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

DEPARTMENT: **Parks and Recreation Department**

AGENDA DATE: **Introduction August 14, 2012**
Public Hearing August 21, 2012

CONTACT PERSON/PHONE: Liza Ramirez-Tobias (541-4599)

DISTRICT AFFECTED: District 4

SUBJECT:
AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A LEASE WITH THE TRANSMOUNTAIN OPTIMIST CLUB FOR THE LEASE OF 4.69 ACRES OF A PORTION OF BLOCKS 78, 79, AND 80 AND THE CLOSED ADJACENT STREETS AND ALLEYS IN TOBIN MEMORIAL PARK, AN ADDITION TO THE CITY OF EL PASO, EL PASO, TEXAS ACCORDING TO THE MAP ON FILE IN BOOK 15, PAGE 17, PLAT RECORDS OF EL PASO COUNTY, TEXAS AND A PORTION OF TRACT 9B, SECTION 10, BLOCK 81, TOWNSHIP 2, TEXAS & PACIFIC RAILROAD COMPANY SURVEYS MUNICIPALLY KNOWN AS 8801 RAILROAD DRIVE, EL PASO, TEXAS IN THE AMOUNT OF $10.00 PER ANNUM.

BACKGROUND / DISCUSSION:

The Transmountain Optimist Club (TOC) has leased the approximately 4.69 acres in Tobin Memorial Park since 1981 for the development and operation of a bicycle motor-cross track. This new lease will continue the relationship and allow the TCO to continue to provide recreational activities. The terms of the lease are:

- Initial term, 10 years/$10 year
- Option to extend for two (2) additional five (5) year term, with 60 day notification
- Any improvements will require City's approval
- Operational costs and improvements will be paid by TOC

PRIOR COUNCIL ACTION:

March 1981- Lease approved
November 1983- Lease amended

AMOUNT AND SOURCE OF FUNDING:

BOARD / COMMISSION ACTION:

(N/A)

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

DEPARTMENT HEAD: _____

Information copy to appropriate Deputy City Manager

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A LEASE WITH THE TRANSMOUNTAIN OPTIMIST CLUB FOR THE LEASE OF 4.69 ACRES OF A PORTION OF BLOCKS 78, 79, AND 80 AND THE CLOSED ADJACENT STREETS AND ALLEYS IN TOBIN MEMORIAL PARK, AN ADDITION TO THE CITY OF EL PASO, EL PASO, TEXAS ACCORDING TO THE MAP ON FILE IN BOOK 15, PAGE 17, PLAT RECORDS OF EL PASO COUNTY, TEXAS AND A PORTION OF TRACT 9B, SECTION 10, BLOCK 81, TOWNSHIP 2, TEXAS & PACIFIC RAILROAD COMPANY SURVEYS MUNICIPALLY KNOWN AS 8801 RAILROAD DRIVE, EL PASO, TEXAS IN THE AMOUNT OF $10.00 PER ANNUM

WHEREAS, Lessor owns 4.69 acres of a portion of blocks 78, 79, and 80 and the closed adjacent streets and alleys in Tobin Memorial Park, an Addition to the City of El Paso, El Paso, Texas according to the map on file in Book 15, Page 17, Plat Records of El Paso County, Texas and a portion of Tract 9b, Section 10, Block 81, Township 2, Texas & Pacific Railroad Company Surveys, municipally known and numbered as 8801 Railroad Drive, El Paso, Texas 79924, and further described in this Lease as the leased Premises (as defined in Section 1.01 below);

WHEREAS, Lessee has previously leased the property for 30 years beginning March 31, 1981 ("1981 Lease") for the purpose of forming a cooperative public-private project to develop certain public park and recreational facilities in the northeast El Paso area;

WHEREAS, Lessee has constructed, operated and maintained certain improvements, including a bicycle moto-cross track that conforms to standards established by the National Bicycle Association and a bicycle trail to be used for practice and for safety instruction programs and a jogging trail and related facilities upon the property in accordance with the terms of that lease;

WHEREAS, the 1981 Lease has expired and Lessee has indicated a desire to extend its lease of the property and has the willingness and ability to use the property accordance with the terms of this Lease and to properly keep, maintain and improve said grounds and improvements in accordance with standards established by Lessor; and

WHEREAS, Lessor has determined that a public purpose will be served by leasing the property to Lessee in accordance with the terms specified herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager is hereby authorized to sign, on behalf of the City of El Paso, a lease with Transmountain Optimist Club for the lease of 4.69 acres of a portion of blocks 78, 79, and 80 and the closed adjacent streets and alleys in Tobin Memorial Park, an Addition to the City of El Paso, El Paso, Texas according to the map on file in Book 15, Page 17, Plat Records of El Paso County, Texas and a portion of Tract 9b, Section 10, Block 81, Township 2, Texas & Pacific Railroad Company Surveys, municipally known and numbered as 8801 Railroad Drive, El Paso, Texas in the amount of $10.00 per annum and City Manager is further authorized to sign all documents necessary to effectuate this transaction.

