

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

DEPARTMENT: Aviation

AGENDA DATE: July 13, 2010

CONTACT PERSON/PHONE: Monica Lombraña, A.A.E. -780-4793

DISTRICT(S) AFFECTED: All

SUBJECT: This is a resolution authorizing the City Manager to sign an Estoppel and Consent Agreement between and among the City of El Paso and CP EL PASO, LTD (the "Existing Subtenant"), Clearview El Paso Airway, LLC, (the "Subtenant Assignee") and Clearview El Paso Airway Lessee, LLC (the "TRS Lessee") for the following property:

A portion of Tract 4A25, Block 2, Ascarate Grant, El Paso, El Paso County, Texas, compromising approximately 376,586.841 sq. ft., and municipally known and numbered as 1600 Airway Blvd., El Paso, Texas.

BACKGROUND / DISCUSSION:

The current subtenant, CP El Paso, LTD, is requesting the City of El Paso's approval to assign Clearview El Paso Airway, LLC, as "Subtenant" and Clearview El Paso Airway Lessee, LLC as "TRS Lessee" for the property commonly known as 1600 Airway Boulevard, El Paso, Texas.

PRIOR COUNCIL ACTION:

On December 29, 1999, the City Council approved a Second Amendment to the Lease Agreement between the City of El Paso and Host Marriott, LP to include the Approval of Assignment of CP El Paso, LTD as Sublessee.

AMOUNT AND SOURCE OF FUNDING:

N/A - Revenue Generating

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



Monica Lombraña, A.A.E., Director of Aviation

Information copy to appropriate Deputy City Manager

RESOLUTION

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

That the City Manager be authorized to sign an Estoppel and Consent Agreement by and between the City of El Paso ("Landlord"); CP El Paso, LTD ("Existing Subtenant"); Clearview El Paso Airway, LLC ("Subtenant Assignee"), and Clearview El Paso Airway Lessee, LLC ("TRS Lessee") for the following property:

A portion of Tract 4A25, Block 2, Ascarate Grant, El Paso, El Paso County, Texas, comprising approximately 376,586.841 sq. ft., and municipally known and numbered as 1600 Airway Blvd., El Paso, Texas.

ADOPTED this ____ day of _____, 2010.

CITY OF EL PASO:

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña

Monica Lombraña, A.A.E.
Director of Aviation

ESTOPPEL AND CONSENT AGREEMENT

THIS ESTOPPEL AND CONSENT AGREEMENT (the "Agreement") is entered into effective as of the _____ day of _____, 2010, between and among the **CITY OF EL PASO**, a Texas home rule city and a municipal corporation (the "Landlord"), **CP EL PASO, LTD.** a Kentucky limited partnership (the "Existing Subtenant"), **CLEARVIEW EL PASO AIRWAY, LLC**, a Delaware limited liability company, (the "Subtenant Assignee") and **CLEARVIEW EL PASO AIRWAY LESSEE, LLC**, a Delaware limited liability company (the "TRS Lessee").

WHEREAS, Landlord has heretofore leased certain lands described on Exhibit A attached hereto (the "Premises") to **HOST MARRIOTT, L.P.**, a Delaware limited partnership (the "Tenant"), which is the present tenant under a Lease dated October 17, 1980, as amended by a First Amendment to El Paso Airport Ground Lease dated March 17, 1981, as further amended by a Second Amendment to El Paso Airport Ground Lease dated as of December 29, 1999 (collectively, the "Original Ground Lease") between the Landlord and Host Marriott Corporation, a Delaware corporation, formerly known as Marriott Corporation ("HMC").

WHEREAS, the rights and duties of HMC as the initial tenant under the Original Ground Lease were assigned and transferred to Tenant, and Tenant assumed such rights and duties, pursuant to a Consent, Assignment and Assumption Agreement dated December 1, 1998 (the "Assignment") between and among Landlord, HMC, Tenant and Chase Bank of Texas, National Association (the "Trustee").

WHEREAS, Landlord and HMC are parties to a Special Facilities Lease dated as of March 1, 1981, as amended and supplemented by a First Supplement to Special Facilities Lease Agreement dated as of November 19, 1991 (collectively, the "Special Facilities Lease"). The rights and duties of HMC under the Special Facilities Lease were assigned to Tenant, and Tenant assumed such rights and duties, pursuant to the Assignment.

