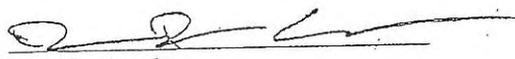
Thence, South $88^{\circ}58'07''$ West a distance of 307.67 feet to a point;

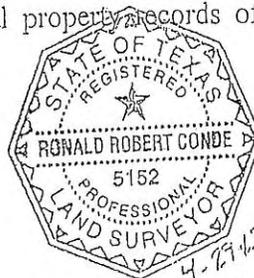
Thence 72.20 feet along the arc of a curve to the left which has a radius of 88.00 feet a central angle of $48^{\circ}39'55''$ a chord which bears North $46^{\circ}01'53''$ West a distance of 70.05 feet;

Thence, North $01^{\circ}01'53''$ West a distance of 101.89 feet to a point on the common line of Lots 9A and 9B, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence along said line, North $88^{\circ}58'07''$ East a distance of 357.20 feet to the TRUE POINT OF BEGINNING" and containing 52,506 Sq. Ft. or 1.205 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.


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Exhibit A

Prepared for: The City of El Paso
April 29, 2013

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being a portion of Lot 9C, Block 5, El Paso International Airport Replat of Unit 3 Replat A as recorded in File No. 20130028872, Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

COMMENCING FOR REFERENCE at a found chiseled x on the intersection of the westerly right of way line of Airway Boulevard with the southerly right of way line of Boeing Drive; Thence along the southerly right of way line of Airway Boulevard, South $01^{\circ}01'53''$ East a distance of 309.66 feet to a point; Thence leaving said right of way line, South $88^{\circ}58'07''$ West a distance of 55.00 feet to a point for THE "TRUE POINT OF BEGINNING"

Thence, South $01^{\circ}01'53''$ East a distance of 213.58 feet to a point on the southerly line of Lot 9C, Block 5; El Paso International Airport Replat of Unit 3 Replat A;

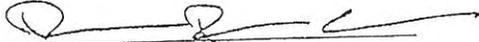
Thence along said line, South $88^{\circ}58'07''$ West a distance of 387.20 feet to a point;

Thence, North $01^{\circ}01'53''$ West a distance of 158.58 feet to a point;

Thence 102.86 feet along the arc of a curve to the left which has a radius of 85.00 feet a central angle of $69^{\circ}19'58''$ a chord which bears North $54^{\circ}18'08''$ East a distance of 96.70 feet;

Thence, North $88^{\circ}58'07''$ East a distance of 307.67 feet to the TRUE POINT OF BEGINNING" and containing 79,519 Sq. Ft. or 1.8255 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.


Ron R. Conde
R.P.L.S. No. 5152
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Exhibit A

Prepared for: The City of El Paso
April 29, 2013

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being a portion of Lot 9D, Block 5, El Paso International Airport Replat of Unit 3 Replat A as recorded in File No. 20130028872, Real property records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

COMMENCING FOR REFERENCE at a point being the intersection of the southerly right of way line of Boeing Drive with the common line of Lots 9G and 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A; Thence along the southerly right of way line of Boeing Drive, North $88^{\circ}58'07''$ East a distance of 185.76 feet to a point on the westerly line of a 60 foot common access and utility easement; Thence leaving said right of way line, South $01^{\circ}01'53''$ East a distance of 386.42 feet to a point on the common line of Lots 9C and 9D, Block 5, El Paso International Airport Replat of Unit 3 Replat A for THE "TRUE POINT OF BEGINNING"

Thence, along said line, South $01^{\circ}01'53''$ East a distance of 158.58 feet to a point on the southerly line of Lot 9D, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence, along said line, South $88^{\circ}58'07''$ West a distance of 73.74 feet to a point;

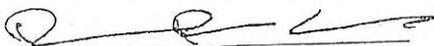
Thence, North $02^{\circ}06'53''$ West a distance of 96.34 feet to a point;

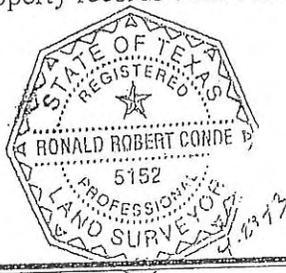
Thence, South $85^{\circ}16'00''$ West a distance of 127.56 feet to a point on the common line of Lots 9D and 9E, Block 5, El Paso International Airport Replat of Units 3 Replat A;

Thence, along said line, North $43^{\circ}54'23''$ East a distance of 175.35 feet to a point;

Thence leaving said line, 101.39 feet along the arc of a curve to the left which has a radius of 85.00 feet a central angle of $68^{\circ}20'37''$ a chord which bears South $56^{\circ}51'35''$ East a distance of 95.48 feet to the TRUE POINT OF BEGINNING" and containing 20,466 Sq. Ft. or 0.4698 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.


Ron R. Conde
R.P.L.S. No. 5152
Job No. 413-43



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Exhibit A

Prepared for: The City of El Paso
April 29, 2013

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being a portion of Lot 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A as recorded in File No. 20130028872, Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

THE "TRUE POINT OF BEGINNING" being a point for the intersection of the southerly right of way line of Boeing Drive with the common line of Lots 9G and 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence along the common line of Lots 9E, 9F and 9G Block 5, El Paso International Airport Replat of Unit 3 Replat A, South $01^{\circ}01'53''$ East a distance of 163.07 feet to a point on the common line of Lots 9E and 9F, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence along said line, South $45^{\circ}58'09''$ East a distance of 151.14 feet to a point;

Thence leaving said line, 64.26 feet along the arc of a curve to the left which has a radius of 85.00 feet a central angle of $43^{\circ}18'46''$ a chord which bears South $01^{\circ}01'53''$ East a distance of 62.74 feet to a point the common line of Lots 9D and 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence, along said line, South $43^{\circ}54'23''$ West a distance of 175.35 feet to a point the southerly line of Lot 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence along said line, South $85^{\circ}16'00''$ West a distance of 173.73 feet to a point on the westerly line of Lot 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence along said line, 154.18 feet along the arc of a curve to the left which has a radius of 2883.36 feet a central angle of $03^{\circ}03'50''$ a chord which bears North $06^{\circ}15'57''$ West a distance of 154.17 feet to a point;

Thence along said line, 127.12 feet along the arc of a curve to the right which has a radius of 415.88 feet a central angle of $17^{\circ}30'50''$ a chord which bears North $20^{\circ}55'12''$ East a distance of 126.63 feet to a point;

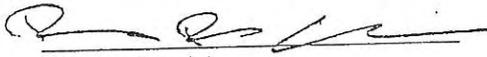
Thence along said line, North $29^{\circ}40'27''$ East a distance of 28.65 feet to a point of curve;

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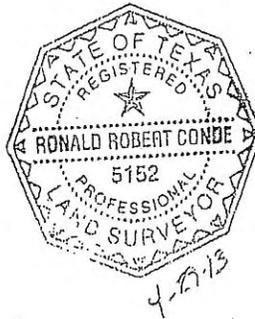
Thence along said line, 182.37 feet along the arc of a curve to the left which has a radius of 389.98 feet a central angle of $26^{\circ}47'37''$ a chord which bears North $16^{\circ}16'47''$ East a distance of 180.71 feet to a point on the southerly right of way line of Boeing Drive;

Thence along said right of way line, North $88^{\circ}58'07''$ East a distance of 88.79 feet to the TRUE POINT OF BEGINNING" and containing 90,788 Sq. Ft. or 2.0842 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.



Ron R. Conde
R.P.L.S. No. 5152
Job No. 413-43



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Exhibit A

Prepared for: The City of El Paso
April 29, 2013

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being a portion of Lot 9F, Block 5, El Paso International Airport Replat C of Unit 3 Replat A as recorded in File No. 20130028872, Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

COMMENCING FOR REFERENCE at a point on the intersection of the southerly right of way line of Boeing Drive with the common line of Lots 9G and 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A; Thence along said line South $01^{\circ}01'53''$ East a distance of 120.00 feet to a point the common line of Lots 9G and 9F, Block 5, El Paso International Airport Replat of Unit 3 Replat A for THE "TRUE POINT OF BEGINNING"

Thence along said line, North $88^{\circ}58'07''$ East a distance of 155.76 feet to a point on the westerly line of a 60 foot common access and utility easement;

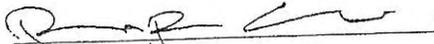
Thence along said line, South $01^{\circ}01'53''$ East a distance of 101.89 feet to a point;

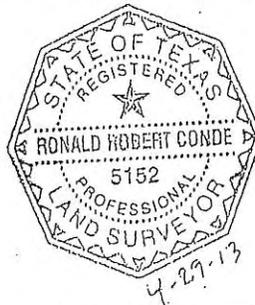
Thence, along said line, 70.73 feet along the arc of a curve to the left which has a radius of 85.00 feet a central angle of $47^{\circ}40'35''$ a chord which bears South $44^{\circ}27'47''$ West a distance of 68.71 feet to a point the common line of Lots 9F and 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence along said line, North $45^{\circ}58'09''$ West a distance of 151.14 feet to a point;

Thence along said line, North $01^{\circ}01'53''$ West a distance of 43.06 feet to the TRUE POINT OF BEGINNING" and containing 16,146 Sq. Ft. or 0.3707 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.


