



RESOLUTION NO. 20170425-05

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR/CEO TO EXECUTE A LEASE AGREEMENT FOR 549 ELM CIRCLE, HOOKS, TX 75561 TO JACKSON MELONS, INC.

WHEREAS, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and


WHEREAS, Jackson Melons, Inc. contacted TexAmericas Center to seek a lease arrangement for warehouse space and related facilities at 549 Elm Circle, Hooks, TX 75561; and

WHEREAS, the parties have come to the attached terms of agreement for said lease.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of TexAmericas Center that the Executive Director/CEO shall be and he is hereby authorized to execute the attached lease; and

BE IT FURTHER RESOLVED, by the Board of Directors of TexAmericas Center that the Center appreciates the collaborative effort of Jackson Melons, Inc. to negotiate this lease as well as to locate its business operations, create jobs and contribute to the tax base in Bowie County, Texas.

PASSED AND APPROVED THIS 25th day of April, 2017.



Denis Washington, Chairman of the Board

ATTEST:



Melford Pierce, Secretary

Attached: Lease Agreement



**INDUSTRIAL LEASE
Tex Americas Center - East**

LEASE SUMMARY

Lessor: TexAmericas Center
107 Chapel Lane
New Boston, Texas 75570

Lessee: Jackson Melons, Inc.
615 ½ E. Main
Henderson, TX 75652
Attn: Scott Gorges, Sales Representative