WHEREAS, Landlord adopted a First Amendment to Supplemental Ordinance Authorizing the Issuance of Bonds dated January 14, 1992 (the "Ordinance") that authorized the issuance of municipal bonds by Landlord to refund the original bonds issued to finance the construction of a Hotel on the Premises, which bonds would be paid by the Net Rental Payments (as defined therein) due from Tenant under the Special Facilities Lease.

WHEREAS, Landlord, Tenant and Existing Subtenant entered into that certain Estoppel and Consent Agreement dated as of December 29, 1999 to permit Tenant to sublease the Premises to the Existing Subtenant pursuant to a Ground Sublease

Agreement dated as of December 29, 1999 as amended and restated pursuant to that certain Amended and Restated Sublease Agreement dated as of July 11, 2003 (the "Ground Sublease") and subleasing all of its right and duties under Special Facilities Lease to Existing Subtenant pursuant to a Special Facilities Sublease Agreement (collectively, the "Subleases").

WHEREAS, Existing Subtenant cannot assign the Subleases to Subtenant Assignee without the written consent of Landlord and Subtenant Assignee cannot further sublease the Premises to TRS Lessee without the written consent of Landlord.

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

1. **Landlord Estoppel**. Landlord hereby certifies to Subtenant Assignee and TRS Lessee as follows:

a. Landlord is the owner of the fee simple estate in the Premises and is the landlord under the Original Ground Lease and the lessor under the Special Facilities Lease.

b. Landlord has not mortgaged or granted a deed of trust or assigned the fee simple estate in the Premises and there are currently no fee simple mortgages, deeds of trust or other security interests encumbering the fee estate in the Premises except for (i) the Trust Indenture dated March 1, 1981 by and between the Landlord and Trustee (the "Trust Indenture"), and (ii) the Deed of Trust and Security Agreement dated as of April 30, 1981 and recorded at Volume 1171, Page 0936, Deed Records, El Paso County, Texas (the "Deed of Trust").

c. The Original Ground Lease and the Special Facilities Lease: (i) contain all of the understandings and agreements between Landlord and Tenant with respect to the Premises, (ii) are in full force and effect in accordance with their terms; and (iii) have not been further supplemented, modified or otherwise amended or assigned except as set forth in the above recitals.

d. As of the date hereof, each of the obligations on Tenant's part and Landlord's part to be performed to date under the Original Ground Lease and Special Facilities Lease have been performed.

e. There are no options to purchase the Premises or any rights of first refusal or first offer with respect to the Premises, nor any options, rights of first refusal or first offer, termination, renewal or extension rights, exclusive business rights or other rights to extend or otherwise modify either the Original Ground Lease or Special Facilities Lease, except as set forth in the Original Ground Lease or the Special Facilities Lease, and there are no prepaid rents or landlord's liens. No escrows or

deposits of any kind are held by Landlord nor required to be held by Landlord under either the Original Ground Lease or Special Facilities Lease. The Lease is subject to the provisions of the deed appearing in Book 893, page 583, of the Real Property records of El Paso County, Texas.

f. There do not exist any other agreements, including, without limitation, subordination, non-disturbance and attornment agreements, concerning the Premises, whether oral or written, to which Landlord is a party, other than the Original Ground Lease and Special Facilities Lease.

g. As of the date hereof, no base rent, percentage rent or additional rent is due from Tenant to Landlord under either the Original Ground Lease or the Special Facilities Lease. The maximum rental for Fiscal Year 2010 has been paid in full.

h. The term commencement date of the Original Ground Lease was May 1, 1981 and the term of the Original Ground Lease shall expire on April 30, 2021. Tenant has the option to extend the term of the Original Ground Lease for two (2) additional ten (10) year periods.

i. Landlord has not received written notice of any pending eminent domain proceedings or any other governmental actions or any judicial actions of any kind against the Premises, nor is Landlord, as a condemning authority, instituting or contemplating instituting any eminent domain proceedings or any other action against the Premises. Landlord has not received written notice that it is in violation of any governmental law or regulation applicable to its interest in the Premises, including, without limitation, the Americans with Disabilities Act or any environmental laws.

j. Landlord agrees that so long as the Subleases are in effect and Subtenant Assignee is not in default under the Subleases beyond any applicable notice and cured periods provided therein, Subtenant Assignee's and TRS Lessee's possession of the Premises shall not be disturbed or interfered with in the exercise of any of Landlord's rights against Tenant under the Original Ground Leases and Special Facilities Lease, including, but not limited to a termination of the Original Ground Lease or Special Facilities Lease following a default by Tenant under the Original Ground Lease or Special Facilities Lease and upon any such termination, Subtenant Assignee and TRS Lessee shall continue to occupy the Premises on the terms and conditions set forth in the Subleases.