Ron R. Conde
R.P.L.S. No. 5152
Job No. 413-43



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Exhibit A

Prepared for: The City of El Paso
April 29, 2013

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being a portion of Lot 9G, Block 5, El Paso International Airport Replat of Unit 3 Replat A as recorded in File No. 20130028872, Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

THE "TRUE POINT OF BEGINNING" being a point for the intersection of the southerly right of way line of Boeing Drive with the common line of Lots 9G and 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

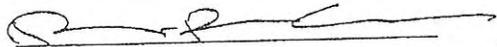
Thence along the southerly right of way line of Boeing Drive, North $88^{\circ}58'07''$ East a distance of 155.76 feet to a point on the westerly line of a 60 foot common access and utility easement;

Thence along said line, South $01^{\circ}01'53''$ East a distance of 120.00 feet to a point on the common line of Lots 9G and 9F, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence, along said line, South $88^{\circ}58'07''$ West a distance of 155.76 feet to a point the common line of Lots 9G and 9E; Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence along said line, North $01^{\circ}01'51''$ West a distance of 120.00 feet to the TRUE POINT OF BEGINNING" and containing 18,691 Sq. Ft. or 0.4291 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.



Ron R. Conde
R.P.L.S. No. 5152
Job No. 413-43



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EXHIBIT B

[Hotel and Commercial/Retail Parcel Depiction]

EXHIBIT C

[Grant Submittal Package Form]

EP Vida, LLC believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of _____, 20__ and signed by _____ of EP Vida, LLC.

This Grant Submittal Package Form is submitted in compliance with the Agreement and in anticipation of receiving the Grant payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted as documentation required for the reimbursement of _____ expenses detailed and attached hereon representing eligible expenses incurred from _____ to _____.

- 1. Documentation required by Section 3(d) (1)-(4) of the Agreement.
- 2. All appropriate and substantiating documents detailing eligible reimbursement amount requested.

It is understood by EP Vida, LLC that the City of El Paso has up to thirty (30) days to process this request and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

EP VIDA, LLC

Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____, as _____ of EP VIDA, LLC, on behalf of said entity (APPLICANT).

Notary Public, State of Texas

My Commission Expires:

EXHIBIT D
[Property Tax Rebate Submittal Package Form]

EP Vida, LLC believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of _____, 20__ and signed by _____ of EP Vida, LLC.

This Property Tax Rebate Submittal Package Form is submitted in compliance with the Agreement and in anticipation of receiving the Property Tax Rebate payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted as documentation required for the reimbursement of _____ expenses detailed and attached hereon representing eligible expenses incurred from _____ to _____.

1. Documentation required by Section 3(e) (1)-(2) of the Agreement.
2. All appropriate and substantiating documents detailing eligible reimbursement amount requested.

It is understood by EP Vida, LLC that the City of El Paso has up to thirty (30) days to process this request and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

EP VIDA, LLC

Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____, as _____ of EP VIDA, LLC, on behalf of said entity (APPLICANT).

Notary Public, State of Texas

My Commission Expires:

EXHIBIT E

[Four Star Rating Criteria]

FOUR STAR HOTEL STANDARDS

200 rooms minimum

Standard rooms – 330 sq. ft. minimum for Airport locations

Minimum Ceiling Height – 8'-4"

Two single line telephones

One HDTV

King – Full shower

Double/Double – Tub

Suites

Presidential (1 required) – 1,000 sq. ft. minimum

Executive Suites (6 required) – 660 sq. ft. minimum

Room Mix

King – 40% minimum

Double/Double – 20% minimum

Room Features

Electronic door locks

In-room safe

Hinged and illuminated closet

Refreshment center

Dual showerhead

Illuminated make-up mirror

Hair dryer

Weight scale

Robes & slippers

Iron/ironing board

Coffee unit

Concierge Service (minimum required)

Complimentary Newspapers

Complimentary soft drinks and snacks

Restaurant & Bar

3 Meals required

24 Hour room service required

125 seats minimum

Meeting Rooms

10,000 sq. ft. minimum not including pre function space
Minimum capacity – 450 people / Banquet style
Required to be divided into 5 separate spaces

Fitness Room

750 sq. ft. minimum size
Multi-station required
Free weights required
Minimum of 6 pieces of high quality equipment required

Pool

800 sq. ft. minimum size

Interior Finishes and Standards

All interior finishes will be reflective of an upper upscale property. The direction will be modern, relaxing and comfortable. The quality of the finishes will also be designed to endure usage and exhibit an elegant feel.

Atmosphere

Modern, refreshing, welcoming, comfortable and exceptional guest experience while also respecting the surrounding environment.

Franchise

National Brand of similar quality required

EXHIBIT F
[Waiver of Sales and Use Tax or Mixed Beverage Tax Confidentiality]

Date _____

I authorize the State of Texas Comptroller of Public Accounts to release [sales / mixed beverage] tax information pertaining to the taxpayer indicated below to _____, a _____, its successors, assigns or nominees, and the **City of El Paso, Texas**. I understand that this waiver applies only to place of business located at _____ in the City of El Paso, El Paso County, Texas.

Please print or type the following information as shown on your Texas [Sales and Use Tax Permit / Liquor Permit / Beer License]:

Name of Taxpayer Listed on Texas Sales Tax Permit:

Name Under Which Taxpayer is Doing Business (d/b/a or Store Name):

Taxpayer Mailing Address:

Physical Location of Business Permitted for [Sales Tax / Mixed Beverage Sales Tax] in El Paso, Texas:

Texas Taxpayer ID Number
Tax Outlet Number / TABC Number

Authorized Signature

Printed Name:

Title:

Phone:

The authorized signature must be an owner, officer, director, partner, or agent authorized to sign a Texas Sales Tax Return or a Texas Mixed Beverage Tax Return. If you have any questions concerning this waiver of confidentiality, please contact the Texas Comptroller of Public Accounts at (800) 531-5441.

CITY OF EL PASO
AND
EP VIDA, LLC

HOTEL AND CONVENTION SERVICES
AGREEMENT

This **HOTEL AND CONVENTION SERVICES AGREEMENT** (this "Agreement") is made and entered into by and between the **CITY OF EL PASO, TEXAS** ("hereinafter referred to as "**CITY**"), a Texas home rule municipal corporation, **EP VIDA, LLC** (hereinafter "**EP VIDA**"), a Texas limited liability company, for the purposes and considerations stated below:

WHEREAS, Chapter 351 of the Texas Tax Code addresses expenditures of the municipal hotel occupancy tax revenue; and

WHEREAS, Section 351.101(a) of the Texas Tax Code provides in pertinent part that revenue from "the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry, and that use is limited to the following: (1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers, or both; (2) the furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants; [and] (3) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity"; and

WHEREAS, **EP VIDA** agrees to provide the use of Hotel facilities and Specialty Retail Center, personnel, and materials; further **EP VIDA** will conduct advertising and conducting solicitations and other promotional programs in an effort to attract tourists and convention delegates or registrants to the City of El Paso; and

WHEREAS, the **CITY** has concluded and hereby finds that this Agreement clearly promotes tourism and the convention and hotel industry within the City of El Paso and, further meets the requirements contained in Chapter 351 of the Texas Tax Code, as amended.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. TERM.

This Agreement shall be effective for thirteen (13) years from the Effective Date of this Agreement. However, EP VIDA's eligibility for reimbursement for certain activities

pursuant to Section 3(b)(2) shall be limited to forty (40) consecutive quarters within the term of this Agreement.

SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Agreement.** The word "Agreement" means this Hotel and Convention Services Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (b) **CITY.** The word "**CITY**" means the City of El Paso, Texas. For purposes of this Agreement, City's address is City of El Paso, P.O. Box 1890, El Paso, Texas 79950-1890.
- (c) **Convention and Tourist Facilities.** The words "Convention and Tourist Facilities" mean and include the following: El Paso Convention Center, located at 1 Civic Center Plaza, El Paso, Texas, 79901; El Paso Museum of Art, located at 1 Arts Festival Plaza, El Paso, Texas, 79901; El Paso Museum of History, located at 12901 Gateway West, El Paso, Texas, 79928; Plaza Theatre Performing Arts Center, located at 125 Pioneer Plaza, El Paso, Texas 79901; and other tourist and culture facilities in El Paso, Texas.
- (d) **Development.** The word "Development" means the planned Hotel and Specialty Retail Center more specifically described on **Exhibit A**.
- (e) **Hotel.** The word "Hotel" means the Four Star Rating or higher hotel, more specifically described in **Exhibit A** and as depicted in **Exhibit B**, owned and operated by **EP VIDA**. Four Star Rating is defined in **Exhibit C**.
- (f) **EP VIDA.** The words "**EP VIDA**" mean the EP VIDA, LLC, a Texas limited liability company. For the purposes of this Agreement, EP VIDA's address is 8411 Lockheed, Suite 7, El Paso, Texas 79925.
- (g) **Full-time Employment.** The words "Full-time Employment" in this Agreement shall mean a job requiring a minimum of One Thousand Eight Hundred Twenty (1,820) hours of work averaged over a twelve (12) month period, including allowance for vacation and sick leave, with full company benefits, including 75% payment of the required health insurance premium (exclusive of any supplemental insurance), and receipt of a sustainable wage in an amount of at least \$10.00 per hour, and employed at the Hotel and Specialty Retail Center in the City of El Paso, Texas.
- (h) **Local Hotel Occupancy Tax Revenue.** The words "Local Hotel Occupancy Tax Revenue" mean the municipal hotel occupancy tax levied by the **CITY** pursuant to chapter 351 of the Texas Tax Code, as amended, at the rate of seven percent

(7%), as of the effective date of this Agreement, which is attributable to guests staying at the Hotel, and is remitted by **EP VIDA** to **CITY**.