Guarantor: N/A

Premises Leased Address: 549 Elm Circle
Hooks, Texas 75561

Primary Term: 12 (twelve) months; From 6/1/2017 to 05/31/18

Option Terms: N/A

Base Rent: \$6,455.46 per month during lease period

Option Rent: N/A

Security Deposit: \$6,500.00

Ad Valorem Tax Deposit: N/A

Table of Contents

ARTICLE 1 . TERM

§ 1.01 Term of Lease

§ 1.02 Option to Extend Term - Intentionally Deleted

§ 1.03 Holdover

ARTICLE 2 . RENT/SECURITY and AD VALOREM TAX DEPOSITS

§ 2.01 Base Rent

§ 2.02 Taxes and Assessments as Additional Rent

§ 2.03. Late Charges

§ 2.04. Security-Ad Valorem Tax Deposit - N/A

ARTICLE 3 . USE OF PREMISES

§ 3.01 Tenant's Warranty Regarding Use

§ 3.02 Compliance With Laws

§ 3.03 Rights of Inspection

§ 3.04 Environmental Reporting Requirements

§ 3.05 Condition of Premises

§ 3.06 Delivery of Premises at End of Term

§ 3.07 Blast Arcs – Intentionally Deleted

§ 3.08 Information to Be Provided to Landlord – Intentionally Deleted

ARTICLE 4 . REPAIRS AND MAINTENANCE

§ 4.01 Repairs and Maintenance by Tenant

§ 4.02 Tenant's Failure to Repair or Maintain

§ 4.03 Allocation of Environmental Cleanup Costs

ARTICLE 5 . UTILITIES AND GARBAGE REMOVAL

§ 5.01 Utility Charges

§ 5.02 Meters and Pretreatment Requirements

§ 5.03 Garbage Removal

ARTICLE 6 . ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

§ 6.01 Consent of Landlord

§ 6.02 Property of Landlord

§ 6.03 Alterations Required by Accessibility Laws

ARTICLE 7 . TRADE FIXTURES AND SIGNS

§ 7.01 Trade Fixtures

§ 7.02 Signs

ARTICLE 8 . MECHANIC'S LIEN

ARTICLE 9 . INSURANCE AND INDEMNITY

§ 9.01 Tenant's Property Insurance

§ 9.02 Landlord's Property Insurance

§ 9.03 Tenant's Liability Insurance

§ 9.04 Remedy for Failure to Provide Insurance

§ 9.05 Tenant's Environmental Indemnity

§ 9.06 Hold-Harmless Clause

§ 9.07 Release of Claims/Subrogation

§ 9.08 Pollution Legal Liability Insurance - Intentionally Deleted

ARTICLE 10 . DAMAGE OR DESTRUCTION

§ 10.01 Notice to Landlord

§ 10.02 Total Destruction

§ 10.03 Partial Destruction

ARTICLE 11 . CONDEMNATION

§ 11.01 Total Condemnation

§ 11.02 Partial Condemnation

§ 11.03 Condemnation Award

ARTICLE 12 . DEFAULT

§ 12.01 Tenant's Default

§ 12.02 Landlord's Lien

§ 12.03 Landlord's Default

§ 12.04 Cumulative Remedies

§ 12.05 Waiver of Breach

§ 12.06 Indemnities in Event of Termination

§ 12.07 Limitation of Landlord's Liability

ARTICLE 13 . INSPECTION BY LANDLORD

ARTICLE 14 . ASSIGNMENT AND SUBLEASE

§ 14.01 Assignment and Subletting by Tenant

§ 14.02 Assignment by Landlord

ARTICLE 15 . MISCELLANEOUS

§ 15.01 Notices and Addresses

§ 15.02 Parties Bound

§ 15.03 Texas Law to Apply

§ 15.04 Legal Construction

§ 15.05 Prior Agreements Superseded

§ 15.06 Amendment

§ 15.07 Rights and Remedies Cumulative

§ 15.08 Attorney's Fees and Costs

§ 15.09 Force Majeure

§ 15.10 Time of Essence

- § 15.11 Alternate Dispute Resolution
- § 15.12 Limitation of Warranties
- § 15.13 Abandoned Property
- § 15.14 Municipal and Emergency Services
- § 15.15 Army Imposed Restrictions
- § 15.16 Reservation of Rights
- § 15.17 Common Area Charges
- § 15.18 License for Access to Premises
- § 15.19 Guarantee - Intentionally Deleted
- § 15.20 Option to Purchase – Intentionally Deleted
- § 15.21 Landlord’s Additional Obligations
- § 15.22. Early Termination

Execution

- Exhibit "A" – Premises Description
- Exhibit "B" – Option to Purchase – Intentionally Deleted

LEASE

This Lease is entered into between TexAmericas Center ("Landlord"), a political subdivision of the State of Texas, and Jackson Melons, Inc. ("Tenant"), a privately held company in Henderson, TX.

In consideration of the mutual covenants and agreements of this lease, and other good and valuable consideration, Landlord demises and leases to Tenant, and Tenant leases from Landlord, the premises situated at 549 Elm Circle in Hooks, Texas 75561, in Bowie County, Texas, described on Exhibit A attached to this lease, and made a part of this lease for all purposes (collectively referred to as "the premises" or "the leased premises" in this lease).

Landlord reserves the right to harvest any and/or all timber located upon the leased premises together with the right of ingress and egress to and from the leased premises for said harvesting by Landlord and/or its contractors.

ARTICLE 1 . TERM

§ 1.01. **Term of Lease.** The term of this lease is 12 (twelve) months, beginning on June 1, 2017 and ending on May 31, 2018 unless terminated sooner as provided in this lease.

§ 1.02. **Option to Extend Term.** Intentionally Deleted

§ 1.03. **Holdover.** If Tenant holds over and continues in possession of the premises after the lease term (or any extension) expires, other than as provided in § 1.02, Tenant will be considered to be occupying the premises on a month-to-month tenancy, subject to all the terms of this lease. Landlord may terminate the tenancy upon ten (30) days written notice to Tenant.

ARTICLE 2 . RENT/SECURITY DEPOSIT AND AD VALOREM TAX DEPOSITS

§ 2.01. **Fixed Rent.**

a. Tenant will pay Landlord \$6,455.46 per month on or before the first day of each month as a fixed rent for the next month. Rent for any fractional month at the beginning or end of the lease term will be prorated on a per-day basis.

b. Tenant will pay this fixed rent to Landlord at Landlord's office, located at 107 Chapel Lane, New Boston, Texas 75570, or at such other location or locations that Landlord may from time to time designate by written notice to Tenant.

c. Intentionally Deleted.

§ 2.02. Taxes and Assessments as Additional Rent.

a. In addition to the fixed rent specified in § 2.01, Tenant will pay in full all real-property taxes, special assessments, and governmental charges of any kind imposed on the premises or leasehold interest in the Premises commencing on the first day of the lease term and continuing through the end of the calendar year in which the term ends, including any special assessments imposed on or against the premises for constructing or improving public works. This additional rent is payable directly to the entity imposing the tax, assessment, or charge at least 30 days before the date payment is due. Tenant will provide Landlord with a receipt or other evidence of payment for each tax, assessment, or charge paid as soon as a receipt or other evidence is available to Tenant, but not later than the date payment is due.

b. Tenant may, at its own expense, contest any tax or assessment for which it is responsible under subparagraph a. Except as provided in subparagraph c, Tenant need not pay the tax, assessment, or charge while the contest is pending. Except as provided in subparagraph c, Tenant may prevent Landlord from paying any tax, assessment, or charge that Tenant is contesting under this subparagraph, pending resolution of the contest, by depositing with Landlord the full amount of the tax or assessment, plus the amount of any penalty that might be imposed for failing to make timely payment and one year of interest at the rate imposed by the entity levying the tax or assessment. When the contest is resolved, Tenant may use the money deposited with Landlord to pay any tax or assessment, plus any penalty or interest, due under the final resolution and keep any balance of the deposit. If the deposit is insufficient to pay these amounts, Tenant must immediately pay the balance due to the entity imposing the tax, assessment, or charge.

c. Notwithstanding subparagraph b, Landlord may pay, or require Tenant to pay, any tax, assessment, or charge for which Tenant is responsible under subparagraph a, pending resolution of Tenant's contest of the tax, assessment, or charge, if payment is demanded by a holder of a mortgage on the premises or if failing to pay will subject all or part of the premises to forfeiture or loss.

§2.03. Late Charges. Tenant shall pay a late charge of five percent (5%) of any rent not received by Landlord by the tenth day of the month in which said rent is due.

§2.04. Security and Ad Valorem Tax Deposits.