PASSED AND APPROVED on this the _____ day of _____, 2012.

CITY OF EL PASO

ATTEST:

_____
John F. Cook
Mayor

_____
Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:

_____
Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Mathew McElroy, Director
City Development Department

11-1040-027/PL#110754/ORD-LEASE TO THE TRANSMOUNTAIN OPTIMISTS/BAO

LEASE

By and between

CITY OF EL PASO

Lessor

and

TRANSMOUNTAIN OPTIMIST CLUB

Lessee

for the Premises located at
8801 Railroad Drive

_____

Effective Date

TABLE OF CONTENTS

		Page
ARTICLE I	**PREMISES AND PRIVILEGES**	**1**
1.01	Description of Premises Demised	1
1.02	Right to Construct	1
1.03	Restriction of Privileges, Uses and Rights	2
1.04	Conditions of Granting Lease	2
ARTICLE II	**OBLIGATIONS OF LESSOR**	**3**
2.01	Quiet Enjoyment	3
ARTICLE III	**OBLIGATIONS OF LESSEE**	**3**
3.01	Net Lease	3
3.02	Condition of Premises	3
3.03	Annual Inspection	3
3.04	Compliance With Laws	4
3.05	Lessor's Approval of Plans	6
3.06	Landscaping and Maintenance of Improvements	7
3.07	Utilities	7
3.08	Trash, Garbage, Etc	7
3.09	Outside Lighting	7
3.10	Signs	7
3.11	Cutting or Filling	7
3.09	Permitted Uses	8
ARTICLE IV	**TERM OF LEASEHOLD**	**8**
4.01	Term	8
4.02	Option to Extend	8
4.03	Holding Over	8
4.04	National Emergency	8
ARTICLE V	**CONSIDERATION**	**9**
5.01	Rent	9
5.02	Place of Payment	9
5.03	Additional Consideration, Services	9
ARTICLE VI	**INSURANCE AND INDEMNIFICATION**	**9**
6.01	Fire and Other Risks Insurance	9
6.02	Liability Insurance	9
6.03	Performance Bonds	10
6.04	Authorized Insurance Companies	10
6.05	Indemnification	11
6.06	Waiver of Liability	11

ARTICLE VII	**DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY**	**11**
7.01	Obligations of Lessee	11
7.02	Insurance Proceeds	12
7.03	Cancellation of Lease	12
ARTICLE VIII	**CONDEMNATION**	**12**
8.01	Definitions	12
8.02	Notice of Condemnation	13
8.03	Rights of Parties During Condemnation Proceeding	14
8.04	Taking of Leasehold	14
8.05	Total Taking	14
8.06	Partial Taking	14
8.07	Obligations of Lessee Under Partial Taking	14
8.08	Taking of Temporary Use of Premises and Improvements	15
ARTICLE IX	**ENCUMBRANCES**	**15**
9.01	Encumbrance	15
ARTICLE X	**EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER**	**15**
10.01	Expiration	15
10.02	Cancellation	15
10.03	Repossessing and Reletting	16
10.04	Assignment, Subletting and Transfer	17
10.05	Rights Upon Expiration	17
10.06	Landlord's Lien	17
ARTICLE XI	**GENERAL PROVISIONS**	**18**
11.01	Time is of the Essence	18
11.02	Notices	18
11.03	Attorney's Fees	19
11.04	Agreement Made in Texas	19
11.05	Nondiscrimination Covenant	19
11.06	Cumulative Rights and Remedies	19
11.07	Interpretation	20
11.08	Agreement Made in Writing	20
11.09	Paragraph Headings	20
11.10	Severability	20
11.11	Successors and Assigns	20
11.12	Taxes and Other Charges	20
11.13	Waiver of Warranty and Suitability	20
11.14	Survival of Certain Provisions	21
11.15	Restrictions and Reservations	21

11.16 Authorization To Enter Lease 21
11.17 Effective Date 21

ARTICLE XII RESTRICTIONS AND RESERVATIONS 21
12.1 Restrictions and Reservations on Lease. 21

LESSOR'S SIGNATURE AND ACKNOWLEDGMENT 23
LESSEE'S SIGNATURE AND ACKNOWLEDGMENT 24

ATTACHMENTS

EXHIBIT "A" – Site Map
EXHIBIT "B" – Parcel I Property Description & Metes and Bounds of Premises
EXHIBIT "C" - Parcel I Property Description & Metes and Bounds of Premises

LEASE

THIS LEASE AGREEMENT ("Lease") is entered into this ____ day of _____, 2012 by and between the **City of El Paso**, a home rule municipal corporation ("Lessor") and the **Transmountain Optimist Club**, a Texas nonprofit corporation ("Lessee").