- (i) **Operator and Hotel Franchise.** The words "Operator and Hotel Franchise" mean an experienced hotel operator and a franchise for Four Star Rating hotel or other hotel of equivalent or better quality.
- (j) **Qualified Expenditures.** The words "Qualified Expenditures" means those costs incurred by **EP VIDA** in the acquisition, construction, development, furnishing, operation, and or repair of Development.
- (k) **Specialty Retail Center.** The words "Specialty Retail Center" means approximately 87,000 sq. ft. for a specialty retail center consisting of 66,000 sq. ft. of retail, 14,000 sq. ft. of restaurant space and approximately 7,000 sq. ft. of office and service space, more specifically described by **Exhibit A** owned and operated by **EP VIDA**.

SECTION 3. OBLIGATIONS OF **EP VIDA**.

During the term of this Agreement, **EP VIDA** shall comply with the following terms and conditions:

(a) **Construction of Hotel.**

- (1) **EP VIDA** agrees to develop, construct, at its sole cost, the Hotel and the Specialty Retail Center. **EP VIDA** shall commence construction to the Hotel and the Specialty Retail Center within twelve (12) months of the effective date of this Agreement. **EP VIDA** shall receive a certificate of occupancy, and be open for business to the general public within twenty-four (24) months from the commencement of construction to the Hotel and Specialty Retail Center. The Hotel shall be at a minimum a Four Star Rating hotel with approximately two hundred (200) rooms. **EP VIDA** agrees that it shall make Qualified Expenditures of not less than Sixty Four Million Dollars (\$64,000,000.00) in the Development and/or equipment installed in the Development, which investment shall be made and the equipment installed no later than thirty-six (36) months following the effective date of this Agreement. **EP VIDA** shall submit receipts to the **CITY** for Qualified Expenditures towards the construction of the Development, in a minimum amount of Sixty Four Million Dollars (\$64,000,000.00) within twenty-four (24) months of the effective date of this Agreement. At a minimum, the Development shall contain the following features:

- (A) approximately two hundred (200) guestrooms furnished and maintained to the standard of a Four Star Rating hotel;

- (B) full service restaurant and bar;
 - (C) standard room service;
 - (D) concierge services;
 - (E) spa services
 - (F) banquet/meeting room
 - (G) swimming pool;
 - (H) in-room internet access; and
 - (I) services and amenities common in a Four Star Rating hotel as defined in **Exhibit C**.
- (2) **EP VIDA** agrees that it shall create, staff, and maintain Three Hundred (300) Full-Time Employment positions for its Hotel and Specialty Retail Center within twelve (12) months from the date of the issuance of the Certificate of Occupancy for the Development, and shall maintain Three Hundred (300) Full-Time Employment positions for its Hotel and Specialty Retail Center through the entire term of the Reimbursement Period of this Agreement. **EP VIDA** shall maintain the full-time jobs for each quarter of each fiscal year with the total per day hours worked averaged over each fiscal quarter.
- (3) **EP VIDA** shall provide an annual report by April 30th certifying the status of compliance through the life of this Agreement of new jobs created, new investments and any other relevant information. Documentation for jobs may be in the form of quarterly IRS 941 returns, Texas Workforce Commission Employer Quarterly Reports, or employee rosters that show the hours worked and the positions filled, and such other reports as may reasonably be required.
- (4) **EP VIDA**, during normal business hours, at its principal place of business, shall allow **CITY** reasonable access to its employment records and books, and other books and records that are related to the other described economic development consideration and incentives, to verify employment records and any other records related to other economic development consideration and incentives, but the confidentiality of such records will be maintained.
- (5) **EP VIDA** agrees to provide **CITY** with a copy of the following:

- (A) Closing Statement and any debt instruments for the purchase of the land and improvements thereon.
- (B) Copy of a development budget providing complete picture of construction expenditures, soft costs and all other typical development costs, including contingencies.
- (C) Copy of financial pro-forma to include a detailed revenue and expense statement, including reserves for replacement, from pre-opening to stabilization.
- (D) Copy of the construction bid and copy of the final construction contract with terms and conditions in accordance with the approved budget. Any construction costs over and above the approved budget shall be the sole responsibility of **EP VIDA**.
- (E) Signed copies of the proposed hotel operator/management and franchise agreements with a Four Star Rating hotel or higher containing all the terms and conditions regarding their operation of the hotel, including all fees, required annual capital expenditure requirements, etc.
- (F) Copy of the interim construction loan commitment along with all terms and conditions including the reserve requirements.
- (G) Copy of the proposed permanent loan commitment along with all terms and conditions including reserve requirements.
- (H) Copy of the Phase I environmental study issued to **EP VIDA** and the City of El Paso (and banking institutions as required). All remediation costs will be the full responsibility of **EP VIDA** and any costs above the approved budget will be the full responsibility of **EP VIDA**.

(b) **Tourist Facilities Services and Promotional Programs.**

- (1) **EP VIDA** hereby agrees to conduct the following activities which promotes tourism, and the convention and hotel industry, and is consistent with the Chapter 351 of the Texas Tax Code, as amended: to provide Hotel facilities, personnel, and materials for the registration of convention delegates or registrants; to conduct advertising, solicitations and promotional programs to attract tourists and convention delegates or registrants to the City of El Paso or its vicinity; and to conduct solicitations and promotional programs to encourage tourists and convention delegates to visit historic sites and museums located within the City of El Paso, including Convention and Tourist Facilities, which are in the immediate

vicinity of the El Paso Convention Center, and are frequented by tourists and convention delegates. **EP VIDA** agrees to the following:

- (A) **EP VIDA**, through its Operator and Hotel Franchise, hereby agrees to make Hotel staff available periodically to assist El Paso Convention and Visitors Bureau staff with voluntary convention registration processes and activities.
 - (B) **EP VIDA** through its Operator and Hotel Franchise, hereby agrees to periodically assist the **CITY** and El Paso Convention and Visitors Bureau with its convention marketing efforts by providing mutually acceptable facilities for event planner site visits and familiarization trips.
 - (C) **EP VIDA** through its Operator and Hotel Franchise, hereby agrees to cooperate with the **CITY** and or El Paso Convention and Visitors Bureau by placing approved logos and slogans on Hotel advertising material targeting the meetings and tourism markets as directed by the **CITY** and or El Paso Convention and Visitors Bureau.
- (2) **EP VIDA** shall be entitled to reimbursement for activities and programs conducted pursuant to this Section of the Agreement, and chapter 351 of the Texas Tax Code, as amended. To obtain reimbursement, **EP VIDA** shall submit to **CITY**, not more frequently than quarterly, a written draw request submitted by **EP VIDA** accompanied by an activity report, schedule of work, activities, and programs performed. **CITY** shall fund the requested amount of each reimbursement request within thirty (30) days after its receipt of the specified submittals with respect thereto. **CITY** shall not be obligated to fund any reimbursement which is not submitted in accordance with this section. **CITY'S** reimbursements under this section of the Agreement shall equal but not exceed fifty percent (50%) of the Local Hotel Occupancy Tax Revenue collected by **EP VIDA** and remitted to **CITY** during the term of this Agreement.

(c) **Records.**

EP VIDA hereby agrees to provide and maintain a record acceptable to the **CITY** specifying each scheduled activity, program, or event that: (i) is directly funded or reimbursed by the Local Hotel Occupancy Tax Revenue; and (ii) is directly enhancing and promoting tourism and the convention and hotel industry.

(d) **Reports to the CITY and State Comptroller's Office.**

Pursuant to Chapter 156 of the Texas Tax Code, **EP VIDA** hereby agrees to timely remit to the State Comptroller, the State Hotel Occupancy Tax collected, at the state rate of six percent (6%) for each reporting period. Further, **EP VIDA**

hereby agrees to provide the **CITY** a copy of the report filed with the State Comptroller's office. A copy of the report shall be provided to the **CITY** within thirty (30) days of reporting to the State Comptroller's office. The report shall include the following:

- (1) the total amount of the payments made for rooms at the Hotel during the preceding reporting period;
- (2) the amount of the State Hotel Occupancy tax collected by **EP VIDA** during the preceding reporting period;
- (3) the amount of Local Hotel Occupancy Tax Revenue collected by **EP VIDA** during the preceding reporting period; and
- (4) other information that the State Comptroller requires to be in the report.

(e) **Environmental Studies.**

EP VIDA shall perform and provide the **CITY** with a copy of a Phase I environmental study issued to **EP VIDA** and the **CITY** (and banking institutions, as required). An environmental indemnity from **EP VIDA** to the **CITY** will be required. All remediation costs will be the full responsibility of **EP VIDA** and any costs for remediation not included in the approved budget will be the full responsibility of **EP VIDA**.

