

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

CITY CLERK DEPT.  
07 AUG 13 AM 11:42

**DEPARTMENT:** Parks and Recreation  
**AGENDA DATE:** August 21, 2007  
**CONTACT PERSON/PHONE:** Barry Russell (915) 541-4292  
**DISTRICT(S) AFFECTED:** City-Wide

**SUBJECT:**

**APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.**

A resolution authorizing the City Manager to sign a Lease Agreement between the City and the United States Department of the Army, for 100 acres of land at Biggs Army Airfield.

**BACKGROUND / DISCUSSION:**

**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?**

City and Fort Bliss officials have been working on this lease agreement for a number of years. Over the course of the last year staff from both groups has met to discuss a number of issues that both sides needed to resolve to their satisfaction. Issues such as schedules of use, lease termination, specific design and reporting criteria, program administration and environmental issues.

The term of the lease is for thirty (30) years from November 1, 2007 to October 31, 2037. There is a cost of \$136,000/year to the City, however, this fee is waved for value use of the sports fields by the Army.

**PRIOR COUNCIL ACTION:**

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

Yes. City Council approved this project as part of the 2000 QOL Bond

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

The 2000 QOL Bond earmarked \$5,000,000 for the construction of soccer fields at Fort Bliss.

**BOARD / COMMISSION ACTION:**

**Enter appropriate comments or N/A**

N/A

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

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

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

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**RESOLUTION**

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

**THAT** the City Manager be authorized to sign a lease agreement by and between the City of El Paso and the United States Department of the Army, Fort Bliss Military Installation, Biggs Army Airfield, Texas, to lease military reservation property for public and recreational purposes, specifically for the construction and maintenance of a soccer complex.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

CITY OF EL PASO

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

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Josette Flores  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Barry Russell, Interim Director  
Parks and Recreation Department

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DEPARTMENT OF THE ARMY LEASE

FORT BLISS MILITARY INSTALLATION

BIGGS ARMY AIRFIELD

EL PASO COUNTY, TEXAS

THIS LEASE, made on behalf of the United States, between the SECRETARY OF THE ARMY, (hereinafter, the Secretary), hereinafter referred to as the "Lessor", and the City of El Paso, Texas, hereinafter referred to as the "Lessee".

**WITNESSETH:**

That the Secretary, by authority of Title 10, United States Code, Section 2667, and for the consideration hereinafter set forth, hereby leases to the Lessee 100 acres of land at Biggs Army Airfield, identified in Exhibit A, attached hereto and made a part hereof, hereinafter referred to as the Lease Premises for construction and maintenance of a soccer complex.

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of thirty (30) years, beginning November 1, 2007 and ending October 31, 2037.

**2. USE OF THE LEASE PREMISES**

The Lease Premises and any improvements thereon or additions thereto may be used for the use(s) designated in or consistent with the approved Development Plan submitted to the Lessor, prior to any construction, by the Lessee ("Development Plan"), which uses may include but are not limited to construction and maintenance of a Soccer Complex including construction and maintenance of restroom facilities, concession areas, jogging trail(s), fencing, signage and roads. Changes to the use of the Lease Premises require prior written approval of the Lessor. Lessee shall be responsible to ensure that land use is in compliance with all state and federal regulations. The Lessor's use of the Lease Premises shall be Monday through Friday, from 0500 to 0900 hours for the soldiers' physical training, and at least one lit field shall be available to Lessor on Monday through Friday from 1700 to 2100 hours for adult and/or youth soccer games.

**3. CONSIDERATION**

a. The consideration for this Lease is the fair market rental of **ONE HUNDRED THIRTY-SIX THOUSAND DOLLARS (\$136,000)** per annum. Rental consideration may be offset, in accordance with Title 10 USC 2667 (C)(1)(E), by the Government's exclusive use of the facilities estimated at a fair market rental of two hundred dollars (\$200) per sports field per day.