WHEREAS, Lessor owns the property located at 8801 Railroad Drive, El Paso, Texas 79924 and further described in this Lease as the leased Premises (as defined in Section 1.01 below); and

WHEREAS, Lessee has previously leased the property for 30 years beginning March 31, 1981 ("1981 Lease") for the purpose of forming a cooperative public-private project to develop certain public park and recreational facilities in the northeast El Paso area;

WHEREAS, Lessee has constructed, operated and maintained certain improvements, including a bicycle moto-cross track that conforms to standards established by the National Bicycle Association and a bicycle trail to be used for practice and for safety instruction programs and a jogging trail and related facilities upon the property in accordance with the terms of that lease;

WHEREAS, the 1981 Lease has expired and Lessee has indicated a desire to extend its lease of the property and has the willingness and ability to use the property accordance with the terms of this Lease and to properly keep, maintain and improve said grounds and improvements in accordance with standards established by Lessor;

WHEREAS, Lessor has determined that a public purpose will be served by leasing the property to Lessee in accordance with the terms specified herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out; and

NOW THEREFORE, in consideration of the mutual covenants and agreements herein set forth, Lessor and Lessee agree and covenant as follows:

ARTICLE I - PREMISES AND PRIVILEGES

1.01 Description of Premises Demised. Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property located in El Paso County, Texas:

> Approximately 4.69 acres of land located in the southeast corner of Nations Tobin Park and a flood drainage ditch which separates such property from the developed area of Nations Tobin Park (See **Exhibit "A"**) and more particularly described in **Exhibit "B"** (hereinafter called

Parcel 1) and **Exhibit "C"** (hereinafter called Parcel II), attached hereto and incorporated herein by reference (the "Premises").

1.02 **Right to Construct.** Lessee shall have the right and privilege to maintain, and remove improvements it has previously constructed and any improvements it may construct during the Lease term upon the Premises subject to the terms, covenants, and conditions contained herein. Prior to any modifications, additions, alterations or changes to the Premises, Lessee shall submit the plans and specifications for any modifications, improvements, additions, alterations or changes to the Director of the City Parks and Recreation Department or designee, with a copy to the Capital Assets Manager, for review and approval. No work shall commence until the City Engineer has given written approval, which permission shall not be unreasonably withheld.

All structures and other improvements constructed on the Premises shall be of substantial construction and good architectural design. Lessee shall employ competent engineers and architects to prepare architectural plans, construction plans and specifications.

All improvements and structures constructed under the 1981 Lease or under this Lease shall remain the property of Lessee until termination of this lease (whether by expiration of the term or otherwise) and shall then become the property of the City.

1.03 **Restriction of Privileges, Uses and Rights.** The rights and privileges granted Lessee hereunder are subject and expressly limited to the construction, operation and maintenance of certain improvements. Parcel II is the site of a bicycle moto-cross track that conforms to standards established by the National Bicycle Association and related facilities. The primary use of Parcel I shall be for a flood drainage ditch, however, Lessee has the right to the secondary and subordinate use of Parcel I for a bicycle trail to be used for practice and for safety instruction programs and a jogging trail. The facilities on the Premises shall be under the control of the Lessee. Collectively these uses on Parcel I and Parcel II are referred to as Recreational Uses and the Premises shall be used for no other purpose.

Lessor further grants to the Lessee during the term of this Lease, the exclusive concession to sell food and beverages on the Premises. Lessee will not sell any food or beverage on the Premises in glass containers and alcoholic beverages are strictly prohibited. The revenues from such concessions will be used by the Lessee to pay expenses of the activities on the Premises and for the purpose of constructing, operating and managing the Recreational Uses on the Premises.

Any change of use will require the prior written approval of the City Council. Failure to obtain the prior written approval of the City Council prior to using the Premises for anything other than the purposes set forth herein shall constitute an event of default and may result in termination of the Lease.

The Premises shall be for the use of the public, and therefore, no person shall be denied entrance thereto, nor will anyone be refused the use of the same, although reasonable and non-discriminatory charges may be assessed by the Lessee for the use of said facilities in line with charges commonly fixed for other similar facilities in the community. The revenues from such

activities will be used by the Lessee to pay expenses of such activities and for the purpose of constructing, operating and maintaining the Recreational Uses on the Premises.

1.04 **Conditions of Granting Lease.** The granting of this Lease and its acceptance by Lessee is conditioned upon the following covenants:

A. That no functional alteration of the Premises or improvements located thereon or functional change in the uses of such Premises shall be made without the prior written consent of Lessor.

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

ARTICLE II - OBLIGATIONS OF LESSOR

2.01 **Quiet Enjoyment.** Lessor agrees that upon Lessee's occupying the Premises and performing all of the covenants, conditions, and agreements set forth in this Lease, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises. Lessor has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

ARTICLE III - OBLIGATIONS OF LESSEE

3.01 **Net Lease.** This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth in Article II. Lessee shall:

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

B. Keep and maintain the landscaping for the Premises in a good state of repair at all times; and

C. Pay any and all taxes assessed against the Premises, improvements located on the Premises, Lessee's interest in the Premises and improvements, and all of Lessee's personal property located on the Premises; and

D. Pay any and all operational costs including all utilities and trash pickup; and

E. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

3.02 Condition of Premises. Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Lessor has not made any warranties expressed or implied with regard to the condition of the Premises or improvements or their suitability for a particular use. Lessee accepts the Premises "As Is", with all faults, relying on Lessee's own inspection and judgment and not in reliance on any representations of Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

3.03 Annual Inspection. At least once each calendar year during the term of this lease, Lessor may conduct an inspection of the Premises and improvements in order to insure they are being properly maintained. Upon completion of the inspections, Lessor shall provide written notice of any repairs or maintenance which Lessor in its sole discretion determines must be made to the Premises and improvements. Failure to complete such repairs shall be an event of default and may result in termination of the Lease and a suit for collection of the sums necessary to make said repairs and court costs and attorney's fees for the collection action.