2. **Existing Subtenant Estoppel.** Existing Subtenant hereby certifies to Subtenant Assignee and TRS Lessee as follows:

a. Existing Subtenant has not mortgaged or granted a deed of trust or assigned the leasehold estate in the Premises and there are currently no leasehold mortgages, deeds of trust or other security interests encumbering the leasehold estate

in the Premises, except as otherwise set forth in the existing title commitment delivered to Subtenant Assignee.

b. The Ground Sublease: (i) contain all of the understandings and agreements among Landlord, Tenant and Existing Subtenant, (ii) are in full force and effect in accordance with their terms; and (iii) have not been further supplemented, modified or otherwise amended or assigned except as set forth in the above recitals.

c. As of the date hereof, each of the obligations on Existing Subtenant's under the Ground Sublease and to Existing Subtenant's knowledge, Landlord's part under the Original Ground Lease, Special Facilities Lease and Subleases, to be performed to date have been performed.

d. There are no set-offs, claims, counterclaims, defenses, basis for withholding of rent, deductions or credits whatsoever with respect to the Ground Sublease.

e. There are no options to purchase the Existing Subtenant's leasehold interest in the Premises or any rights of first refusal or first offer with respect to the Existing Subtenant's subleasehold interest in the Premises, nor any options, rights of first refusal or first offer, termination, renewal or extension rights, exclusive business rights or other rights to extend or otherwise modify the Ground Sublease, except as set forth in the Ground Sublease, and there are no prepaid rents. No escrows or deposits of any kind are held by Landlord, Tenant or Existing Subtenant.

f. There do not exist any other agreements, including, without limitation, subordination, non-disturbance and attornment agreements between Landlord or Tenant (or its predecessors) and Existing Subtenant concerning the Premises, whether oral or written, other than the Ground Sublease.

g. As of the date hereof, no base rent, percentage rent or additional rent is due from Existing Subtenant to Landlord under either the Original Ground Lease or the Special Facilities Lease. The maximum rental for Fiscal Year 2010 has been paid in full.

h. The term commencement date of the Original Ground Lease was May 1, 1981 and the term of the Original Ground Lease shall expire on April 30, 2021. Tenant has the option to extend the term of the Original Ground Lease for two (2) additional ten (10) year periods.

i. The current annual maximum rent due from Existing Subtenant under the Ground Sublease is \$373,828.13 and the current annual minimum rent is \$271,875.00, subject to subsequent increases in such amounts as set forth in Section 3.04 of the Original Ground Lease.

j. In the event the consent of the Landlord is obtained, the consent of Tenant is not required for (1) the assignment of the Subleases by Existing Tenant to Subtenant Assignee and (2) the further sublease of the Premises by Subtenant Assignee to TRS Lessee.

3. **Consent to Subleases.**

(a) Landlord hereby consents to (1) the assignment of the Subleases by Existing Subtenant to Subtenant Assignee and (2) the further sublease of the Premises by Subtenant Assignee to TRS Lessee. Landlord's consent shall not relieve Tenant or any other obligor of any of its obligations under the Original Ground Lease.

(b) Landlord agrees to accept in all respects performance by Subtenant Assignee or TRS Lessee under the Subleases as performance by Tenant of any covenants and obligations under the Leases. If any action or inaction on the part of Landlord constitutes or could constitute a default under the Original Ground Lease and the Special Facilities Lease, Subtenant Assignee or TRS Lessee shall have the right to enforce the provisions of such agreement against the defaulting party.

(c) Tenant shall make available to Subtenant Assignee and TRS Lessee the documentation required under Section 3.07 of the Original Ground Lease for such time as is necessary for Subtenant Assignee and TRS Lessee to comply with such Section 3.07.