(f) **Ad Valorem Taxes.**

EP VIDA shall pay by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on the Development, as described by **Exhibit A** and as depicted in **Exhibit B** of this Agreement. **EP VIDA** shall have the right to contest the appraised value of the Development as provided by law, but in no event shall **EP VIDA** contest a valuation of Twenty Two Million Dollars (\$22,000,000.00) or lower for the first five (5) years after completion of construction and improvements; Twenty Four Million Dollars (\$24,000,000.00) or lower for the following three (3) years; and Twenty Six Million Dollars (\$26,000,000.00) or lower for the last two (2) years. The parties to this Agreement agree that the taxable value of the Development after completion of the construction will have a base value of Twenty Two Million Dollars (\$22,000,000.00) or lower for the first five (5) years after completion of construction and improvements; Twenty Four Million Dollars (\$24,000,000.00) or lower for the following three (3) years; and Twenty Six Million Dollars (\$26,000,000.00) or lower for the last two (2) years. **EP VIDA** covenants and agrees that during the term of this Agreement it shall not challenge or permit anyone else to take actions on its behalf to challenge any assessments by the Central Appraisal District at Twenty Two Million Dollars (\$22,000,000.00) or lower for the first five (5) years after completion of construction and improvements;

Twenty Four Million Dollars (\$24,000,000.00) or lower for the following three (3) years; and Twenty Six Million Dollars (\$26,000,000.00) or lower for the last two (2) years. It is the intent of the parties that the assessed value of the **REAL PROPERTY and PERSONALTY** on the tax rolls be a base value of Twenty Two Million Dollars (\$22,000,000.00) or lower for the first five (5) years after completion of construction and improvements; Twenty Four Million Dollars (\$24,000,000.00) or lower for the following three (3) years; and Twenty Six Million Dollars (\$26,000,000.00) or lower for the last two (2) years during the term of this Agreement and any affirmative act by **EP VIDA** to reduce the assessed value to amount lower than Twenty Two Million Dollars (\$22,000,000.00) or lower for the first five (5) years after completion of construction and improvements; Twenty Four Million Dollars (\$24,000,000.00) or lower for the following three (3) years; and Twenty Six Million Dollars (\$26,000,000.00) or lower for the last two (2) years will be an event of default that will result in termination of this Agreement.

SECTION 4. OBLIGATIONS OF CITY.

During the term of this Agreement and so long as an event of default has not occurred and is continuing as set forth in Section 5 of this Agreement (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure period), **CITY** shall comply with the following terms and conditions:

- (a) **CITY** shall reimburse **EP VIDA** on a dollar-to-dollar basis, an amount equal to fifty percent (50%) of the Local Hotel Occupancy Tax Revenue collected by the Hotel, and remitted to the **CITY**. The **CITY** shall reimburse **EP VIDA** for qualified activities and programs conducted by **EP VIDA** on an annual basis pursuant to Section 3(b) of this Agreement. Provided however, the amount reimbursed to **EP VIDA** shall never exceed 50% of the amount actually remitted to **CITY** in the previous year. The **CITY** shall fund the requested amount of each reimbursement request within thirty (30) days after its receipt. **CITY** is obligated to make the payments under this section from the Local Hotel Tax Revenue. The **CITY** is not and shall not be obligated to make such payments from any other funds or revenues of the **CITY**. Reimbursement payments shall be limited to forty (40) consecutive quarters within the term of this Agreement.
- (b) **Limited Return on Investment (ROI)**. During the term of this Agreement if **EP VIDA** realizes an ROI in excess of 20% per annum the total package of incentives arising from this Agreement and the Chapter 380 Economic Development Program Agreement shall be reduced by an amount to result in a yield of only 20% per annum.

SECTION 5. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **Construction of Hotel and Specialty Retail Center.** *EP VIDA'S* failure to comply with its construction obligations set forth in this Agreement and if *EP VIDA* fails to cure same within sixty (60) days after written notice from the *CITY* unless such failure cannot be cured within such sixty (60) day period in the exercise of all due diligence, then if *EP VIDA* fails to commence such cure within such sixty (60) day period or fails to continuously thereafter diligently prosecute the cure of such failure, except to the extent such failure is caused by any act or failure to act on the part of the *CITY*.
- (b) **Quality of Hotel.** *EP VIDA'S* failure to operate the Hotel as a full service Four Star Rating hotel as specified in paragraph 3(a) and detailed in *Exhibit C*. No change of flag, a hotel branding or change in affiliation or franchise shall be made on Hotel without the prior written consent of the *CITY*, which shall not be unreasonably withheld. Any such change without the prior written consent of *CITY* shall be an event of default.
- (c) **Management of Hotel and Specialty Retail Center.** *EP VIDA'S* failure to manage the Hotel and Specialty Retail Center with a first quality professional management company. The parties agree that Aquila Management, LLC meets the requirements of a first quality professional management company as of the date of this agreement. Change of Management Company without the prior written consent of *CITY* shall be an event of default.
- (d) **False Statements.** Any written warranty, representation or statement made or furnished to the *CITY* by *EP VIDA* under this Agreement or any document(s) related hereto furnished to the *CITY* by *EP VIDA* is/are false or misleading in any material respect, either now or at the time made or furnished, and *EP VIDA* fails to cure same within sixty (60) days after written notice from the *CITY* describing the violation, or if such violation cannot be cured within such sixty (60) day period in the exercise of all due diligence, then if *EP VIDA* fails to commence such cure within such sixty (60) day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if *EP VIDA* obtains actual knowledge that any such warranty, representation or statement has become false or misleading after the time that it was made, and *EP VIDA* fails to provide written notice to the *CITY* of the false or misleading nature of such warranty, representation or statement within ten (10) days after *EP VIDA* learns of its false or misleading nature.
- (e) **Insolvency.** The dissolution or termination of *EP VIDA'S* existence as a going business or concern, *EP VIDA'S* insolvency, appointment of receiver for any part of *EP VIDA'S* portion of the Property, any assignment of all or substantially all of the assets of *EP VIDA* for the benefit of creditors of *EP VIDA*, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against *EP VIDA* unless, in the case of involuntary proceedings, such proceedings are discharged within sixty (60) days after filing.

- (f) **Local Hotel Occupancy Tax Revenue.** *EP VIDA* shall file a hotel occupancy tax return with the *CITY* (in a form prescribed by *CITY* from time to time) and include a copy of the Hotel's tax report submitted to the State Comptroller's office for Local Hotel Occupancy Tax Revenue. *EP VIDA* shall keep and maintain accurate records of the consideration and local hotel occupancy tax paid by the occupant of each sleeping room in the Hotel. *CITY* shall not be required to pay any monies for any period or portion thereof during the term of this Agreement for which the *CITY* has not received Local Hotel Occupancy Tax Revenue, or if *EP VIDA* is in default of this Agreement.
- (g) **Property Taxes.** *EP VIDA* allows its property taxes owed to the *CITY* to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within thirty (30) days after written notice thereof from the *CITY* and/or El Paso Central Appraisal District.
- (h) **Other Defaults.** Failure of *EP VIDA* or *CITY* to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, or failure of *EP VIDA* or *CITY* to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement between the *CITY* and *EP VIDA*, and *EP VIDA* or *CITY* fails to cure such failure within sixty (60) days after written notice from the *CITY* or *EP VIDA*, as the case may be, describing such failure, or if such failure cannot be cured within such 60-day period in the exercise of all due diligence, then if *EP VIDA* or *CITY* fails to commence such cure within such 60-day period or fails to continuously thereafter diligently prosecute the cure of such failure.
- (i) **Failure to Cure.** If any Event of Default by *EP VIDA* shall occur, and after *EP VIDA* fails to cure same in accordance herewith, then this Agreement may be terminated and the *CITY'S* obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.

SECTION 6. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed 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.

Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.

- (c) **Assignment.** *EP VIDA* understands and agrees that the *CITY* expressly prohibits *EP VIDA* from selling, transferring, assigning or conveying in any way any rights to receive the proceeds under this Agreement without the *CITY'S* prior written consent.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. *CITY* warrants and represents that the individual executing this Agreement on behalf of *CITY* has full authority to execute this Agreement and bind *CITY* to the same. *EP VIDA* warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (f) **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the date of the later to execute this Agreement by *EP VIDA* and *CITY*.
- (g) **Enforcement.** The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. *EP VIDA* shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining *EP VIDA'S* compliance with this Agreement.
- (h) **Execution of Agreement.** City Council shall authorize the El Paso City Manager to execute this Agreement on behalf of *CITY*.
- (i) **Filing.** This Agreement shall be filed in the deed records of El Paso County, Texas. The provisions of this Agreement shall be deemed to run with the land and shall be binding on heirs, successors and assigns of *EP VIDA*. Upon any sale or other transfer of ownership rights in the Property, *EP VIDA* shall notify the *CITY* in writing of such sale or transfer within thirty (30) business days of such sale or transfer. Such provision is a material term of this Agreement and the failure to notify the *CITY* of such sale or transfer within the applicable period shall constitute a default.
- (j) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time

period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

- (k) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.
- (l) **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the **CITY**, whether now existing or in the future arising provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Hotel unless specifically enumerated herein.
- (m) **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- (n) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.