3.04 Compliance With Laws. Lessee, at Lessee's expense, agrees that it will operate and maintain, and to the extent applicable, construct, improvements on the Premises in accordance with the terms, conditions and processes contained herein, and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

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

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

A. Definitions.

(1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the

Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.

(2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, and diesel fuel.

(3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

(1) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its sublessees, agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under environmental law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on

the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

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

(3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.

(4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.

(5) Lessee shall insert the provisions of this Section 3.03 in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

3.05 **Lessor's Approval of Plans.** Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of improvements shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities. It is specifically understood that the Parks and Recreation Department is only one of numerous departments of the Lessor and that, in addition to obtaining approval of the Parks and Recreation Department, Lessee may be required to obtain the approval of other departments as well, such as Engineering and Construction Management Department or the Capital Assets and Real Estate Manager.

3.06 **Landscaping and Maintenance of Improvements.** If Lessee elects to install landscaping, before doing any such landscaping, Lessee shall submit to the City a plan showing such proposed landscaping and no work shall be done thereon until the City has given its approval, which permission the City agrees will not be unreasonably withheld. Lessee shall maintain the landscaping on the Premises and keep the improvements on the Premises in a good state of repair and condition. Lessee shall water, trim and maintain any landscaping installed by Lessee so that the same shall be kept in neat, orderly and attractive condition at all times.

Lessor agrees that attractive, low water usage landscaping is a desirable goal and agrees to consider and approve appropriate low water usage landscaping plans if improvements are made to the current landscaping.

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

3.07 **Utilities.** Lessee shall pay for all costs for utility services during the term hereof, except City shall pay for water service for existing facilities. Lessee is responsible for paying the cost of extending water, sewer, gas and electric lines to the boundary of the property and within the boundaries of the property (connecting to such lines and setting meters), if any. If the Lessee's use of water increases the City's obligation to pay for water service by more than 20%, the Lessee shall be responsible for payment of additional water costs on a monthly basis as invoiced by the City, within 30 days of receipt of such invoice.

3.08 **Trash, Garbage, and Other Refuse.** Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Premises, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises. Lessee shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

3.09 **Outside Lighting.** Outside Lighting on the Premises will not be operated at such hours or with such intensity as to constitute a public nuisance to the occupants of other property in the neighborhood. If this provision is violated, the City Council may require any such lighting to be

extinguished, changed or removed at Lessee's expense.

3.10 Signs. All signs on the Premises shall comply with all building codes and other ordinances of the City of El Paso. The size, design and location of all signs shall be subject to approval by the Lessor prior to installation. No outdoor advertising signs, billboards or flashing lighting shall be permitted. Signs on the property shall be limited to those identifying the uses conducted on the Premises and those necessary for informational and directional purposes.

3.11 Cutting or Filling. No cuts or fills shall be done on the property nor any grubbing, grading or moving of earth performed, unless such work has received prior written approval of the City Engineer and a grading permit obtained if required by the grading ordinance of the City of El Paso.

3.12 Permitted Uses. Lessee will not enter into any activity on the Premises other than those permitted in Paragraph 1.03. The Lessee shall not permit on the Premises any entertainment, amusement or other activity which violates any statute or ordinance, and will use Lessee's best efforts to prevent disorder and conduct amounting to a nuisance. Lessee shall take all prudent safety precautions to protect the general public and others on the Premises. Littering and pollution shall be strictly prohibited. Lessee shall provide adequate policing and shall safeguard the Premises to prevent vandalism, rowdyism or violations of the law. The Premises shall not be used for any purpose except as contemplated by this Lease, unless written permission of the City Council is first obtained. Lessee may make reasonable rules for use of the Premises to protect the rights of the public and to provide for the proper, orderly and non-discriminatory use of the facilities thereon which shall be made available to every member of the community.

ARTICLE IV - TERM OF LEASEHOLD

4.01 Term. This Lease shall be for a term of ten (10) years, commencing on the Effective Date, as defined in Section 11.17. This shall hereinafter be referred to as the "Initial Term".

4.02 Option to Extend. In the event Lessee is not in default of any terms of this Lease, Lessee shall have the option to extend this Lease for two (2) additional five (5) year terms. Lessee may exercise each option ("Option Period") by notifying Lessor in writing of Lessee's election at least sixty (60) days prior to the expiration of the previous term. In the event the election is so exercised, the Lease shall be extended for five years (the "Extended Term") on the same terms and conditions.