4. **Certain Additional Provisions.**

(a) Landlord agrees that no notice by Landlord to Tenant, including, without limitation, notice of default, shall be deemed to have been duly given under the Original Ground Lease unless and until a copy thereof has been sent by certified or registered mail, return receipt requested, to the Subtenant Assignee and TRS Lessee at the following address, or at such other address as Subtenant Assignee and TRS Lessee may designate in writing to Landlord and Tenant:

Subtenant Assignee:
Tom Naughton
180 Newport Center Drive, Suite 178
Newport Beach, CA 92660

with a copy to:

Goodwin Procter LLP
Exchange Place
53 State Street

Boston, MA 02109
Attn: Samuel L. Richardson, Esq.

TRS LESSEE:
Tom Naughton
180 Newport Center Drive, Suite 178
Newport Beach, CA 92660

with a copy to:

Goodwin Procter LLP
Exchange Place
53 State Street
Boston, MA 02109
Attn: Samuel L. Richardson, Esq.

In the event Tenant shall be in default under the Original Ground Lease, the Subtenant Assignee and the TRS Lessee shall, within the period provided in the Original Ground Lease, have the right to remedy such default, or cause the same to be remedied and Landlord shall accept such performance by or at the instigation of Subtenant Assignee or TRS Lessee as if the same had been done by Tenant.

(b) Without the prior written consent of Subtenant Assignee and TRS Lessee, Landlord shall not amend or modify the Original Ground Lease.

5. **Further Assurances.** Each party hereto agrees promptly to do, make, execute and deliver all such additional and further acts, things, deeds, assurances, instruments and documents as any other party may reasonably request to vest in and assure to the requesting party its rights (and/or to confirm the agreements and obligations of the non-requesting party) hereunder, under the Original Ground Lease, Special Facilities Lease, Bond Documents, and Subleases. Without limitation of the foregoing, each party agrees to provide such assurances concerning the effectiveness of this Agreement as any other party may reasonably request.

6. **Ratification.** Except as expressly provided herein, the Original Ground Lease, the Special Facilities Lease and the Bond Documents shall remain unchanged, and are hereby ratified and confirmed in all respects. It is expressly agreed by all parties hereto that the Original Ground Lease, the Special Facilities Lease and the Bond Documents shall continue in full force and effect in accordance with their respective terms.

7. **Binding Agreement.** This Agreement and the representations made herein shall inure to the benefit of Subtenant Assignee, its successors and assigns, and

shall be binding on the Landlord, and Existing Subtenant and their respective legal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first above written.

ATTEST:

CITY OF EL PASO:

N/A
City Clerk

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Theresa Cullen
Theresa Cullen
Deputy City Attorney

Monica Lombraña
Monica Lombraña, A.A.E.
Director of Aviation

[Signatures continue on the next page]

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

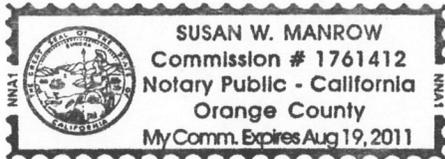
State of California

County of Orange

On 7/1/10 before me, Susan W. Manrow, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Jon Kline
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Susan W. Manrow
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
 Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
 Top of thumb here

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

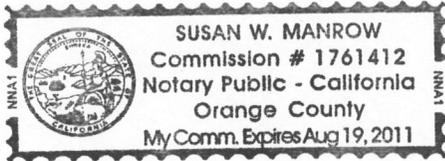
State of California

County of Orange }

On 7-1-10 before me, Susan W. Manrow, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Jon Kline
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Susan W. Manrow
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