(SIGNATURES BEGIN ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

EP VIDA:

EP VIDA, LLC,
a Texas limited liability company

By: _____
Name: William Correa
Title: President
Date: _____

By: _____
Name: Ajay Kothari
Title: Vice President
Date: _____

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2013, by _____, as _____ on behalf of ***EP VIDA, LLC***, a limited liability company, organized and existing under the laws of the State of Texas.

Notary Public, State of Texas

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

CITY:

CITY OF EL PASO, TEXAS

By: _____
Joyce A. Wilson,
City Manager

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT



Matthew K. Behrens
Assistant City Attorney

Mathew S. McElroy, Director
City Development Department

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2013, by Joyce A. Wilson, City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas.

Notary Public, State of Texas

Exhibit A

[Legal Description]

Exhibit A

Prepared for: The City of El Paso
April 29, 2013

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being a portion of Lot 9A, Block 5, El Paso International Airport Replat of Unit 3 Replat A as recorded in File No. 20130028872, Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

THE "TRUE POINT OF BEGINNING" being a found chiseled x on the intersection of the westerly right of way line of Airway Boulevard with the southerly right of way line of Boeing Drive;

Thence along the southerly right of way line of Airway Boulevard, South $01^{\circ}01'53''$ East a distance of 73.24 feet to a point;

Thence leaving said right of way line and along said easement, South $88^{\circ}58'07''$ West a distance of 55.00 feet to a point;

Thence, South $01^{\circ}01'53''$ East a distance of 25.00 feet to a point on the common line of Lots 9A and 9B, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

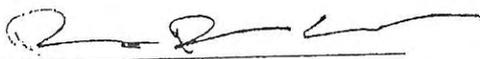
Thence along said line, South $88^{\circ}58'07''$ West a distance of 357.20 feet to a point;

Thence, North $01^{\circ}01'53''$ West a distance of 120.00 feet to a point on the southerly right of way line of Boeing Drive;

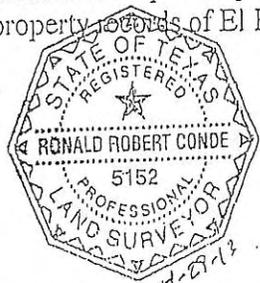
Thence along said right of way line, North $88^{\circ}58'07''$ East a distance of 348.20 feet to a point of curve;

Thence along said right of way line, 68.82 feet along the arc of a curve to the right which has a radius of 105.00 feet a central angle of $37^{\circ}33'18''$ a chord which bears South $72^{\circ}16'45''$ East a distance of 67.60 feet to the TRUE POINT OF BEGINNING" and containing 47,647 Sq. Ft. or 1.0938 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.



Ron R. Conde
R.P.L.S. No. 5152
Job No. 413-43



CONDE INC
ENGINEERING / LAND SURVEYING / PLANNING
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905
(915) 592-0283 FAX (915) 592-0286

Exhibit A

Prepared for: The City of El Paso
April 29, 2013

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being a portion of Lot 9B, Block 5, El Paso International Airport Replat of Unit 3 Replat A as recorded in File No. 20130028872, Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

COMMENCING FOR REFERENCE at a found chiseled x on the intersection of the westerly right of way line of Airway Boulevard with the southerly right of way line of Boeing Drive; Thence along the southerly right of way line of Airway Boulevard, South $01^{\circ}01'53''$ East a distance of 73.24 feet to a point; Thence leaving said right of way line, South $88^{\circ}58'07''$ West a distance of 55.00 feet to a point; Thence, South $01^{\circ}01'53''$ East a distance of 25.00 feet to a point on the common line of Lots 9A and 9B, Block 5, El Paso International Airport Replat of Unit 3 Replat A for THE "TRUE POINT OF BEGINNING"

Thence leaving said line, South $01^{\circ}01'53''$ East a distance of 151.42 feet to a point;

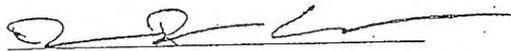
Thence, South $88^{\circ}58'07''$ West a distance of 307.67 feet to a point;

Thence 72.20 feet along the arc of a curve to the left which has a radius of 88.00 feet a central angle of $48^{\circ}39'55''$ a chord which bears North $46^{\circ}01'53''$ West a distance of 70.05 feet;

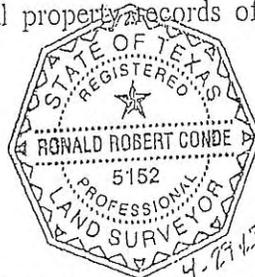
Thence, North $01^{\circ}01'53''$ West a distance of 101.89 feet to a point on the common line of Lots 9A and 9B, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence along said line, North $88^{\circ}58'07''$ East a distance of 357.20 feet to the TRUE POINT OF BEGINNING" and containing 52,506 Sq. Ft. or 1.205 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.



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Exhibit A

Prepared for: The City of El Paso
April 29, 2013

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being a portion of Lot 9C, Block 5, El Paso International Airport Replat of Unit 3 Replat A as recorded in File No. 20130028872, Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

COMMENCING FOR REFERENCE at a found chiseled x on the intersection of the westerly right of way line of Airway Boulevard with the southerly right of way line of Boeing Drive; Thence along the southerly right of way line of Airway Boulevard, South $01^{\circ}01'53''$ East a distance of 309.66 feet to a point; Thence leaving said right of way line, South $88^{\circ}58'07''$ West a distance of 55.00 feet to a point for THE "TRUE POINT OF BEGINNING"

Thence, South $01^{\circ}01'53''$ East a distance of 213.58 feet to a point on the southerly line of Lot 9C, Block 5; El Paso International Airport Replat of Unit 3 Replat A;

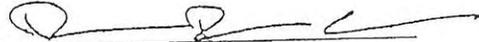
Thence along said line, South $88^{\circ}58'07''$ West a distance of 387.20 feet to a point;

Thence, North $01^{\circ}01'53''$ West a distance of 158.58 feet to a point;

Thence 102.86 feet along the arc of a curve to the left which has a radius of 85.00 feet a central angle of $69^{\circ}19'58''$ a chord which bears North $54^{\circ}18'08''$ East a distance of 96.70 feet;

Thence, North $88^{\circ}58'07''$ East a distance of 307.67 feet to the TRUE POINT OF BEGINNING" and containing 79,519 Sq. Ft. or 1.8255 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.


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Exhibit A

Prepared for: The City of El Paso
April 29, 2013

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being a portion of Lot 9D, Block 5, El Paso International Airport Replat of Unit 3 Replat A as recorded in File No. 20130028872, Real property records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

COMMENCING FOR REFERENCE at a point being the intersection of the southerly right of way line of Boeing Drive with the common line of Lots 9G and 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A; Thence along the southerly right of way line of Boeing Drive, North $88^{\circ}58'07''$ East a distance of 185.76 feet to a point on the westerly line of a 60 foot common access and utility easement; Thence leaving said right of way line, South $01^{\circ}01'53''$ East a distance of 386.42 feet to a point on the common line of Lots 9C and 9D, Block 5, El Paso International Airport Replat of Unit 3 Replat A for THE "TRUE POINT OF BEGINNING"

Thence, along said line, South $01^{\circ}01'53''$ East a distance of 158.58 feet to a point on the southerly line of Lot 9D, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence, along said line, South $88^{\circ}58'07''$ West a distance of 73.74 feet to a point;

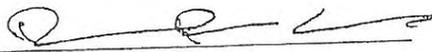
Thence, North $02^{\circ}06'53''$ West a distance of 96.34 feet to a point;

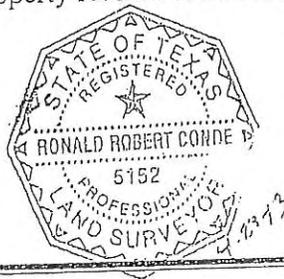
Thence, South $85^{\circ}16'00''$ West a distance of 127.56 feet to a point on the common line of Lots 9D and 9E, Block 5, El Paso International Airport Replat of Units 3 Replat A;

Thence, along said line, North $43^{\circ}54'23''$ East a distance of 175.35 feet to a point;

Thence leaving said line, 101.39 feet along the arc of a curve to the left which has a radius of 85.00 feet a central angle of $68^{\circ}20'37''$ a chord which bears South $56^{\circ}51'35''$ East a distance of 95.48 feet to the TRUE POINT OF BEGINNING" and containing 20,466 Sq. Ft. or 0.4698 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.