**b.** All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 U.S.C. Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

#### **4. TERMINATION, REVOCATION, AND RELINQUISHMENT**

**a.** The Lessee is charged at all times with full knowledge of all the limitations and requirements of this Lease, and the necessity for correction of deficiencies. This Lease may be terminated in the event the Lessee violates any of the terms and conditions of the Lease and continues and persists in such non-compliance or fails to initiate corrective action within all applicable notice and cure periods. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance, or to initiate the necessary corrective action, which period of time shall be not less than ninety (90) days, provided, however, that (i) if the matter that is subject to the notice is of such a nature that it cannot be cured within ninety (90) days, then no default shall be deemed to have occurred if the Lessee promptly, upon receipt of notice, commences curing the default and diligently prosecutes the same to completion, and (ii) this time period may be less than ninety (90) days if (a) such corrective action must be initiated in less than ninety (90) days due to a specific requirement of applicable law or governmental regulation, and (b) the Lessee receives reasonable and adequate notice of the requirement for such corrective action. Failure to satisfactorily correct any substantial or persistent non-compliance or to initiate necessary corrective action within the specified time is grounds, at the option of the Lessor, for closure of all or part of the Lease Premises, temporary suspension of operation, or the termination of the Lease, after notice in writing of such intent as provided in Subcondition b below.

**b.** Should the Lessee default as described above, the Lessor may, at its

option, following the expiration of applicable notice and cure periods, (i) seek injunctive relief or take any other action permitted by law or in equity; or (ii) take such measures as the Lessor deems reasonable to mitigate the effects of or cure such default, and charge all reasonable costs and expenses so incurred to the Lessee; or (iii) give the Lessee thirty (30) days written notice of its intention to end the Term of this Lease and thereupon at the expiration of those thirty (30) days the Term of this Lease shall expire as completely as if that date were the date definitely fixed in this Lease for the expiration of the term.

c. The following shall be deemed a default by the Lessor and a breach of this Lease: the Lessor's failure to observe or perform any of its obligations under the terms, covenants, or conditions of this Lease if such failure persists after the expiration of ninety (90) days from the date the Lessee gives written notice to the Lessor calling attention to the existence of that failure, but, if the matter that is the subject of the notice is of such a nature that it cannot be reasonably cured within ninety (90) days, then no default shall be deemed to have occurred if the Lessor promptly, upon the receipt of the notice, commences the curing of the default and diligently prosecutes the same to completion. Notwithstanding the provisions of this Subcondition c., no default or breach of this Lease shall be deemed to have occurred if the Lessor promptly notifies the Lessee in writing that a cure of the default cannot occur within the time limits of this Subcondition due to applicable laws, regulations, or written policies of the Lessor, and that a longer period to commence and diligently prosecute such cure shall be required. Said notification shall cite the applicable laws, regulations, and/or policies and the amount of additional time necessary due thereto.

d. Should the Lessor default as described above, the Lessee may, at its option, following the expiration of applicable notice and cure periods, (i) seek injunctive relief or take any other action permitted by law or in equity; or (ii) take such measures as the Lessee deems reasonable to mitigate the effects of or cure such default; or (iii) give the Lessor thirty (30) days written notice of its intention to end the Term of this Lease and thereupon at the expiration of those thirty (30) days the Term of this Lease shall expire as completely as if that date were the date definitely fixed in this Lease for the expiration of the Term.

e. In accordance with Condition 12 TRANSFERS, ASSIGNMENTS AND SUBLEASING hereof, any sublease or license is to be subject to the conditions and terms of this Lease, nevertheless, should non-compliance described in Subcondition a. above, stem from the activities of a sublessee, licensee, or any other person, excluding an assignee subject to an assumption agreement pursuant to Condition on **TRANSFERS, ASSIGNMENTS AND SUBLEASING** hereof, the Lessee is responsible for ensuring compliance, either by corrective action itself or through the sublessee, licensee, or such other person, as appropriate. If the Lessee is making good faith efforts to obtain corrective action and compliance by the sublessee, licensee, or other person, then closure, or temporary suspension of operation, will only be for that part of the Lease Premises under the control of the sublessee or licensee involved.

f. This Lease may be relinquished by the Lessee by giving one (1) year prior written notice to the District Engineer in the manner prescribed in the Condition on **NOTICES**.

g. The Lessor may terminate this Lease if the Lessor determines that a termination is in the Lessor's interest. The Lessor shall terminate by

delivering to the Lessee a Notice of Termination specifying the effective date.