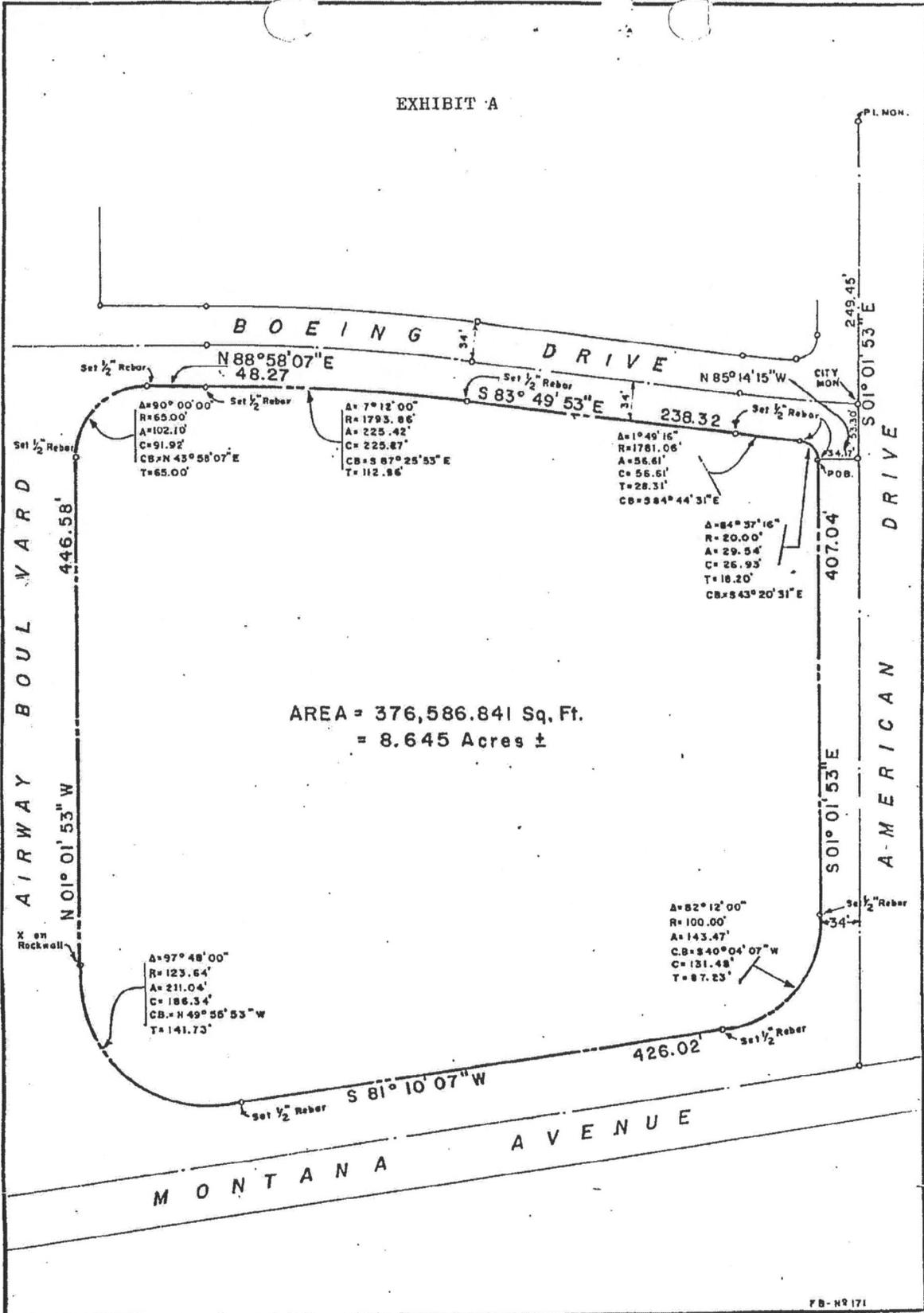
- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

EXHIBIT A



AREA = 376,586.841 Sq. Ft.
= 8.645 Acres ±

FB-NR171

CERTIFICATION

I HEREBY CERTIFY THAT THE FOREGOING SURVEY WAS MADE BY AND UNDER THE DIRECT SUPERVISION OF RAMON E. LARA REGISTERED PROFESSIONAL ENGINEER No. 37942, AND THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Ramon E. Lara
JUNE 13, 1980
RAMON E. LARA, P.E. DATE



SCALE: 1" = 100'

PLAT OF SURVEY

BEING A PORTION OF TRACT 4A25 BLOCK 2, ASCARATE GRANT EL PASO COUNTY, TEXAS.

FIELD: F.M.	DRAWN: J.B.S.
CHECK'D: R.E.L.	APPY'D: R.E. LARA.
DRWN'G No.	FILE No.