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Exhibit A

Prepared for: The City of El Paso
April 29, 2013

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being a portion of Lot 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A as recorded in File No. 20130028872, Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

THE "TRUE POINT OF BEGINNING" being a point for the intersection of the southerly right of way line of Boeing Drive with the common line of Lots 9G and 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence along the common line of Lots 9E, 9F and 9G Block 5, El Paso International Airport Replat of Unit 3 Replat A, South $01^{\circ}01'53''$ East a distance of 163.07 feet to a point on the common line of Lots 9E and 9F, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence along said line, South $45^{\circ}58'09''$ East a distance of 151.14 feet to a point;

Thence leaving said line, 64.26 feet along the arc of a curve to the left which has a radius of 85.00 feet a central angle of $43^{\circ}18'46''$ a chord which bears South $01^{\circ}01'53''$ East a distance of 62.74 feet to a point the common line of Lots 9D and 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence, along said line, South $43^{\circ}54'23''$ West a distance of 175.35 feet to a point the southerly line of Lot 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence along said line, South $85^{\circ}16'00''$ West a distance of 173.73 feet to a point on the westerly line of Lot 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence along said line, 154.18 feet along the arc of a curve to the left which has a radius of 2883.36 feet a central angle of $03^{\circ}03'50''$ a chord which bears North $06^{\circ}15'57''$ West a distance of 154.17 feet to a point;

Thence along said line, 127.12 feet along the arc of a curve to the right which has a radius of 415.88 feet a central angle of $17^{\circ}30'50''$ a chord which bears North $20^{\circ}55'12''$ East a distance of 126.63 feet to a point;

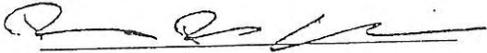
Thence along said line, North $29^{\circ}40'27''$ East a distance of 28.65 feet to a point of curve;

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Thence along said line, 182.37 feet along the arc of a curve to the left which has a radius of 389.98 feet a central angle of $26^{\circ}47'37''$ a chord which bears North $16^{\circ}16'47''$ East a distance of 180.71 feet to a point on the southerly right of way line of Boeing Drive;

Thence along said right of way line, North $88^{\circ}58'07''$ East a distance of 88.79 feet to the TRUE POINT OF BEGINNING" and containing 90,788 Sq. Ft. or 2.0842 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.



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Exhibit A

Prepared for: The City of El Paso
April 29, 2013

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being a portion of Lot 9F, Block 5, El Paso International Airport Replat C of Unit 3 Replat A as recorded in File No. 20130028872, Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

COMMENCING FOR REFERENCE at a point on the intersection of the southerly right of way line of Boeing Drive with the common line of Lots 9G and 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A; Thence along said line South $01^{\circ}01'53''$ East a distance of 120.00 feet to a point the common line of Lots 9G and 9F, Block 5, El Paso International Airport Replat of Unit 3 Replat A for THE "TRUE POINT OF BEGINNING"

Thence along said line, North $88^{\circ}58'07''$ East a distance of 155.76 feet to a point on the westerly line of a 60 foot common access and utility easement;

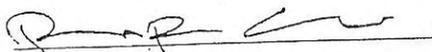
Thence along said line, South $01^{\circ}01'53''$ East a distance of 101.89 feet to a point;

Thence, along said line, 70.73 feet along the arc of a curve to the left which has a radius of 85.00 feet a central angle of $47^{\circ}40'35''$ a chord which bears South $44^{\circ}27'47''$ West a distance of 68.71 feet to a point the common line of Lots 9F and 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence along said line, North $45^{\circ}58'09''$ West a distance of 151.14 feet to a point;

Thence along said line, North $01^{\circ}01'53''$ West a distance of 43.06 feet to the TRUE POINT OF BEGINNING" and containing 16,146 Sq. Ft. or 0.3707 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.


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Exhibit A

Prepared for: The City of El Paso
April 29, 2013

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being a portion of Lot 9G, Block 5, El Paso International Airport Replat of Unit 3 Replat A as recorded in File No. 20130028872, Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

THE "TRUE POINT OF BEGINNING" being a point for the intersection of the southerly right of way-line of Boeing Drive with the common line of Lots 9G and 9E, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

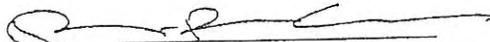
Thence along the southerly right of way line of Boeing Drive, North 88°58'07" East a distance of 155.76 feet to a point on the westerly line of a 60 foot common access and utility easement;

Thence along said line, South 01°01'53" East a distance of 120.00 feet to a point on the common line of Lots 9G and 9F, Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence, along said line, South 88°58'07" West a distance of 155.76 feet to a point the common line of Lots 9G and 9E; Block 5, El Paso International Airport Replat of Unit 3 Replat A;

Thence along said line, North 01°01'51" West a distance of 120.00 feet to the TRUE POINT OF BEGINNING" and containing 18,691 Sq. Ft. or 0.4291 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.



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EL PASO INTERNATIONAL AIRPORT REPLAT OF UNIT 3 REPLAT "A"

BEING A REPLAT OF LOT 9 AND PORTION OF LOT 10, BLOCK S,
EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT 3,
CITY OF EL PASO, EL PASO COUNTY, TEXAS,
CONTAINING: 8.287± ACRES

NOTES:
1. THE PLAT IS SUBJECT TO ALL EASEMENTS AND RIGHTS OF WAY SHOWN HEREON.
2. THE PLAT IS SUBJECT TO ALL EASEMENTS AND RIGHTS OF WAY SHOWN HEREON.
3. THE PLAT IS SUBJECT TO ALL EASEMENTS AND RIGHTS OF WAY SHOWN HEREON.
4. THE PLAT IS SUBJECT TO ALL EASEMENTS AND RIGHTS OF WAY SHOWN HEREON.
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6. THE PLAT IS SUBJECT TO ALL EASEMENTS AND RIGHTS OF WAY SHOWN HEREON.
7. THE PLAT IS SUBJECT TO ALL EASEMENTS AND RIGHTS OF WAY SHOWN HEREON.
8. THE PLAT IS SUBJECT TO ALL EASEMENTS AND RIGHTS OF WAY SHOWN HEREON.
9. THE PLAT IS SUBJECT TO ALL EASEMENTS AND RIGHTS OF WAY SHOWN HEREON.
10. THE PLAT IS SUBJECT TO ALL EASEMENTS AND RIGHTS OF WAY SHOWN HEREON.

DEDICATION
THE CITY OF EL PASO, TEXAS, DOES HEREBY DEDICATE TO THE PUBLIC THE TRACTS SHOWN ON THIS PLAT AS BEING NECESSARY FOR THE PROPER OPERATION OF THE AIRPORT AND THE INTERESTS OF THE PUBLIC THEREIN.
BY THE CITY OF EL PASO
[Signature]
[Signature]

ACKNOWLEDGEMENT
STATE OF TEXAS
COUNTY OF EL PASO
I, [Signature], County Clerk, do hereby certify that the foregoing plat was duly filed for record in the County Clerk's Office on this [Date] day of [Month], 2015.
[Signature]

CITY PLAN COMMISSION
[Signature]
[Signature]
[Signature]

FILING
This plat is recorded in the Office of County Clerk of El Paso County, Texas, on this [Date] day of [Month], 2015, A.D.
[Signature]
[Signature]