A. Security Deposit. Upon execution of this Lease, Tenant shall deposit the sum of \$6,500.00 with Landlord as a deposit. Said deposit shall not accrue interest. Landlord may use the deposit to pay arrears of rent, to repair any damage or injury to the Premises, or to pay any expense or liability incurred by Landlord as a result of any default by Tenant under this Lease including but not limited to payment of ad valorem taxes upon the premises or the leasehold interest in the premises. If Landlord uses the deposit, or any portion thereof as authorized above, Tenant shall restore the deposit to its original amount within ten (10) days after notice from Landlord. Failure to restore the deposit to its original amount within the required time shall constitute a default under the Lease. Subject to the right to withhold to pay ad valorem taxes as provided in 204.B, within 30 days after Tenant surrenders the Premises, or completion of repairs or replacement of damaged or destroyed property, whichever is later, Landlord shall return to Tenant any remaining portion of the

deposit, after any lawful deductions, provided Tenant has given to Landlord an address specifically for that purpose. IT IS SPECIFICALLY PROVIDED, HOWEVER, THAT TENANT SHALL NOT BE ENTITLED TO ANY PORTION OF THE SECURITY DEPOSIT AS A REFUND UNLESS TENANT GIVES LANDLORD THIRTY (30) DAYS NOTICE OF SURRENDERING THE PREMISES.

B. Ad Valorem Tax Deposit. Upon execution of this Lease Tenant shall deposit the sum of N/A with Landlord as an Ad Valorem Tax Deposit. Said deposit shall not accrue interest. Landlord may upon expiration or termination of this Lease use the deposit to pay the taxes actually due, or hold for payment of, estimated ad valorem taxes due or to become due upon the leased premises and for which Tenant is responsible under the Terms of this Lease. Provided Tenant pays all ad valorem taxes for which Tenant is responsible under this Lease, the deposit shall be refunded to Tenant at the address Tenant has given to Landlord for this specific purpose. If taxes have not been assessed and levied for the year in which this Lease expires or is terminated, Landlord may hold the deposit until said taxes have been determined; and, if Tenant does not pay said taxes at least 30 days before delinquency, Landlord may apply the deposit to the taxes due. Nothing in this subsection shall relieve Tenant of its obligation to pay ad valorem taxes upon the leased premises prior to delinquency as provided elsewhere in this Lease.

ARTICLE 3 . USE OF PREMISES

§ 3.01. Tenant's Warranty Regarding Use. Tenant represents and warrants to Landlord that Tenant intends to use the premises for WAREHOUSING AND STORAGE of non-hazardous, non-explosive materials and goods, and that Tenant's use of the property is restricted to those purposes specified in this section unless Tenant obtains Landlord's prior written consent to any change in use. Before the lease term begins, Tenant must give Landlord an affidavit of an officer of Tenant, referred to as the "Officer's Affidavit," setting forth a detailed description of the operations that Tenant will conduct on the premises and stating any applicable permit numbers. The Officer's Affidavit must be organized and prepared in a narrative form, including a description and quantification of all hazardous materials to be generated, manufactured, refined, transported, treated, stored, handled, or disposed of on the premises. After the lease term begins, Tenant must notify Landlord as to any changes in Tenant's operation or use or generation of hazardous materials by way of a supplemental Officer's Affidavit. Tenant must also supplement and update the Officer's Affidavit on each anniversary of the commencement of the lease term. Tenant may not begin or alter any operations on the property before (a) obtaining all required operating and discharge permits or approvals, including but not limited to air pollution control permits and pollution discharge elimination system permits, from all governmental or public authorities having jurisdiction over the Tenant's operations or the property, and (b) providing copies of such permits and approvals to the Landlord.

§ 3.02. Compliance With Laws.

a. Tenant may not use, or permit using, the premises in any manner that results in waste of premises or constitutes a nuisance or for any illegal purpose. Tenant, at its own expense, will comply, and will cause its officers, employees, agents, and invitees to comply, with all applicable laws, ordinances, and governmental rules and regulations concerning the use of the premises, including Hazardous Materials Laws, fire and safety regulations and explosives regulations, including but not limited to Title 27, Chapter 11, Subchapter C, Part 555 of the

Code of Federal Regulations regarding commerce in explosives.