4.03 Holding Over. It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent payable as defined in Section V, and Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of payment after expiration or cancellation of this Lease or after the service of any notice, or after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this

Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

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

ARTICLE V - CONSIDERATION

5.01 **Rent.** As monetary consideration for this Lease, Lessee will deliver to the City the sum of TEN AND NO/100 DOLLARS ($10.00) per year in advance on the first day of the anniversary month in each year of the initial term of this Lease and each year of any extended terms in which the Lessee has exercised its option to extend pursuant to Section 4.02.

5.02 **Place of Payment.** All rent payments provided herein shall be paid to Lessor at the following address:

City of El Paso
2 Civic Center Plaza, 7th Floor
El Paso, TX 79901
ATTN: FINANCIAL SERVICES DEPARTMENT

5.03 **Additional Consideration, Services.** As additional consideration for the use of the Premises by Lessee, the Premises will be used to provide certain public park and recreational facilities in the northeast El Paso area that are of general benefit to the citizens of El Paso.

ARTICLE VI – INSURANCE AND INDEMNIFICATION

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

6.02 Liability Insurance. Lessee, at its sole cost and expense shall, throughout the term of this Lease, provide and keep in force for the benefit of Lessor and Lessee, as their respective interests may appear, comprehensive general liability insurance in an amount not less than One Million Dollars ($1,000,000.00) for bodily injury to one person for each occurrence, One Million Dollars ($1,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Million Dollars ($1,000,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

6.03 Performance Bonds. In the event of any construction on the Premises, Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

A. Prior to the date of commencement of any construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work described as herein provided.

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

In accordance with Article 7.19-1 of the Texas Insurance Code, if a Performance bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed ten percent (10%) of the reinsurer's capital and surplus. In lieu of the payment and performance bonds described in Paragraph A and B, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable letter of Credit in an amount equal to the full amount of the construction contract awarded. Such Letter of Credit shall be issued by a national banking association with offices in El Paso, El Paso County, Texas, shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii)

complete construction of the improvement contemplated by the construction contract.

6.04 **Authorized Insurance Companies.** All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld. Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Each such certificate shall contain:

A. A statement of the coverage provided by the policy;

B. A statement certifying the Lessor to be listed as an additional insured in the policy;

C. A statement of the period during which the policy is in effect;

D. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and

E. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least fifteen (15) days prior written notice to Lessor.

6.05 **Indemnification. Lessee agrees to indemnify and hold Lessor harmless against any and all claims, demands, damages, costs, and expenses, including investigation expenses and reasonable attorney's fees for the defense of such claims and demands, arising out of or attributed directly, or indirectly to the operation, conduct or management of Lessee's business on the Premises, its use of the Premises, or from any breach on the part of Lessee of any terms of this Lease, or from any act or negligence of Lessee, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the Premises including claims and damages arising in whole, or in part, from the negligence of Lessor. In case of any action or proceeding brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, agrees to defend the action or proceeding by counsel acceptable to Lessor.**

6.06 **Waiver of Liability.** Lessor shall not be responsible for any damage to any personal property placed on the Premises by Lessee, including but not limited to, office equipment, vehicles, inventory, etc. By signing this Lease Lessor acknowledges that the Lessor, its agents, employees and invitees will be on Premises and agrees to accept whatever risks come from the use of the Premises.

ARTICLE VII - DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY

7.01 Obligations of Lessee. During the term hereof, except as provided in Section 7.03 below, should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessor shall repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessor as aforesaid and Lessor shall bill Lessee for the repairs, replacements or rebuilding.

7.02 Insurance Proceeds. Upon receipt by Lessee of the proceeds of the insurance policy or policies, Lessee shall deposit same in an escrow account to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed by Lessee during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Lessee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Lessee.

7.03 Cancellation of Lease. Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty during the last year of the initial term or last year of any renewal term of this Lease, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessor, unless Lessor has elected to have the Premises returned to it clear of all improvements in accordance with Section 10.06 herein below, in which case Lessee shall be entitled to such insurance proceeds. All rents payable under this Lease shall be prorated and paid to the date of such cancellation. The receipt of insurance proceeds by Lessor will relieve Lessee from any responsibility to restore the Premises to their former condition.

ARTICLE VIII – CONDEMNATION

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

A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.

B. "Total taking" means the taking of the fee title to all of the Premises and improvements thereon.

C. "Substantial taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:

1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;

2. The conduct of Lessee's business on the Premises would be substantially prevented or impaired;

3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Lease.

D. "Partial taking" means the taking of a fee title that is not either a total or substantial taking.

E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.