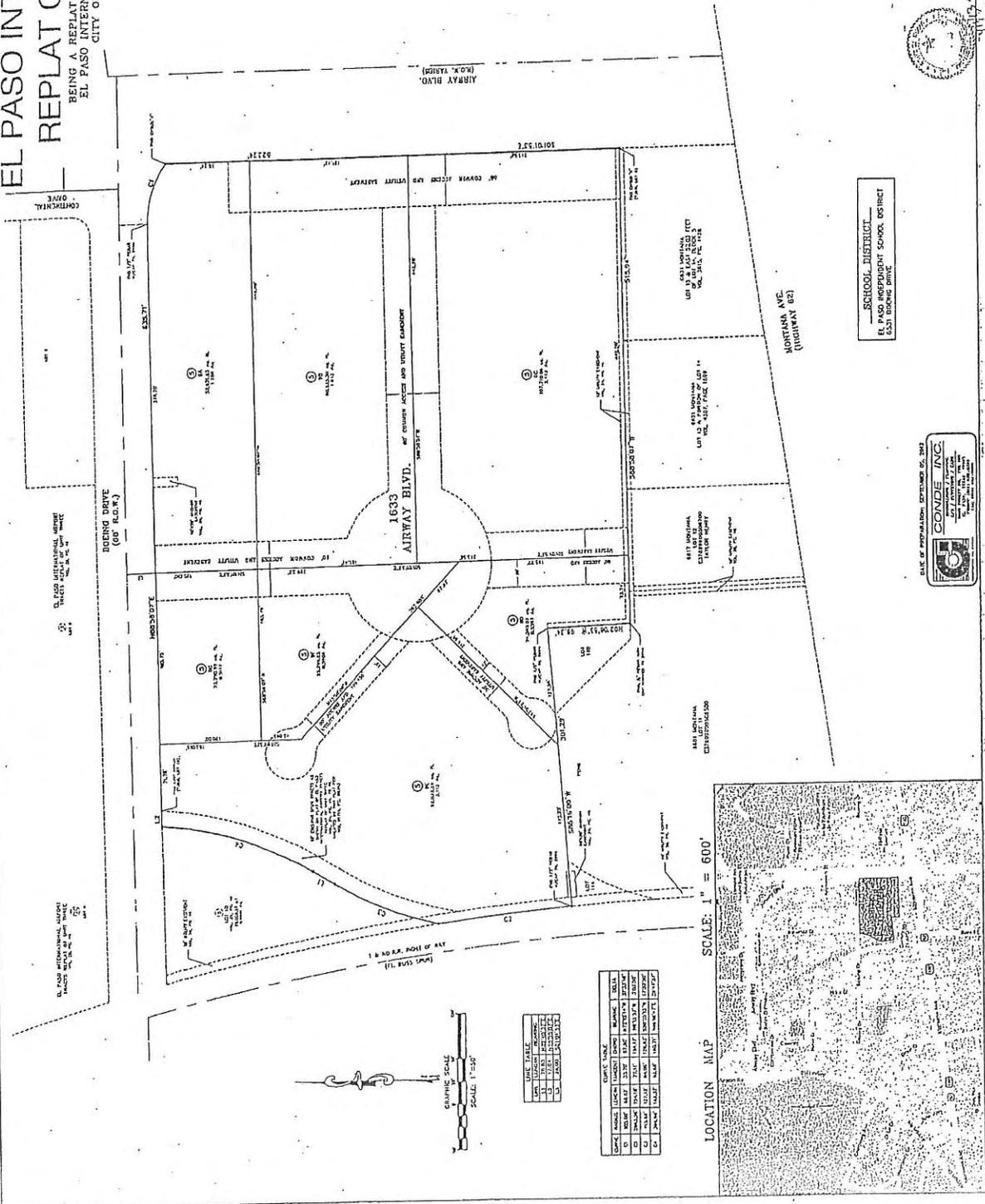
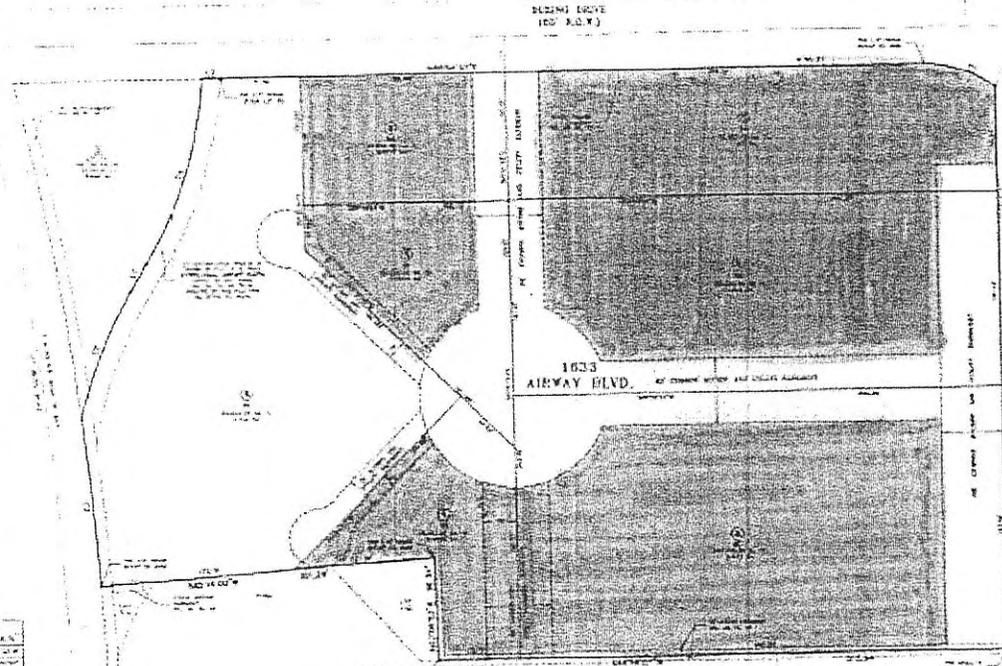


Exhibit B

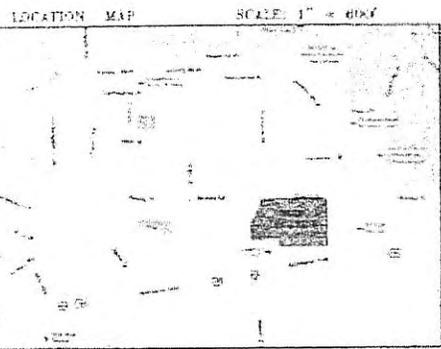
[Hotel and Commercial/Retail Parcel Depiction]

EL PASO INTERNATIONAL AIRPORT REPLAT OF UNIT 3 REPLAT "A"

BEING A REPLAT OF LOT 9 AND PORTION OF LOT 10, BLOCK 6,
EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT 3,
CITY OF EL PASO, EL PASO COUNTY, TEXAS,
CONTAINING 9.2077 ACRES



Lot No.	Area (Acres)	Dimensions (Feet)
1
2
3
4
5
6
7
8
9
10



NOTES

1. THIS PLAT IS SUBJECT TO THE EASEMENTS AND RESTRICTIONS SET FORTH IN THE PLAT OF UNIT 3, EL PASO INTERNATIONAL AIRPORT TRACTS, REPLAT OF UNIT 3, CITY OF EL PASO, EL PASO COUNTY, TEXAS, DATED AND RECORDED IN BOOK 10, PAGE 100, OF THE PUBLIC RECORDS OF EL PASO COUNTY, TEXAS.

2. THE REPRESENTATIVE AND THE SURVEYOR HAVE REVIEWED THE RECORDS OF THE CITY OF EL PASO AND HAVE FOUND NO RECORDS OF ANY OTHER PLATS OR RECORDS THAT AFFECT THE RIGHTS OF THE CITY OF EL PASO IN THE SUBJECT PROPERTY.

3. THE REPRESENTATIVE AND THE SURVEYOR HAVE REVIEWED THE RECORDS OF THE COUNTY OF EL PASO AND HAVE FOUND NO RECORDS OF ANY OTHER PLATS OR RECORDS THAT AFFECT THE RIGHTS OF THE COUNTY OF EL PASO IN THE SUBJECT PROPERTY.

4. THE REPRESENTATIVE AND THE SURVEYOR HAVE REVIEWED THE RECORDS OF THE STATE OF TEXAS AND HAVE FOUND NO RECORDS OF ANY OTHER PLATS OR RECORDS THAT AFFECT THE RIGHTS OF THE STATE OF TEXAS IN THE SUBJECT PROPERTY.

5. THE REPRESENTATIVE AND THE SURVEYOR HAVE REVIEWED THE RECORDS OF THE FEDERAL GOVERNMENT AND HAVE FOUND NO RECORDS OF ANY OTHER PLATS OR RECORDS THAT AFFECT THE RIGHTS OF THE FEDERAL GOVERNMENT IN THE SUBJECT PROPERTY.

6. THE REPRESENTATIVE AND THE SURVEYOR HAVE REVIEWED THE RECORDS OF THE AIR FORCE AND HAVE FOUND NO RECORDS OF ANY OTHER PLATS OR RECORDS THAT AFFECT THE RIGHTS OF THE AIR FORCE IN THE SUBJECT PROPERTY.

7. THE REPRESENTATIVE AND THE SURVEYOR HAVE REVIEWED THE RECORDS OF THE AIR FORCE AND HAVE FOUND NO RECORDS OF ANY OTHER PLATS OR RECORDS THAT AFFECT THE RIGHTS OF THE AIR FORCE IN THE SUBJECT PROPERTY.

8. THE REPRESENTATIVE AND THE SURVEYOR HAVE REVIEWED THE RECORDS OF THE AIR FORCE AND HAVE FOUND NO RECORDS OF ANY OTHER PLATS OR RECORDS THAT AFFECT THE RIGHTS OF THE AIR FORCE IN THE SUBJECT PROPERTY.

9. THE REPRESENTATIVE AND THE SURVEYOR HAVE REVIEWED THE RECORDS OF THE AIR FORCE AND HAVE FOUND NO RECORDS OF ANY OTHER PLATS OR RECORDS THAT AFFECT THE RIGHTS OF THE AIR FORCE IN THE SUBJECT PROPERTY.

10. THE REPRESENTATIVE AND THE SURVEYOR HAVE REVIEWED THE RECORDS OF THE AIR FORCE AND HAVE FOUND NO RECORDS OF ANY OTHER PLATS OR RECORDS THAT AFFECT THE RIGHTS OF THE AIR FORCE IN THE SUBJECT PROPERTY.

RECITALS

THE CITY OF EL PASO, TEXAS, HAS THE HONOR TO REQUEST THAT THE CITY OF EL PASO, TEXAS, BE REPLATED AS SHOWN ON THE PLAT OF UNIT 3, EL PASO INTERNATIONAL AIRPORT TRACTS, REPLAT OF UNIT 3, CITY OF EL PASO, EL PASO COUNTY, TEXAS, DATED AND RECORDED IN BOOK 10, PAGE 100, OF THE PUBLIC RECORDS OF EL PASO COUNTY, TEXAS.

ACKNOWLEDGMENT

I, the undersigned, being duly qualified, do hereby certify that the foregoing is a true and correct copy of the original plat as the same appears on file in the office of the County Clerk of El Paso County, Texas.

CITY PLAN COMMISSION

APPROVED AND ADOPTED this 14th day of June, 2015.