- b. Tenant, at its sole cost, must comply with all Hazardous Materials Laws in connection with Tenant's use of the premises.
- c. "Hazardous Materials" means any substance, material, or waste that is or becomes regulated by any local governmental agency, the State of Texas, or the federal government, including, but not limited to, any material or substance that is upon commencement of the term or at any time during the term, (1) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, [33 U.S.C. § 1251 et seq.](#), or listed pursuant to Section 307 of the Clean Water Act, [33 U.S.C. § 1317](#), (2) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, [42 U.S.C. § 9601 et seq.](#), (3) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, [42 U.S.C. § 6901 et seq.](#), (4) petroleum, (5) asbestos, and (6) polychlorinated biphenyls.
- d. "Hazardous Materials Laws" means any federal, state, or local statute, ordinance, order, rule, or regulation of any type relating to the storage, handling, use, or disposal of any Hazardous Materials, the contamination of the environment, or any removal of such contamination, including, without limitation, those statutes referred to in subparagraph c.
- e. Tenant shall coordinate with Landlord and the U.S. Army regarding environmental issues related to the leased premises as provided in Section 15.15.
- f. Tenant shall obtain any and all permits and/or licenses required to conduct its business on the Premises and provide a copy of same to Landlord.
- g. Tenant shall provide a monthly report to Landlord of all materials manufactured and/or stored in the Premises which constitute hazardous materials, explosives, petrochemicals, alcohols and any other materials which constitute a danger due to their fire, explosive or environmental hazard.
- h. Tenant shall clearly indicate on the outside of each igloo/warehouse the type of materials manufactured or stored therein.
- i. Tenant shall furnish, install, and maintain during the term such safety devices, such as fire suppression systems, spark arresters, lightning rods and static electricity suppressors, as are required or are customarily installed in facilities manufacturing or storing explosives, hazardous materials, petrochemicals, alcohols and other materials constituting a danger due to explosives or fire.
- j. Tenant shall construct a secure perimeter fence around the Leased Premises sufficient to deter persons not affiliated with Tenant from gaining access to storage facilities in which explosives, hazardous materials, petrochemicals, alcohols and other materials constituting a danger due to explosions or fire are kept or stored.
- k. Tenant shall not store any hazardous materials, explosives, explosive constituents, petrochemicals, alcohols, or any other materials which constitute a danger due to their fire, explosive or environmental hazard on the Premises other than inside the igloo bunkers secured by a locked door.

§ 3.03. Rights of Inspection. Tenant must permit Landlord and Landlord's agents, servants, and employees, including but not limited to legal counsel and environmental consultants and engineers, access to the premises for the purpose of conducting environmental inspections and sampling during regular business hours, and during other hours either by agreement of the parties or in the event of an environmental emergency. Tenant may not restrict access to any part of the premises, and Tenant may not impose any conditions to access. If Landlord's environmental inspection includes sampling and testing of the premises, Landlord must use its best efforts to avoid interfering with Tenant's use of the premises, and on completion of sampling and testing must repair and restore the affected areas of the premises as made necessary by any sampling and testing.

§ 3.04. Environmental Reporting Requirements.

a. Tenant must promptly supply Landlord with copies of all notices, reports, correspondence, and submissions made by Tenant to the Texas Commission on Environmental Quality, the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, or any other local, state, or federal authority that requires submission of any information concerning environmental matters or hazardous materials pursuant to hazardous materials laws. Tenant shall provide to Landlord copies of all permits and/or licenses issued to Tenant for operation of its business on the leased premises and all modifications, amendments and other changes within 30 days after issuance of same.

b. Tenant must promptly notify Landlord in advance of any scheduled meeting between Tenant and any of the agencies specified in subparagraph a. In the case of regulatory inspections for which the Tenant has not received advance notice, Tenant shall notify Landlord within 48 hours of the visit and the corrective actions, if any, required by the Agency.

c. Tenant must promptly notify Landlord as to any liens threatened or attached against the premises pursuant to any environmental law. If an environmental lien is filed against the premises, Tenant must, within 30 days from the date on which the lien is placed against the premises, and at any rate before the date on which any governmental authority begins proceedings to sell the premises pursuant to a lien, either: (1) pay the claim and remove the lien from the premises; or (2) furnish either (a) a bond satisfactory to the Landlord in the amount of the claim on which the lien is based, or (b) other security satisfactory to the Landlord in an amount sufficient to discharge the claim on which the lien is based.

§ 3.05. Condition of Premises. Tenant accepts the Premises in their present condition "AS IS" and acknowledges that the Premises are, or will be repaired by Tenant to be, suitable for Tenant's intended use.

§ 3.06. Delivery of Premises at End of Term. Tenant shall remove all personal property, Tenant owned equipment and stored items from the leased premises at the end of the term or extended term of this Lease. The leased premises shall be returned to Landlord in clean, empty and good condition reasonable wear and tear excepted. Under no circumstances shall stored items be left on or in the premises.

§ 3.07. Blast Arcs. Intentionally Deleted

§ 3.08. **Information to Be Provided to Landlord.** Intentionally Deleted.

ARTICLE 4 . REPAIRS AND MAINTENANCE

§ 4.01. **Repairs and Maintenance by Tenant.** Tenant will except as provided in paragraph 4.04, throughout the lease term and any extensions of it, at its own expense and risk, maintain the premises and all improvements on them in good order and condition, including but not limited to making all repairs and replacements necessary to keep the premises and improvements in that condition. All maintenance, repairs, and replacements required by this section must be performed promptly when required.

§ 4.02. **Tenant's Failure to Repair or Maintain.** If Tenant fails to perform its obligation to repair, replace, or maintain, as set forth in § 4.01, within a reasonable time after notice from Landlord of the need for the repair, replacement, or maintenance, Landlord may enter the premises and make the repairs or replacements, or perform the maintenance, or have the repairs or replacements made or maintenance performed, at its own expense. On Landlord's notice to Tenant of the performance and cost of any maintenance, repairs, or replacements under this section, Tenant must immediately reimburse Landlord for any reasonable costs incurred by Landlord under this section, together with interest on the sum at the highest legal rate from the date of the notice until the date paid by Tenant to Landlord.