**h.** Lessor may terminate this Lease and remove Lessee and any sublessee in the event of a National Emergency declared by the President or the Congress of the United States, base closure, deactivation or substantial realignment, or in the interest of national defense; provided, however, that prior to revocation, Lessor shall notify Lessee.

**i.** Lessee and Lessor shall coordinate their efforts to mitigate the impact of the National Emergency or defense related situation on the Lease by instituting measures that would allow the lease to continue in effect.

(1) Such measures shall include, but not be limited to the following:

(i) Increasing security along the perimeter of the Soccer Complex and at the access point between Biggs Army Airfield and the Soccer Complex;

(ii) Reducing public access points to the Soccer Complex;

(iii) Restricting times of use by the public;

(iv) Suspending operation of the Lease during the period of National Emergency or defense-related situation without terminating the Lease.

(2) After the National Emergency of defense-related situation has abated, the Lease shall continue in effect in accordance with its original terms.

## **5. NOTICES**

All correspondence and notices to be given pursuant to this Lease shall be addressed, if to the Lessee, to Parks & Recreation Department Director, City of El Paso, Texas, 2 Civic Center Plaza, El Paso, TX 79901-1196; and, if to the United States, to the District Engineer, ATTN:CESWF-RE, P.O. Box 17300, Fort Worth, Texas 76102-0300, or as may from time to time otherwise be directed by the parties. Copies of correspondence and notices will also be furnished to Commander, Fort Bliss, ATTN: ATZC-ISE-PR, Director of Public Works and Logistics, 1733 Pleasonton Road, Fort Bliss, Texas 79916-6816, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

## **6. AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include any of its sublessees, assignees, transferees, successors and their duly authorized representatives.

**a.** Any references to "Secretary" or "District Engineer" shall be interpreted to be the District Engineer, U.S. Army Corps of Engineers, Fort

Worth District, ATTN: CESWF-RE, Fort Worth, Texas 76102-0300.

**b.** Any references to "Installation Commander" shall be interpreted to be the Commanding General of Fort Bliss, Fort Bliss, Texas 79916-6816.

**c.** Any references to "DPW" the "Environmental Division" or to "Fort Bliss" shall be interpreted to be the Fort Bliss Public Works & Logistics, Directorate of Public Works, ATTN: IMWE-BLS-PWM, 1733 Pleasonton Road, Fort Bliss, Texas 79916-6816.

## **7. DEVELOPMENT PLANS**

The Lessee shall be guided by an annual Plan of Operation and Maintenance in furtherance of the Lessee's implementing Plan of Recreation Development and Management (Development Plan), which shows the facilities and services necessary to meet the current and potential public demand and the management and development activities to be undertaken by the Lessee and any sublessees. No later than October 1st of each year, the Lessee will submit the annual Plan to be mutually agreed on between the Lessee and the District Engineer. Such annual Plan shall include but is not limited to the following:

**a.** Plans for management, maintenance and development activities to be undertaken by the Lessee and any sublessees.

**b.** A mutually acceptable schedule for use of the Lease Premises by Lessee and Lessor for the upcoming year.

**c.** Report of the management, maintenance and development accomplishments of the Lessee for the preceding year.

**d.** Report on any significant modification of policies or procedures which are planned for the following year as well as those implemented in the preceding year.

**e.** Minor modifications to the Development Plan. Major modifications are to be accomplished by amendment to the Plan before proceeding to implement any changes in the development or management of the leased premises.

**f.** Annual certification that all water and sanitary systems on the premises have been inspected and comply with federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the Condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

**g.** The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer. During the Term of the Lease, the District Engineer will notify the Lessee of any updates to the existing Installation Master Plan affecting the premises and the Lessee may provide comments.