F. "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the Taking.

G. "Award" means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.

H. "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

8.02 **Notice of Condemnation.** The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

A. Notice of intended Taking;

B. Service of any legal process relating to condemnation of the Premises or improvements; or

C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

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

8.04 Taking of Leasehold. Upon a Total Taking, Lessee's obligation to pay Rent and other charges hereunder shall terminate on the Date of Taking, but Lessee's interest in the leasehold shall continue until the Taking is completed by deed, contract or final order of condemnation. If the Taking is substantial under the aforementioned definition, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives Notice of the intended Taking, elect to treat the Taking as a Total Taking. If Lessee does not so notify Lessor, the Taking shall be deemed a partial Taking. Upon a partial Taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the Rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

8.05 Total Taking. All of Lessee's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Premises, as unencumbered by any Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

8.06 Partial Taking. Upon a Partial Taking, all Awards shall be disbursed as follows:

A. To the cost of restoring the improvements on the Premises; and

B. The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all sums awarded for Lessee-owned improvements and the Leasehold estate. Lessor shall receive all sums awarded for the Premises, as unencumbered by the Lessee-owned improvements but subject to the Lease.

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

8.08 Taking of Temporary Use of Premises and Improvements. Upon any Taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the Taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such Taking, Lessee shall receive, hold and disburse the Award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

If any such Taking is for a period extending beyond the expiration date of the term, the Taking shall be treated under the foregoing provisions for total, substantial and Partial Takings.

ARTICLE IX – ENCUMBRANCES

9.01 Encumbrance. Lessee may not permit any liens or encumbrances upon its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises, except as may be approved by the Lessor.

ARTICLE X - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

10.01 Expiration. This Lease shall expire ten (10) years from the Effective Date of this Lease, unless as extended pursuant to paragraph 4.02 above. Upon expiration or any termination of the Lease pursuant to the terms and conditions herein, Lessee shall peacefully surrender such Premises and improvements to the City free of all such liens or encumbrances. Lessee shall defend and indemnify the City against any liability and loss of any type arising from any such lien or encumbrance on the Premises or improvements, together with reasonable attorney's fees, costs and expenses incurred by the City in negotiating, settling, defending or otherwise protecting against such liens or encumbrances.

10.02 Cancellation. Subject to the provisions of Article IX above, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

A. Fail to maintain the Premises and the improvements for a period of thirty (30) days after Lessor has notified Lessee that repairs are needed;

B. Fail to maintain insurance and provide proof of said insurance;

C. Fail to use the Premises for the purpose identified in paragraph 1.03;

D. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due.

E. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;

F. Make any general assignment for the benefit of creditors;

G. Abandon the Premises;

H. Be in violation of any local, state, or federal rules and/or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Lessee, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;

I. Be adjudged bankrupt in involuntary bankruptcy proceedings; or

J. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

In any of the aforesaid events, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

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

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

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

A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and

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

10.04 Assignment, Subletting and Transfer.

A. Lessee shall not assign this Lease or any interest therein, whether voluntarily, by operation of law, or otherwise, and shall not sublet the Premises or any part thereof, except upon receipt of prior written permission and consent of Lessor. Any attempt to assign, sublet or otherwise transfer any interest in this Lease shall be void and shall be an event of default which may result in immediate termination of the Lease. Consent of Lessor to any such assignment or subletting shall not be permitted if: (i) at the time of such assignment or subletting, Lessee is in default in the performance and observance of any of the covenants and conditions of this Lease; (ii) the assignee, sublessee, or Lessee will not expressly assume in writing all of Lessee's obligations hereunder; and (iii) Lessee's provision of proof to Lessor that the assignee's or sublessee's financial condition is not satisfactory to Lessor.

B. Any such assignment or subleasing, even with the approval of Lessor shall not relieve Lessee from liability for payment of all forms of rental, fees, and other charges herein provided or from the obligations to keep and be bound by the Initial Term, conditions, and covenants of this Lease. Lessor's acceptance of rent, fees, or other charges from any person or entity other than Lessee shall not be deemed to be a waiver of any of the provisions of this Lease, or a consent in the assignment or subletting of the Premises. Consent to any assignment or subletting shall not be deemed a consent to any further assignment or subletting. Any merger, consolidation, or transfer of corporate shares of Lessee, if Lessee is a corporation, so as to result in a change in the present voting control of Lessee by the person or persons owning a majority of said corporate shares on the date of this Lease.

10.05 Rights Upon Expiration. At the expiration of this Lease, at the sole option of Lessor, the Premises and all the improvements thereon will either be returned to its prior condition, reasonable wear and tear excepted or Lessor will agree to accept the improvements placed on the Premises by Lessee. Lessee shall peacefully surrender such Premises and improvements to the City.

10.06 Landlord's Lien. It is expressly agreed that in the event of default in the payment of rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first the necessary proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

ARTICLE XI - GENERAL PROVISIONS

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

11.02 Notices. All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LESSOR: City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901
Attn: City Manager

Copy to: City of El Paso
2 Civic Center Plaza, 4th Floor
El Paso, Texas 79901
Attn: Capital Assets Manager

City of El Paso
2 Civic Center Plaza
El Paso Texas 79901
Attn: Parks and Recreation Director

LESSEE: Transmountain Optimist Club
8801 Railroad Drive
El Paso, Texas 79924
Attn: President

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

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

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

11.05 Nondiscrimination Covenant. Lessee, for himself, his heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

A. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.

B. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.