CREMANS, INC.
Engineers-Planners
EL PASO, TEXAS

Exhibit A
1 of 2

Description of a part of land being a Portion of Tract 4A25, Block 2, Ascarate Grant, El Paso County, Texas and being more particularly described by metes and bounds as follows:

From a City monument located at the centerline intersection of Boeing Drive and American Drive, thence South $1^{\circ} 01' 53''$ East along the centerline of American Drive a distance of 53.30 feet, thence North $85^{\circ} 14' 15''$ West a distance of 34.17 feet to a point lying on the west right-of-way line of American Drive projected, said point being the POINT OF BEGINNING;

Thence along said projected right-of-way line, South $1^{\circ} 01' 53''$ East a distance of 407.04 feet;

Thence 143.47 feet along the arc of a curve to the right, whose radius is 100.00 feet, whose interior angle is $82^{\circ} 12'$, and whose chord bears South $40^{\circ} 04' 07''$ West a distance of 131.48 feet to the north right-of-way line of Montana Avenue;

Thence along the north right-of-way line of Montana Avenue, South $81^{\circ} 10' 07''$ West a distance of 426.02 feet;

Thence 211.04 feet along the arc of a curve to the right, whose radius is 123.64 feet, whose interior angle is $97^{\circ} 48'$, and whose chord bears North $49^{\circ} 55' 53''$ West a distance of 186.34 feet to the east right-of-way line of Airway Boulevard;

Thence along the east right-of-way line of Airway Boulevard, North $1^{\circ} 01' 53''$ West a distance of 446.58 feet;

Thence 102.10 feet along the arc of curve to the right, whose radius is 65.00 feet, whose interior angle is $90^{\circ} 00'$, and whose chord bears North $43^{\circ} 58' 07''$ East a distance of 91.92 feet to the south right-of-way line of Boeing Drive;

Thence along the south right-of-way line of Boeing Drive, North $88^{\circ} 58' 07''$ East a distance of 48.27 feet;

Thence continuing along the south right-of-way line of Boeing Drive, 225.42 feet along the arc of a curve to the right, whose radius is 1793.86 feet, whose interior angle is $7^{\circ} 12'$, and whose chord bears South $87^{\circ} 25' 53''$ East a distance of 225.27 feet;

Thence continuing along the south right-of-way line of Boeing Drive South $83^{\circ} 49' 53''$ East a distance of 238.32 feet;

Thence continuing along the south right-of-way line of Boeing Drive, 56.61 feet along the arc of a curve to the left, whose radius is 1781.06 feet, whose interior angle is $1^{\circ} 49' 16''$, and whose chord bears South $84^{\circ} 44' 31''$ East a distance of 56.61 feet;

Thence 29.54 feet along the arc of a curve to the right, whose radius is 20.00 feet; whose interior angle is $84^{\circ} 37' 16''$, and whose chord bears South $43^{\circ} 20' 31''$ East a distance of 26.93 feet to THE POINT OF BEGINNING and containing 376, 586.841 square feet, or 8.645 acres of land, more or less; subject to all easements of record.

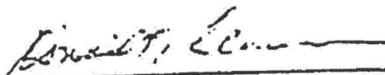
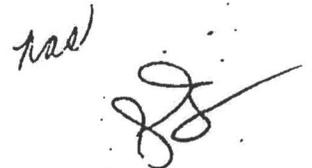

Donald T. Cremans, P.E.
CREMANS, INC.

EXHIBIT "A"

Exhibit "A"
2 of 2



JOINDER

By its execution of this Joinder, Host Hotels & Resorts Inc., as successor-in-interest to Host Marriott, L.P. ("Tenant"), agrees and acknowledges that the assignment of the sub-ground lease by the Assignor to the Assignee as described in the foregoing Estoppel and Consent Agreement shall not relieve Tenant of any of its obligations under the Original Ground Lease.

**Host Hotels & Resorts Inc.,
Successor-in-interest to Host Marriott, L.P.**

By: *Gregory J. Larson*
Printed Name: Gregory J. Larson
Title: E.V.P., Corporate Strategy & Fund Management

ACKNOWLEDGMENT

THE STATE OF Maryland)
COUNTY OF Montgomery)

This instrument was acknowledged before me on this 9 day of July, 2010, by Gregory J. Larson as E.V.P. Corporate Strategy & Fund Mgmt. of Host Hotels & Resorts Inc, as successor-in-interest to Host Marriott, L.P.

Melissa A. Durbin
Notary Public, State of Maryland

My Commission Expires:

Embossed Hereon is My
Carroll County, Maryland Notary Public Seal
My Commission Expires April 08, 2014
MELISSA A DURBIN