## **8. STRUCTURES AND EQUIPMENT**

The Lessee shall have the right, during the Term of the Lease, to erect such structures and to provide such equipment upon the premises as may be necessary to furnish the facilities and services authorized. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION**. However, no structures may be erected or altered upon the premises unless and until the type of use, design, and proposed location or alteration thereof shall have been approved in writing by the District Engineer. No construction at or above 60' above ground level will be made without prior written approval by Lessor. All plans, designs and construction shall incorporate all safety and force protection measures required by the Lessor. The District Engineer may require the Lessee, upon the completion of each of the proposed developments to furnish complete "as built" construction plans for all facilities.

## **9. APPLICABLE LAWS AND REGULATIONS**

**a.** The Lessee shall comply with (i) all applicable federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business; and (ii) Fort Bliss rules and regulations, as said rules may be amended from time to time. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this Lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army.

**b.** The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with federal, state and local standards. The Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disability Act, as required in the Condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

## **10. CONDITION OF PREMISES**

**a.** The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the Lessor to make any alterations, repairs, or additions thereto.

**b.** This Condition is specifically subject to the provisions contained in Condition on **PROTECTION OF PROPERTY**, and Condition on **ENVIRONMENTAL PROTECTION** of this Lease.

## **11. FACILITIES AND SERVICES**

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on **DEVELOPMENT PLANS** either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this Lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lessee will not allow any third party activities with a rental to the Lessee

or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sub-lessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this Lease.

## **12. TRANSFERS, ASSIGNMENTS, SUBLEASES**

**a.** Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this Lease nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this Lease. No such transfer, sublease, or assignment shall be made to a Non-Qualifying Party. A Non-Qualifying Party is one that is (i) on the most current "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" published at <http://epls.arnet.gov/>, as said list may be updated from time to time, and/or (ii) a country listed in Publication 10535, *Patterns of Global Terrorism*, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and available at [http://www.state.gov/www/global/terrorism/annual\\_reports.html](http://www.state.gov/www/global/terrorism/annual_reports.html), (Collectively "Non-Qualifying Parties").

**b.** The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

## **13. FEES**

Fees may be charged by the Lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sub-lessees for use of facilities developed in whole or part with federal funds if a user charge for the facility would be prohibited under law. Lessee may not charge Lessor any fees for entrance or use of the Lease Premises or any facilities.

## **14. ACCOUNTS, RECORDS AND RECEIPTS**

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, shall be utilized by the Lessee for the administration, maintenance, operation and development of the premises. The Lessee shall establish and maintain accurate records and accounts and provide an annual statement of receipts and expenditures to the District Engineer. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sub-lessees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the District Engineer with the results of such an audit.

## **15. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this Lease and shall exercise due diligence in the protection of all property

located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

#### **16. RIGHT TO ENTER**

The right is reserved to the Lessor to enter upon the Lease Premises at any reasonable time, following prior written notice, which notice hereunder shall be at least two business days, except in the case of emergency, for the sole purpose of making reasonable periodic inspections of the Lease Premises as to its condition. Any such inspections shall be coordinated with the Lessee and shall not disrupt or otherwise disturb the ongoing activities of the Lessee or any sublessees on the Lease Premises. The Lessee or any sublessee shall have no claim for damages on account thereof against the Lessor or any officer, agent, or employee thereof, except for such damages as may be caused by negligence or willful misconduct of the Lessor or any officer, agent, or employee thereof.

#### **17. UTILITIES**

The Lessee shall pay the cost, as determined by the officer having jurisdiction over the premises, of producing and/or supplying any utilities and other services furnished by the government or through government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the government-owned facilities by which such utilities or services are produced or supplied. The government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

#### **18. MUNICIPAL SERVICES**

The Lessee shall be responsible for maintaining the provision of police, fire, and other services to and for the benefit of the Lease Premises and the activities of the Lessee, its successors, sublessees, and licensees.