C. That Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27. D. That, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Lease and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

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

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

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

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

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

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

11.11 Successors and Assigns. All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

11.12 Taxes and Other Charges. The Lessee shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against the Lessee or the Lessor, with respect to the Premises, any improvements, equipment, personal property, inventory thereon or Lessee's use and/or occupancy of the Premises during the term of this Lease including any extensions or option periods granted thereto.

The Lessee in good faith may contest any tax or governmental charge; provided that the Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom.

11.13 Waiver of Warranty of Suitability. Lessor disclaims any warranty of suitability that may arise by operation of law. Lessee leases the Premises as is and Lessor does not warrant that there are no latent defects that are vital to Lessee's use of the Premises for their intended commercial purpose.

11.14 Survival of Certain Provisions. All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 3.03 and
6.05.

11.15 Restrictions and Reservations. This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Lessor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

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

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

11.17 Effective Date. This Lease shall be effective on the date executed by the City Manager for the City of El Paso.

ARTICLE XII - RESTRICTIONS AND RESERVATIONS

12.1 Restrictions and Reservations on Lease. This Lease is subject to the following restrictions, conditions, reservations and covenants:

The provisions of this paragraph shall be covenants running with the land and shall be binding upon all future users of the land hereby leased, or any part thereof.

A. This Lease is made and accepts subject to existing easements and rights of way in favor of the public or third parties for roads, highways, telephone and telegraph lines, transmission lines, pipelines and public utilities.

B. This Lease is further made and accepted subject to the following:

1. Any and all restrictions, covenant, conditions, and easements, if any, relating to the leased premises, shown of record in El Paso County Texas, but only to the extent they are still in effect.

2. Any and all applicable zoning laws, regulations and ordinances of municipal or other governmental authorities.

C. There is reserved to the Lessor and its assigns the prior right to use any of the land herein described to construct, operate and maintain structures and facilities including but not limited to canals, ditches, roadways, electrical transmission lines, dams, dikes, reservoirs, pipelines, telephone and telegraph lines, communication facilities and other public structures and facilities, without any payment made by the Lessor or its successors or such right, provided, however, that the exercise of such rights shall not substantially interfere with Lessee's use of the land.

(Signature Page to follow)

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this ____ day of _____, 2012.

LESSOR:
CITY OF EL PASO

_____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

_____
Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Mathew McElroy, Director
City Development Department

_____
Nanette Smejkal, Director
Parks and Recreation Department

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2011, by **Joyce A. Wilson** as **City Manager** of the **City of El Paso**, Texas.

_____
Notary Public, State of Texas
Printed Name: _____

My Commission Expires:

_____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

LESSEE:
Transmountain Optimist Club

By: Thurman Reynolds
Thurman ~~Ray~~ Reynolds
President

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this day 26 of July, ~~2011~~ 2012, 2012
by Reynolds, Thurman, of Transmountain Optimists

Notary Public, State of Texas
Printed Name: Mary Gamez

My Commission Expires:

MARY GAMEZ
Notary Public, State of Texas
My Commission Expires
JANUARY 12, 2016

EXHIBIT A

SITE MAP

SANDERS
WAYCROSS
MIDDLESBORO
BAINBRIDGE
TIMES
DYER
PRIVATE
VICKSBURG
WREN
ALBANY
MCCOMBS
RAILROAD
LEXINGTON
SALISBURY
FAIRFAX
DALTON
MONTGOMERY
WAVERLY
MACON
JOE HERRERA
RALEIGH
GULFPORT
RAILROAD TRACKS
RUTHERFORD
RAYMOND TELLES
MIAMI
MOUNT ETNA
MATTERHORN
HOLLINGS
MARIE TOBIN
DECATUR
ALPS
ELKTON
HONDO PASS
DUVAL
TAMMY
UNKNOWN- FORT BLISS
MOUNT OLYMPUS
PIKES PEAK
ROANOKE
LADYBIRD
DUCHESS
GLACIER PEAK
DIANA
MOUNT ELBERT
MOUNT CAPOTE
BLUE RIDGE
ANDES
MOUNT SHASTA
WILMOTH
SIERRA MADRE
TETONS
GUNTER
STATLER
MOUNT SCOTT
MOUNT TIBET
MOUNT WHITNEY
HERCULES
CATSKILL
BRAGG
BENNING
KNOX
LOUIS
N

EXHIBIT B

PARCEL I

Property Description
and
Metes and Bounds of Premises

OF NATIONS TOBIN PARK

From a section corner at the intersection of the center line of Hondo Pass Drive and Diana Drive, thence North 88°49'00" East, along the center line of Hondo Pass Drive, said center line also being the common section line of Sections 10 and 1, Block 81, Township Two, Texas and Pacific Railroad Surveys, a distance of two thousand six-hundred thirty-six and seventy-five hundredths (2,636.75) feet to a point on the intersection of Hondo Pass Drive center line and the extended west right-of-way line of Mountain View Drainage Channel Easement; thence South 01°11'00" East, along the common line of Mountain View Drainage Easement and El Paso Natural Gas Company easement, a distance of one thousand eight hundred fifty-eight and ninety-three hundredths (1,858.93) feet a point for a curve, said point being the point of beginning;

Thence along a curve to the left, an arc distance of five hundred ninety-three and fourteen hundredths (593.14) feet to a point, on the common right-of-way line of the Mountain View Drainage Channel Easement and the southwest portion of Nations Tobin Park, said curve has a radius of five hundred sixty-two and fifty hundredths (562.50) feet, a delta angle of 60°25'00" and a chord of five hundred sixty-six and four hundredths (566.04) feet bearing South 31°23'30" East;

Thence South 61°36'00" East, along the common right-of-way line of Mountain View Drainage Easement and the southwest portion of Nations Tobin Park, a distance of five hundred fifty-six and eighty-three hundredths (556.83) feet, to a point on the west right-of-way line of Railroad Drive;.