§ 4.03. **Allocation of Environmental Cleanup Costs.** Tenant is responsible only for the payment of that portion of any cleanup costs necessary for compliance with Hazardous Materials Laws that arise as a result of Tenant's discharge of hazardous materials on the premises during the Tenant's occupancy of the premises and/or as a result of Tenant's violation of any restrictive covenants relating to the Premises which are of Record in Bowie County, Texas, including but not limited to those set forth in Section 15.15 of this Lease.

§ 4.04. **Repairs and Maintenance by Landlord.** Landlord shall repair, replace and maintain only the (a) roof and (b) the foundation.

ARTICLE 5 . UTILITIES AND GARBAGE REMOVAL

§ 5.01. **Utility Charges.** Tenant will pay all utility and connection charges for water, sewer, electricity, heat, gas, cable, fiber optic and telephone service used in and about the premises during the lease term. Tenant will pay the charges directly to the Landlord before the charges are delinquent.

§ 5.02. **Meters and Pretreatment Requirements.** Tenant shall pay for the cost for individual meters for utility services and installation of them if individual meters to the Premises are not in place at the time of execution of this Lease. Tenant agrees to pretreat at its cost any waste streams which require pretreatment as determined by the respective utility provider prior to discharge of such waste into the sanitary sewer system.

§ 5.03. **Garbage Removal.** Tenant will pay for all garbage removal from the premises during the lease term.

ARTICLE 6 . ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

§ 6.01. **Consent of Landlord.** Tenant may not make any alterations, additions, or improvements to the premises without Landlord's prior written consent. Landlord may not unreasonably withhold consent for nonstructural alterations, additions, or improvements.

§ 6.02. **Property of Landlord.** All alterations, additions, or improvements made by Tenant will become Landlord's property when the lease terminates. However, Landlord may, when the lease terminates, remove any alterations, additions, and improvements made by Tenant and any other property it placed in the premises, and charge Tenant the cost of removal plus interest which amount shall be paid within 50 days of Landlord's notice to Tenant of the amount due.

§ 6.03. **Alterations Required by Accessibility Laws.** If any alterations, additions, or improvements to the premises are mandated by legal requirements related to accessibility by persons with disabilities ("accessibility alterations"), Tenant is responsible for making them. This allocation of responsibility for compliance with such legal requirements is a material inducement for the parties to enter this lease.

ARTICLE 7 . TRADE FIXTURES AND SIGNS

§ 7.01. **Trade Fixtures.** Tenant may, at all times, erect or install shelves, bins, machinery, equipment, or other trade fixtures, in, on, or about the premises, if Tenant complies with all applicable governmental laws, ordinances, and regulations regarding the fixtures. Tenant may remove all trade fixtures when this lease terminates, if Tenant is not in default under the lease and the fixtures can be removed without structural damage to the building. Tenant must repair any damage to the premises caused by removing trade fixtures, and all the repairs must be completed before the lease terminates. Any trade fixtures not removed by Tenant when this lease terminates are considered abandoned by Tenant and will automatically become Landlord's property. If any trade fixture installed by Tenant is abandoned when the lease terminates, Tenant must pay Landlord any reasonable expense actually incurred by Landlord to remove the fixture from the premises, which amount shall be paid within 15 days of Landlord's notice to Tenant of the amount due.

§ 7.02. **Signs.** Tenant may erect signs on any portion of the premises, including but not limited to the exterior walls, subject to applicable laws, ordinances, and regulations, and after approval of the proposed signage by Landlord. Tenant must remove all signs when this lease terminates and repair any damage resulting from erecting or removing the signs.

ARTICLE 8 . MECHANIC'S LIEN

Tenant will not permit any mechanic's lien to be placed on the premises or improvements on the premises. Tenant will promptly pay any mechanic's lien that is filed on the premises or on improvements located on the premises. If default in payment of the lien continues for 20 days after Landlord's written notice to Tenant, Landlord may, at its option, pay the lien or any portion of it without inquiring into its validity. Any amounts Landlord pays to remove a mechanic's lien caused by Tenant to be filed against the premises or improvements on them, including expenses and interest, are due from Tenant to Landlord and must be repaid to Landlord immediately on rendition of notice, together with interest at eighteen (18) percent annually until repaid.

ARTICLE 9 . INSURANCE AND INDEMNITY

§ 9.01. **Tenant's Property Insurance.** Tenant must, at its own expense during the lease term, maintain insurance on Tenant's personal property, furniture, fixtures and equipment in such amounts as Tenant deems necessary.

§ 9.02. **Landlord's Property Insurance.** Landlord shall, at its expense, keep all buildings on the Premises insured against loss or damage in an amount determined by Landlord in its sole discretion. Tenant will have no claim to any proceeds of Landlord's insurance policies.

§ 9.03. **Tenant's Liability Insurance.** Tenant, at its own expense, must provide and maintain in force during the lease term (a) a policy of commercial liability insurance with a single limit each occurrence of not less than \$1,000,000.00 and general aggregate of not less than \$2,000,000.00, and (b) a policy of Worker's Compensation Insurance as required by applicable law. This insurance is to be carried by one or more Insurance companies authorized or admitted to transact business in Texas. The liability policy must cover Landlord as well as Tenant, for any liability for property damage or personal injury arising from Tenant's occupying or Landlord's owning the premises.