#### **19. INDEMNITY**

Subject to the provisions of Condition on **ENVIRONMENTAL PROTECTION** hereof and applicable law, the Lessee agrees to assume all risks of loss or damage to property and injury or death to persons to the extent such loss, damage, injury or death is caused by or attributable or incident to its possession and/or use of the Lease Premises or the activities conducted by the Lessee under this Lease. The Lessee expressly waives all claims against the Lessor for any such loss, damage, personal injury or death. To the extent allowed by applicable law, the Lessee further agrees to indemnify and hold harmless the Lessor, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death or property damage to the extent such injury, death or damages result from, are related to, or caused by the possession and/or use of the Lease Premises by the Lessee. The Lessor will give the Lessee notice of any claim against it covered by this indemnity as soon after learning of

such claim as practicable.

## **20. HAZARD TO AIR NAVIGATION**

There shall be no unreasonable interference with air navigation by the exercise of the privileges granted by this Lease. Prior to the start of construction, the Lessee must receive a Federal Aviation Administration determination that construction and use of the Soccer Complex will not produce a hazard to air navigation. A copy of the document indicating such determination shall be provided to Lessor prior to the start of construction.

## **21. INSURANCE**

**a.** At the commencement of this Lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this Lease as third parties, shall obtain from an A.M. Best or similarly rated insurance company or companies contracts of liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum Combined Single Limit of \$1,000,000.00 U.S. dollars, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the Lessee, sub-lessees and concessionaires under the terms of this Lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance required.

**b.** The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days notice of any cancellation or change in such insurance.

**c.** In the event the Lessee is self-insured, the Lessee shall certify such self-insurance in writing in the minimum amount specified above to the District Engineer. The Lessee's insurance status shall not eliminate the requirement for its sub-lessees and concessionaires to have insurance from a A.M. Best or similarly rated insurance carrier as set out above.

**d.** The District Engineer may require closure of any or all of the premises during any period for which the Lessee and/or its sub-lessees and concessionaires do not have the required insurance coverage.

**e.** At the initiation of construction on the Lease Premises, the Lessee shall procure and maintain at the Lessee's cost a standard fire and extended coverage insurance policy or policies on the Lease Premises. The Lessee shall procure such insurance from an A.M. Best or similarly rated company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the Lessee, shall be payable to the Lessee to be used for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the Lessee, as designated in writing by the Lessee. If the Lessee does not elect by notice in writing to the insurer within sixty (60) days

after the damage or destruction occurs to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the Lessor, provided, however, that the insurer, after payment of any proceeds to the Lessee or the Lessor in accordance with the provisions of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee or the Lessor. Nothing herein contained shall be construed as an obligation upon the Lessor to repair, restore, or replace the Lease Premises or any part thereof should it be diminished in value, damaged, or destroyed.

f. The Lessee may require any sublessees or licensees, as joint and several responsible parties with the Lessee for those portions of the Lease Premises under their control, to maintain and carry at their expense portions of this insurance requirement.

## **22. IMPROVEMENTS TO LEASE PREMISES**

a. The Lessee, its sublessees, assignees, transferees, and successors, shall have the right to make improvements, alterations and repairs to the Lease Premises, which improvements, alterations and repairs may include, without limitation, construction and maintenance of facilities, including soccer fields, restroom facilities, concession areas, jogging trail(s), fencing, signage and roads provided that said improvements, alterations and repairs are undertaken or constructed in a good and workmanlike manner and in accordance with all requirements of applicable federal, state and local laws, ordinances and regulations. All necessary permits shall be obtained by the Lessee. The Lessor agrees to cooperate with the Lessee and to execute any documents or permits reasonably required for the undertaking by the Lessee of any such improvements, provided that the Lessee shall discharge any expense or liability of the Lessor in connection therewith. Plans and designs for construction of the Soccer Complex shall be submitted to Lessor for approval no less than 60 days prior to issuance by the Lessee of any requests for proposals or bids from contractors. Plans and designs for soccer complex shall incorporate all Safety and Force Protection measures required by Lessor. Within ninety (90) days after the completion of any improvements hereunder the Lessee shall provide the Lessor with as-built drawings of said improvements.