Thence South 28°24'00" West, along the west right-of-way line of Railroad Drive, a distance of twenty-eight and thirty-eight hundredths (28.38) feet to a point, said point being the east common corner of Nations Tobin Park and El Paso Natural Gas Company Compressor Station Number 3;

Thence South 88°49'00" West, along the common property line of Nations Tobin Park and El Paso Natural Gas Company Compressor Station Number 3, a distance of seven hundred fifty-five and forty-six hundredths (755.46) feet to a point, said point being the common corner of Nations Tobin Park, El Paso Natural Gas Company fifty (50) feet easement, and El Paso Natural Gas Company Compressor Number 3;

Thence North 01°11'00" West, along the common property line of the southwest portion of Nations Tobin Park and El Paso Natural Gas Company easement, a distance of seven hundred eighty-nine and one hundredths (789.01) feet to the point of beginning;

Said parcel of land contains 204,269.28 square feet or 4.69 acres, more or less.

By: J. Gandara 10/18/79
Checked by: J. Baca
Approved by: J. Baca
Ref. #: 235335

EXHIBIT C

PARCEL II

Property Description
and
Metes and Bounds of Premises

EASEMENT, ABUTTING NATIONS TOBIN PARK

Legal description of ntain View Drainage easement, abutting Nations Tobin Park:

From a section corner at the intersection of the center line of Hondo Pass Drive and Diana Drive, thence North 88°49'00" East, along the center line of Hondo Pass Drive, said center line also being the common section line of Sections 10 and 1, Block 81, Township Two, Texas and Pacific Railroad Surveys, a distance of two thousand six-hundred thirty-six and seventy-five hundredths (2,636.75) feet to a point on the intersection of the center line of Hondo Pass Drive and the west right-of-way line extended of the Mountain View Drainage Channel easement thence South 01°11'00" East, along the common line of Mountain View Drainage Easement and El Paso Natural Gas Company easement, a distance of seven hundred eighty-four and fifty-three hundredths (784.53) feet to a point, said point being the point of beginning;

Thence; North 88°49'00" East, along the extended common property line of Nations Tobin Park and Stanton School, a distance of one hundred twenty-five and no hundredths (125.00) feet to a point, said point being on the east right-of-way line of Mountain View Drainage Channel Easement and the west common corner of Nations Tobin Park and Stanton School;

Thence;South 01°11'00" East, along the common property line of Mountain View Drainage Channel Easement and Nations Tobin Park, a distance of one-thousand seventy-four and forty hundredths (1,074.40) feet to a point for a curve;

Thence; along a curve to the left, an arc distance of four hundred sixty-one and thirty-three hundredths (461.33), said curve has a radius of four hundred thirty-seven and fifty hundredths (437.50) feet, a delta angle of 60°25'00" and a chord of four hundred forty and twenty-six hundredths (440.26) feet bearing South 31°23'30" East;

Thence; South 61°36'00" East, continuing along the common property line of Nations Tobin Park and Mountain View Drainage Easement, a distance of five hundred fifty-seven and thirty-two hundredths (557.32) feet to a point on the west right-of-way line of Railroad Drive;

Thence; South 28°24'00" West, along the west right-of-way line of Railroad Drive, a distance of one hundred twenty-five and no hundredths (125.00) feet to a point on the South right-o-fway line of Mountain View Drainage Easement;

Thence; North 61°36'00" West, a distance of five hundred fifty-six and eighty-three hundredths (556.83) feet to a point for a curve;

Thence; along a curve to the right, an arc distance of five hundred ninety-three and fourteen hundredths (593.14) feet to a point on the common property line of Mountain View Drainage Easement and El Paso Electric Company Easement, said curve has a radius of five hundred sixty-two and fifty hundredths (562.50) feet, a delta angle of 60°25'00" and a chord of five hundred sixty-six and four hundredths (566.04) feet bearing North 31°23'30" West;

Thence North 01°11'00" West, along the common right-of-way line of Mountain View Drainage Easement and El Paso Electric Company Easement, a distance of one thousand

seventy-four and forty hundredths (1,074.40) feet to the original point of beginning;

Said existing drainage easement contains 269,868.43 square feet or 6.20 acres, more or less.

By: J. Gandara
Checked by: J. Baca
Approved by: J. Baca
Ref. Plan #: 235335
D.H.D.