[Signature]
City Manager

CITY CLERK

[Signature]
City Clerk

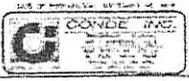
SCHOOL DISTRICT

EL PASO INDEPENDENT SCHOOL DISTRICT
1001 W. BRADLEY DRIVE

NOTARIES

[Signature]
Notary Public

[Signature]
Notary Public



EL PASO INTERNATIONAL AIRPORT REPLAT OF UNIT 3 REPLAT "A"

BEING A REPLAT OF LOT B AND PORTION OF LOT 10, BLOCK 3,
EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT 3,
CITY OF EL PASO, EL PASO COUNTY, TEXAS.
CONTAINING: 0.2074 ACRES

NOTES:
 1. THIS REPLAT OF UNIT 3 REPLAT "A" IS A REPLAT OF LOT B AND PORTION OF LOT 10, BLOCK 3, EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT 3, CITY OF EL PASO, EL PASO COUNTY, TEXAS, CONTAINING 0.2074 ACRES.
 2. THE REPLAT OF UNIT 3 REPLAT "A" IS A REPLAT OF LOT B AND PORTION OF LOT 10, BLOCK 3, EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT 3, CITY OF EL PASO, EL PASO COUNTY, TEXAS, CONTAINING 0.2074 ACRES.
 3. THE REPLAT OF UNIT 3 REPLAT "A" IS A REPLAT OF LOT B AND PORTION OF LOT 10, BLOCK 3, EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT 3, CITY OF EL PASO, EL PASO COUNTY, TEXAS, CONTAINING 0.2074 ACRES.
 4. THE REPLAT OF UNIT 3 REPLAT "A" IS A REPLAT OF LOT B AND PORTION OF LOT 10, BLOCK 3, EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT 3, CITY OF EL PASO, EL PASO COUNTY, TEXAS, CONTAINING 0.2074 ACRES.
 5. THE REPLAT OF UNIT 3 REPLAT "A" IS A REPLAT OF LOT B AND PORTION OF LOT 10, BLOCK 3, EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT 3, CITY OF EL PASO, EL PASO COUNTY, TEXAS, CONTAINING 0.2074 ACRES.
 6. THE REPLAT OF UNIT 3 REPLAT "A" IS A REPLAT OF LOT B AND PORTION OF LOT 10, BLOCK 3, EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT 3, CITY OF EL PASO, EL PASO COUNTY, TEXAS, CONTAINING 0.2074 ACRES.
 7. THE REPLAT OF UNIT 3 REPLAT "A" IS A REPLAT OF LOT B AND PORTION OF LOT 10, BLOCK 3, EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT 3, CITY OF EL PASO, EL PASO COUNTY, TEXAS, CONTAINING 0.2074 ACRES.
 8. THE REPLAT OF UNIT 3 REPLAT "A" IS A REPLAT OF LOT B AND PORTION OF LOT 10, BLOCK 3, EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT 3, CITY OF EL PASO, EL PASO COUNTY, TEXAS, CONTAINING 0.2074 ACRES.
 9. THE REPLAT OF UNIT 3 REPLAT "A" IS A REPLAT OF LOT B AND PORTION OF LOT 10, BLOCK 3, EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT 3, CITY OF EL PASO, EL PASO COUNTY, TEXAS, CONTAINING 0.2074 ACRES.
 10. THE REPLAT OF UNIT 3 REPLAT "A" IS A REPLAT OF LOT B AND PORTION OF LOT 10, BLOCK 3, EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT 3, CITY OF EL PASO, EL PASO COUNTY, TEXAS, CONTAINING 0.2074 ACRES.

DEDICATION

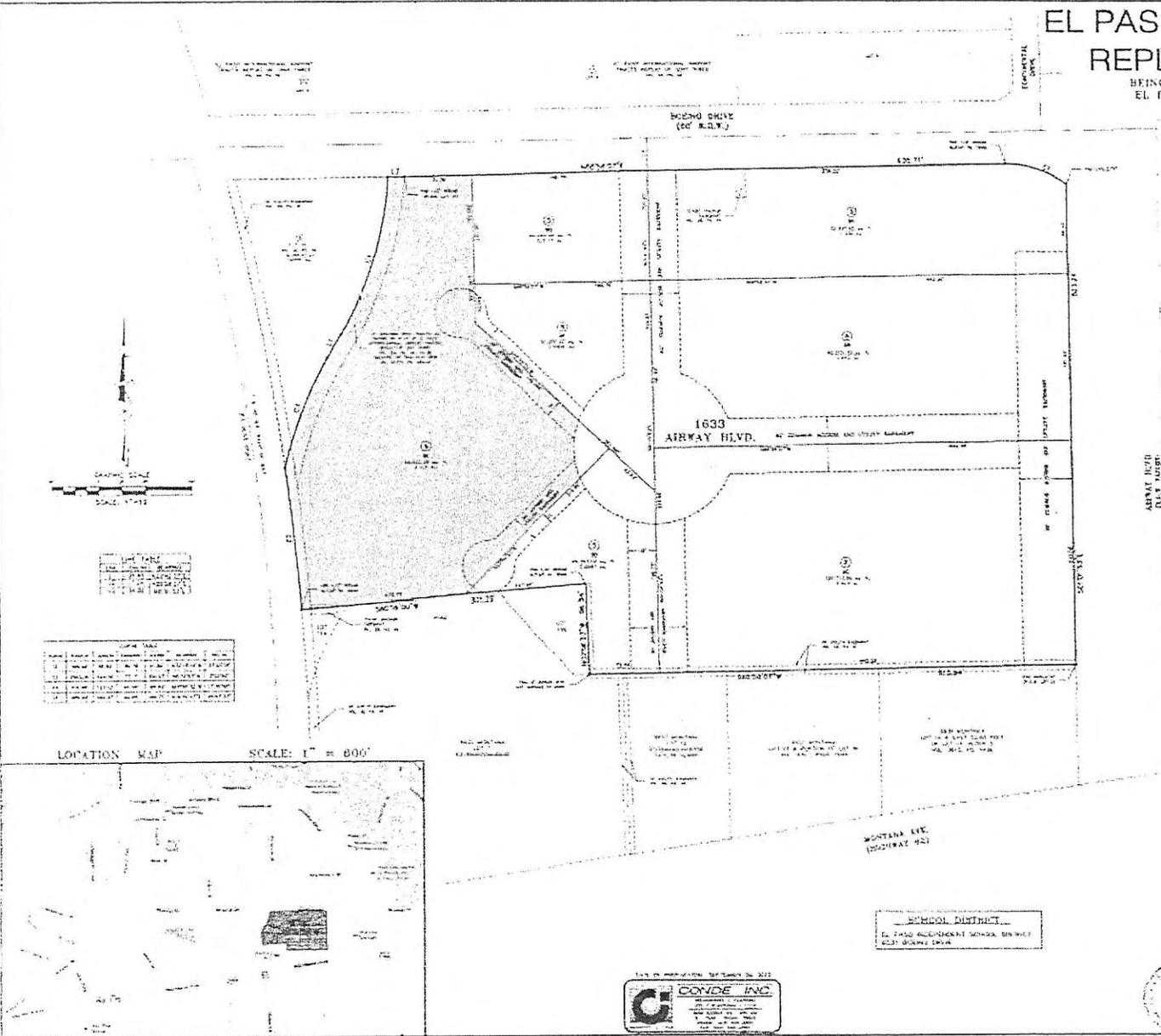
BEING A REPLAT OF LOT B AND PORTION OF LOT 10, BLOCK 3, EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT 3, CITY OF EL PASO, EL PASO COUNTY, TEXAS, CONTAINING 0.2074 ACRES.
 BY THE CITY OF EL PASO
 [Signature]

ACKNOWLEDGMENT

STATE OF TEXAS
 COUNTY OF EL PASO
 I, [Name], County Clerk of El Paso County, Texas, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County Clerk of El Paso County, Texas.
 [Signature]
 COUNTY CLERK OF EL PASO COUNTY, TEXAS

CITY PLAN COMMISSION

APPROVED AND ADOPTED BY THE CITY PLAN COMMISSION OF THE CITY OF EL PASO, TEXAS, THIS [Date] DAY OF [Month], 2015.
 [Signature]
 [Signature]
 [Signature]
 [Signature]
 [Signature]



Hotel Site Description

Exhibit C
[Four Star Rating Criteria]

FOUR STAR HOTEL STANDARDS

200 rooms minimum

Standard rooms – 330 sq. ft. minimum for Airport locations

Minimum Ceiling Height – 8'-4"

Two single line telephones

One HDTV

King – Full shower

Double/Double – Tub

Suites

Presidential (1 required) – 1,000 sq. ft. minimum

Executive Suites (6 required) – 660 sq. ft. minimum

Room Mix

King – 40% minimum

Double/Double – 20% minimum

Room Features

Electronic door locks

In-room safe

Hinged and illuminated closet

Refreshment center

Dual showerhead

Illuminated make-up mirror

Hair dryer

Weight scale

Robes & slippers

Iron/ironing board

Coffee unit

Concierge Service (minimum required)

Complimentary Newspapers

Complimentary soft drinks and snacks

Restaurant & Bar

3 Meals required

24 Hour room service required

125 seats minimum

Meeting Rooms

10,000 sq. ft. minimum not including pre function space
Minimum capacity – 450 people / Banquet style
Required to be divided into 5 separate spaces

Fitness Room

750 sq. ft. minimum size
Multi-station required
Free weights required
Minimum of 6 pieces of high quality equipment required

Pool

800 sq. ft. minimum size

Interior Finishes and Standards

All interior finishes will be reflective of an upper upscale property. The direction will be modern, relaxing and comfortable. The quality of the finishes will also be designed to endure usage and exhibit an elegant feel.

Atmosphere

Modern, refreshing, welcoming, comfortable and exceptional guest experience while also respecting the surrounding environment.

Franchise

National Brand of similar quality required