b. Lessee shall repair any damage to the roads on the Lessor's property arising from any construction activity by or on behalf of Lessee, including (without limitation) direct physical damage and wear and tear caused by construction vehicles and equipment.

c. The Lessee shall have the right to install signs upon the Lease Premises, subject to any applicable laws, prior approval by Lessor and subject to The Army Installation Design Guide for Fort Bliss dated February 2006.

d. The Lessee shall provide to the Lessor, at the Lessee's expense, upon receipt thereof by the Lessee, copies of all permits, certificates of occupancy, and other approvals, including copies of all plans and/or drawings submitted in connection therewith, obtained from governmental authorities in connection with the construction, use and occupancy of such building or improvement.

e. The Lessee shall require all contractors performing work on the Lease Premises to indemnify and hold harmless the Lessor from and against all

claims and liabilities relating to all work performed, including construction, on the Lease Premises.

### **23. RESTORATION**

On or before the expiration of this lease or its termination by the lessee, the Lessee shall vacate the premises, remove the property of the lessee, and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property, and restore the premises to the aforesaid condition within such time as said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, said property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this lease in restoring the premises.

### **24. NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the Lease Premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board. The Lessee expressly waives all claims against the Lessor regarding compliance with the ADA at the Lease Premises after the date of execution of the Lease.

b. The Lessee, by acceptance of this Lease, is receiving a type of federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); the Age Discrimination Act of 1975 (42 U.S.C. 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sub-lessees and assignees.

### **25. SUBJECT TO EASEMENTS**

This Lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

## **26. SUBJECT TO MINERAL INTERESTS**

This Lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

## **27. HEALTH AND SAFETY**

**a.** The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sub-lessees and concessionaires operate and maintain the premises in such a manner.

**b.** In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected within the time specified, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the Lease. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

## **28. PUBLIC USE**

No attempt shall be made by the Lessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

## **29. RENTAL ADJUSTMENT**

In the event the United States revokes this lease or in any other manner materially reduces the leased area or materially affects its use by the Lessee prior to the expiration date, an equitable adjustment will be made in the rental paid or to be paid under this lease. Such adjustment of rental shall be evidenced by a supplemental agreement in writing; PROVIDED however, that none of the provisions of this paragraph shall apply in the event of revocation because of noncompliance by the Lessee with any of the terms and conditions of this lease.

## **30. PROHIBITED USES**

**a.** The Lessee shall not permit the Lease Premises to be used for the following purposes: (i) any illegal business or purpose under applicable local, state or federal law; (ii) correction or detention facilities; (iii) adult entertainment uses; or (iv) partisan political rallies, political fund-raising events, or related political activities.

b. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

c. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

d. The Lessee may not sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises.

### **31. NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **DEVELOPMENT PLANS** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this Lease.

### **32. DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this Lease shall be resolved under this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph c.(2) below.

c. (1) A Claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Lessor against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$100,000, the Lessee shall submit with the claim a certification that--

(i) the claim is made in good faith; and

(ii) supporting data are accurate and complete to the best of the Lessee's knowledge and belief;

(iii) and the amount requested accurately reflects the lease adjustment for which the Lessee believes the Lessor is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by --

(i) a senior company official in charge of the Lessee's location involved; or

(ii) an officer or general partner of the lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$100,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For lessee-certified claims over \$100,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Lessor is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Lessor shall pay interest or the amount found due and unpaid by the Lessor from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Lessor by the Lessee will have interest and penalties assessed.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, or action arising under the lease, and comply with any decision of the District Engineer.

### **33. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized, if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency,

or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

**b.** The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the lessee's activities, the Lessee shall be liable to restore the damaged resources.

**c.** *A Phase I Environmental Site Assessment - Proposed Fort Bliss Soccer Complex*, dated October 8, 2004, documenting the known history of the Lease Premises with regard to the storage, release or disposal of Hazardous Substances thereon has been provided by the Lessee. Upon expiration or earlier termination of the LEASE, the Lessee shall prepare a document that describes the environmental condition of the Lease Premises at the time of termination or expiration. Such document will assist the Installation Commander in determining any environmental restoration requirements. Any such requirements will be completed by lessee in accordance with the Condition on **RESTORATION**.