§ 9.04. **Remedy for Failure to Provide Insurance.** Tenant must furnish Landlord with certificates of all insurance required by this article. If Tenant does not provide the certificates when Landlord delivers possession to Tenant and within ten days prior to any renewal date, or if Tenant allows any insurance required under this article to lapse, Landlord may, at its option, take out and pay the premiums on the necessary insurance to comply with Tenant's obligations under this article. Landlord is entitled to reimbursement from Tenant for all amounts spent to procure and maintain the insurance, with interest at the rate of eighteen (18) percent annually from the date Tenant receives Landlord's notice of payment until reimbursement.

§ 9.05. **Tenant's Environmental Indemnity.** Tenant agrees to indemnify, defend, and hold harmless Landlord from and against all claims, liabilities, losses, damages, remediation expenses, fines and penalties, and costs, foreseen or unforeseen, including without limitation counsel, engineering, and other professional or expert fees, that Landlord may incur by reason of Tenant's action or inaction with regard to Tenant's obligations under Articles 3 and 4 and Section 15.15 of this lease. This section survives the expiration or earlier termination of this lease.

§ 9.06. **Hold-Harmless Clause** Tenant will indemnify and hold Landlord harmless against any claims, demands, damages, costs, and expenses, including reasonable attorney's fees for defending claims and demands, arising from the conduct or management of Tenant's business on the premises or its use of them; from any breach by Tenant of any conditions of this lease; or from any act of negligence of Tenant, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the premises. If any action or proceeding is brought against Landlord by reason of any such claim, Tenant, on notice from Landlord, will defend the action or proceeding by counsel acceptable to Landlord.

§ 9.07. **Release of Claims/Subrogation.** Landlord and Tenant release each other from any claim, by subrogation or otherwise, for any damage to the Premises, the building, or personal property within the building, regardless of cause, including negligence of Landlord or Tenant, however, the release applies only to the extent it is permitted by law, the

damage is covered by insurance proceeds, and the release does not adversely affect any insurance coverage. Landlord and Tenant will notify their insurance companies of the release set forth herein and will have the insurance policies, endorsed, if necessary, to prevent invalidation of the insurance coverage.

§ 9.08. **Pollution Legal Liability Insurance.** Intentionally Deleted

ARTICLE 10 . DAMAGE OR DESTRUCTION OF PREMISES

§ 10.01. **Notice to Landlord.** If the premises, or any structures or improvements on them, are damaged or destroyed by fire, tornado, or other casualty, Tenant must immediately give Landlord written notice of the damage or destruction, including a general description of the damage and, as far as known to Tenant, the cause of the damage.

§ 10.02. **Total Destruction.** If the building on the premises is totally destroyed by fire, tornado, or other casualty by other than the negligence, gross negligence, or intentional tort of Tenant or any person in or about the premises with Tenant's express or implied consent, or if it is so damaged that rebuilding or repairs cannot reasonably be completed within ninety (90) working days at a cost not to exceed the insurance recovery proceeds, this lease will terminate, and rent will be abated for the unexpired portion of this lease, effective as of the date of written notification as provided in § 10.01.

§ 10.03. **Partial Destruction.** If the building or other improvements on the premises are partially damaged by fire, tornado, or other casualty by other than the negligence, gross negligence, or intentional tort of Tenant or any person in or about the premises with Tenant's express or implied consent, but not to such an extent that rebuilding or repairs cannot reasonably be completed within ninety (90) working days and at a cost not to exceed the insurance recovery proceeds, this lease will not terminate except as follows:

a. If the premises are partially destroyed before the final twelve (12) months of the lease term, Landlord must, at its sole cost and risk, up to but not exceeding the amount of available insurance proceeds, proceed immediately to rebuild or repair the damaged buildings and improvements to substantially the condition they were in before the damage. If the damage renders the premises untenable in whole or in part, the rent payable during the period in which they are untenable will be adjusted equitably. If Landlord fails to complete the rebuilding or repairs within one-hundred twenty (120) working days from the date of Tenant's written notification to Landlord of the damage, Tenant may terminate this lease by written notification to Landlord. On the notification, all rights and obligations under this lease will cease.

b. If the premises are partially destroyed during the final twelve (12) months of the lease term, Landlord need not rebuild or repair them. If Landlord elects not to rebuild or repair and the damage rendered the premises untenable in whole or in part, Tenant may terminate the lease or continue it with the rent for the remainder of the lease period adjusted equitably.

ARTICLE 11 . CONDEMNATION

§ 11.01. **Total Condemnation.** If, during the lease term or any extension or renewal of it, all of the premises are taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or are sold to the condemning

authority under threat of condemnation, this lease will terminate, and the rent will be abated during the unexpired portion of this lease, effective as of the date the condemning authority takes the premises.

§ 11.02. **Partial Condemnation.** If less than all, but more than twenty-five percent (25%), of the premises is taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, Tenant may terminate the lease by giving Landlord written notice within 30 days after the entity exercising the power of condemnation takes possession of the condemned portion. In addition, if twenty-five percent (25%) of the parking area, or all of the signage, of the premises is taken for any public or quasi-public use under any governmental law, ordinance, or regulation or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, Tenant may terminate the lease by giving Landlord written notice within 30 days after the entity exercising the power of condemnation takes possession of the condemned portion.