#### **34. CHEMICAL APPLICATION, REPORTING AND SAFE PROGRAM REQUIREMENTS**

**a.** All pesticides, herbicides and fertilizers used will be properly stored, handled and applied by, "state certified" applicators in accordance with Texas Commission of Environmental Quality (TCEQ) and Texas Department of Health standards and regulations. Technicians and apprentices will not meet this requirement. Copies of applicator certifications must be submitted to the Installation Pest Management Coordinator (IPMC) prior to performing any applications.

**b.** All pesticides must be approved by the Army Environmental Center (AEC). A list of pesticides must be submitted to the IPMC for submission to the AEC for approval prior to application. In the event that use of an approved pesticide is to be discontinued, unless it is a pesticide that AEC has already approved, the name of the substitute pesticide must be submitted to the IPMC who will submit it for approval by the AEC.

**c.** The amounts of all pesticides applied must be submitted to the IPMC frequently, but not less than on a monthly basis. Any unused chemicals related to turf management will be disposed of off-site in accordance with the city of El Paso's hazardous waste disposal program. The certified applicator will coordinate with the Texas Cooperative Extension to implement the Sports Athletic Field Education (SAFE) program at the soccer complex. The SAFE program encourages athletic field managers to work with the extension turfgrass and irrigation specialists to audit fertilizer use, pest management and irrigation methods and promote injury reduction to soccer athletes by providing the optimum playing conditions for the sport.

#### **35. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the

District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

**36. SOIL AND WATER CONSERVATION**

The Lessee shall maintain in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the Term of, this Lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

**37. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this Lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**38. OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

**39. MODIFICATIONS**

This Lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this Lease.

**40. DISCLAIMER**

This Lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this Lease does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. 403), or Section 404 of the Clean Water Act (33 U.S.C. 1344).

#### **41. PURCHASE RIGHTS**

The Lessee is hereby granted the first right to buy the Lease Premises, or portion thereof, pursuant to Section (b)(2) of 10 U.S.C. Sec. 2667 or any other applicable statute or regulation, including, without limitation, any base realignment or closure actions.

#### **42. ANTI-DEFICIENCY ACT**

The Lessor's obligation to pay or reimburse any money under this Lease is subject to the availability of appropriated funds, and nothing in this Lease shall be interpreted to require obligations or payments by the United States in violation of the Anti-Deficiency Act, 31 USC 1341.

#### **43. QUIET ENJOYMENT**

The Lessor hereby warrants and covenants that upon the performance of all the terms and covenants of this Lease, the Lessee shall have peaceful and quiet use and possession of the Lease Premises without hindrance or interruption on the part of (a) the Lessor, (b) any other person(s) for whose actions the Lessor is legally responsible, or (c) any person claiming by, through or under the Lessor.

#### **44. RIGHT TO ENCUMBER**

a. In addition to the other rights and obligations set forth in this Condition and notwithstanding any other provision of the Lease to the contrary, the Lessee shall have the right, at any time and from time to time, to encumber the leasehold estate created by this Lease and/or any of its fixtures, furniture or equipment to any bank, thrift institution, insurance company, or other institutional lender or third party without the consent of the Lessor, provided that the Lessee is not at that time in default under the provisions of this Lease beyond applicable notice and cure periods, and provided further that any proceeds derived from an encumbrance of the leasehold estate of the Lessee hereunder shall be utilized by the Lessee for the redevelopment, renovation, reuse, operation and/or maintenance of the Lease Premises, or for purposes directly related thereto.

b. Notwithstanding any other provisions of the Lease to the contrary, any of Lessor's statutory lien or any security interest granted to the Lessor in furniture, fixtures or equipment ("personal property") shall be subordinated to valid purchase money security interest in said Lessee's personal property.

#### **45. INVALIDITY OF PARTICULAR PROVISIONS**

If any term or provision of this Lease or the applicability thereof to any person or circumstances, to any extent, be invalid or unenforceable, the remainder of this Lease, or the applicability of such term or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

#### **46. COVENANT RUNNING WITH THE LAND**

This Lease shall constitute a real right and covenant running with the Lease Premises, and this Lease and all of its terms and provisions shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors, and assigns, and whenever in this Lease a reference to either of the parties hereto is made, such reference shall be deemed to include, wherever applicable, a reference to the heirs, legal representatives, successors and assigns of said party.

#### **47. SUCCESSORS AND ASSIGNS**

Subject to the provisions of this Lease, all covenants and obligations as contained within this Lease shall bind and extend and inure to the benefit of Lessor, its successors and assigns, and shall bind and extend and inure to the benefit of Lessee, its successors and assigns.

#### **48. SUPERVISION OF THE LEASE PREMISES**

The use and occupation of the Lease Premises shall be subject to the general supervision and approval of the Installation Commander for Fort Bliss Installation, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

#### **49. GENERAL PROVISIONS**

**a.** The parties herein agree that nothing herein shall, nor shall any prior agreements between Lessee and the Lessor, be deemed or construed by the parties hereto or by any third party as creating or authorizing the creation of any partnership or joint venture between the Lessor and Lessee, it being understood and agreed that no provision of this Lease, nor any act of the Lessor or Lessee hereafter, shall be deemed to create any relationship between the Lessor and Lessee other than as set out herein.

**b.** This Lease may be executed in any number of counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument.

**c.** All headings used in this Lease are for convenience only and do not constitute legally enforceable rights or obligations.

**d.** This Lease, and its terms, have been freely negotiated by the Lessor and Lessee. The language in all parts of this Lease shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed strictly for or against the Lessor or Lessee.

**e.** The waiver by the Lessor or Lessee of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. The acceptance of rent by the Lessor following a breach by Lessee of any provision of this Lease shall not constitute a waiver of any right of the Lessor with respect to such breach. A party shall be deemed to have waived any right hereunder only if that party shall expressly do so in writing.

**f.** This Lease or a memorandum thereof may be recorded by Lessee in the city and/or county in which the Lease Premises is located. Lessee shall

provide the Lessor with a true copy of the recorded document, showing the date of recordation and file number. The Lessor agrees to sign a memorandum of this Lease for recording purposes promptly upon request. The Lessee shall be responsible for all costs associated with properly filing notices or memoranda at the appropriate governmental offices.

**g.** In the event the Lessor or any successor Lessor shall convey or otherwise dispose of the Lease Premises, then that transferor Lessor shall thereupon be released from all liabilities and obligations under this Lease (except those accruing prior to such conveyance or other disposition) and such liabilities and obligations shall be binding solely on the then owner of the Lease Premises.

**h.** Whenever used herein, the singular shall include the plural, and the neuter shall include the masculine and feminine, and if there be more than one, the obligations hereof shall be joint and several.

**i.** This Lease contains the entire understanding between and among the parties hereto, and shall be binding upon and inure to the benefit of such parties and subject to its terms, their respective successors, heirs, assigns and legal representatives.

**50.** This Lease supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Lease which is not contained herein shall be valid or binding.

**IN WITNESS WHEREOF,** I have hereunto set my hand by authority of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_ 2007.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

CITY OF EL PASO, TEXAS

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

**ACKNOWLEDGMENT**

**STATE OF TEXAS)**

**: ss**

**COUNTY OF TARRANT)**

BEFORE ME, a Notary Public in and for the state of Texas, personally appeared \_\_\_\_\_ to me known to be the identical person and officer whose name is subscribed to the foregoing instrument by authority of the Secretary of the Army for the purposes therein expressed as the act and deed of the United States of America.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the City of El Paso, Texas; that Joyce A. Wilson, who signed the foregoing instrument on behalf of the Lessee was then City Manager of the City of El Paso. I further certify that the said officer was acting within the scope of powers delegated to this officer by the governing body of the Lessee in executing said instrument.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

Please have someone other than the person who signs the instrument sign this certificate.