If the premises are partially condemned and Tenant fails to exercise the option to terminate the lease under this section, or if less than twenty five percent (25%) of the premises is condemned, this lease will not terminate, but Tenant may, at its sole expense, restore and reconstruct the building and other improvements situated on the premises to make them reasonably tenantable and suitable for the uses for which the premises are leased. The fixed rent payable under § 2.01 of this lease will be adjusted equitably during the unexpired portion of this lease.

§ 11.03. **Condemnation Award.** Landlord is entitled to receive and retain the entire award in any condemnation proceedings, except for any portion attributable to trade fixtures, which Tenant is entitled to receive and retain. The termination of this lease will not affect the right to this award.

ARTICLE 12 . DEFAULT

§ 12.01. **Tenant's Default.** If Tenant allows the rent to be in arrears more than fifteen (15) days after its due date, or remains in default under any other condition of this lease for 30 days after written notice from Landlord, Landlord may, at its option, without notice to Tenant, terminate this lease, or, in the alternative, Landlord may reenter and take possession of the premises and remove all persons and property without being considered guilty of any manner of trespass and may (but is not required to) relet the premises (or any part of them) for all or any part of the remainder of the lease term, to a party satisfactory to Landlord and at the monthly rental as Landlord can secure with reasonable diligence. If Landlord cannot relet after reasonable efforts to do so or if the monthly rental is less than the rental Tenant was obligated to pay under this lease (or any renewal of it) plus the expense of reletting, then Tenant must pay Landlord the amount of the deficiency.

§ 12.02. **Landlord's Lien.** If Tenant defaults in paying rent or any other sum due from Tenant to Landlord under this lease, Landlord has a lien on all fixtures, chattels, or other property of any description belonging to Tenant that are placed in, or become a part of, the premises as security for rent due and to become due for the remainder of the current lease term and any other sum Tenant owes Landlord. This lien is not in lieu of, nor in any way affects, the statutory landlord's lien but is in addition to that lien, and Tenant grants Landlord a security interest in all of Tenant's property placed in or on the premises for purposes of this contractual lien. This does not prevent Tenant's selling any merchandise in

the ordinary course of business free of such Landlord's lien. If Landlord exercises the option to terminate the leasehold, reenter, and relet the premises as provided in the preceding paragraph and gives Tenant reasonable notice of the intent to take possession and an opportunity for a hearing on the matter, Landlord may take possession of all of Tenant's property on the premises and sell it at public or private sale after giving Tenant reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, for cash or on credit, for the prices and terms that Landlord considers best, with or without having the property present at the sale. The proceeds of the sale will be applied first to the necessary and proper expense of removing, storing, and selling the property, then to the payment of any rent due or to become due under this lease; any balance will be paid to Tenant. Tenant further grants Landlord a security interest in Tenant's personal property now or subsequently placed in or on the Premises. This Lease is a Security Agreement under the Texas Business and Commerce Code. Landlord may file a Financing Statement to perfect its Security Interest.

§ 12.03. Landlord's Default. If Landlord defaults in performing any term or covenant that Landlord must perform under this agreement, Tenant may, after not fewer than thirty (30) days' notice to Landlord, remedy the default by any necessary action and, in connection with the remedy, may pay expenses and employ counsel. Landlord must, on demand, pay Tenant all sums expended, or obligations incurred, by Tenant in connection with remedying Landlord's default. It is agreed, however, that if Landlord commences action within 30 days after receipt of notice to remedy any default and diligently pursue such action to conclusion, Tenant's rights under this section shall not apply.

§ 12.04. Cumulative Remedies. All Landlord's and Tenant's rights and remedies under this Article are cumulative, and none will exclude any other right or remedy provided by law or any other provision of this lease. All the consistent rights and remedies may be exercised and enforced concurrently and whenever occasion for their exercise arises.

§ 12.05. Waiver of Breach. All Landlord's or Tenant's waiving a breach of this lease by the other party does not constitute a continuing waiver or a waiver of any subsequent breach.

§ 12.06. Indemnities in Event of Termination. In the event that this Lease Agreement is terminated by either party as provided in this Agreement, and upon expiration of the Term, or extended term of this Lease Agreement, the Tenant's obligations to indemnify and hold harmless Landlord shall not terminate or expire and shall survive such termination and/or expiration and shall be fully binding upon Tenant.

§ 12.07. Limitation of Landlord's Liability. Notwithstanding anything to the contrary contained herein, no personal or individual liability of any kind or character whatsoever shall now or at any time hereafter attach to Landlord or its property other than leased premises for the payment of any amount payable under this Lease. The exclusive remedy of Tenant for the failure of Landlord to perform any of its obligations under this Lease shall be to proceed against the interest of Landlord in and to the leased premises.

ARTICLE 13 . INSPECTION BY LANDLORD

Tenant will permit Landlord and its agents, representatives, and employees to enter the premises at all reasonable times for the purpose of inspection or any other purpose necessary to protect Landlord's interest in the premises or to perform Landlord's duties

under this lease, or to show the Premises to prospective purchasers or future tenants.

ARTICLE 14 . ASSIGNMENT AND SUBLEASE

§ 14.01. Assignment and Subletting by Tenant.

a. Tenant may not sublet, assign, encumber, or otherwise transfer this lease, or any right or interest in it or in the premises or the improvements on them, without Landlord's written consent. If Tenant sublets, assigns, encumbers, or otherwise transfers its rights or interests in this lease or in the premises or the improvements on them without Landlord's written consent, Landlord may, at its option, declare this lease terminated. If Landlord consents in writing to an assignment, sublease, or other transfer of all or any of Tenant's rights under this lease, the assignee or subtenant must assume all of Tenant's obligations under this lease, and Tenant will remain liable for every obligation under the lease. Landlord may not arbitrarily or unreasonably withhold consent under this section.

b. As a condition precedent to the Tenant's right to sublease the property or to assign this lease, the Tenant must, at the Tenant's own expense, fulfill all of the Tenant's environmental obligations under Article 3 of this lease. If this condition is not satisfied, the Landlord has the right to withhold consent to any proposed sublease or assignment.

§ 14.02. Assignment by Landlord. Landlord may assign or transfer any of its interests under this lease. On transfer, and on the transferee's assumption of its obligations, Landlord is relieved of its obligations under the lease.

ARTICLE 15 . MISCELLANEOUS

§ 15.01. Notices and Addresses. All notices required under this lease may be given by the following methods:

a. By certified mail, return receipt requested, addressed to the proper party, at the following addresses:

Landlord:	TexAmericas Center 107 Chapel Lane New Boston, Texas 75570 Attn: Executive Director/CEO	Guarantor: Intentionally Deleted
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Tenant:	Jackson Melons, Inc. P.O. Box 1084 Henderson, TX 75653
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b. By fax transmission, to the proper party, at the following fax numbers:

Landlord:	903-223-8742	Attn: Executive Director
Tenant:	903-657-0173	Attn: Sales Representative

Guarantor: Intentionally Deleted

Notices are effective when received. Either party may change the address or fax number to

which notices are to be sent by sending written notice of the new address or number to the other party in accordance with the provisions of this section.

§ 15.02. **Parties Bound.** This agreement binds, and inures to the benefit of, the parties to the lease and their respective heirs, executors, administrators, legal representatives, successors, and assigns when this agreement permits.

§ 15.03. **Texas Law to Apply.** This agreement is to be construed under Texas law, and all obligations of the parties created by this lease are performable in Bowie County, Texas.

§ 15.04. **Legal Construction.** If one or more of the provisions contained in this agreement are for any reason held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision of the agreement, which will be construed as if it had not included the invalid, illegal, or unenforceable provision.

§ 15.05. **Prior Agreements Superseded.** This agreement constitutes the parties' sole agreement and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter.

§ 15.06. **Amendment.** No amendment, modification, or alteration of this agreement is binding unless in writing, dated subsequent to the date of this agreement, and duly executed by the parties.

§ 15.07. **Rights and Remedies Cumulative.** The rights and remedies provided by this lease are cumulative, and either party's using any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

§ 15.08. **Attorney's Fees and Costs.** If, as a result of either party's breaching this agreement, the other party employs an attorney to enforce its rights under this lease, then the breaching or defaulting party will pay the other party the reasonable attorney's fees and costs incurred to enforce the lease.

§ 15.09. **Force Majeure.** Neither Landlord nor Tenant is required to perform any term or covenant in this lease so long as performance is delayed or prevented by *force majeure*, which includes acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within Landlord's or Tenant's control and that Landlord or Tenant cannot, by exercising due diligence and paying money, prevent or overcome, in whole or part.

§ 15.10. **Time of Essence.** Time is of the essence of this agreement.

§ 15.11. **Alternate Dispute Resolution.** Landlord and Tenant shall submit in good faith to mediation any and all disputes before filing suit. Each party shall pay its own counsel fees in such mediations and shall each pay one-half of the mediator's charges. The parties shall mutually agree upon the mediator, and upon failure to agree within 30 days of a request by either party to mediation, shall request the County Judge of Bowie County to select a mediator whose selection shall be binding on the parties. All mediations shall take place in Bowie County, Texas.

§ 15.12. **LIMITATION OF WARRANTIES.** THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE, IF ANY, EXPRESSLY STATED IN THIS LEASE.

§ 15.13. **Abandoned Property.** Landlord may retain, destroy or dispose of any property left on the Premises at the end of the Term without liability to Tenant for loss or damage.

§ 15.14. **Municipal and Emergency Services.** Tenant shall pay for all municipal services (Police, Hazardous Spill Response, Emergency Medical Response and Fire Protection) used by Tenant, its employees, guests, invitees, and any and all persons while upon the Premises. Said services may be furnished by local law enforcement agencies and by the U.S. Department of the Army as provided in that certain Municipal Services Agreement between Red River Army Depot and Red River Redevelopment Authority dated the 4th day of February, 1998, as it may be amended from time to time. Tenant shall pay to, or reimburse, Landlord for all municipal services furnished to Tenant or to persons on the Premises within ten (10) days after receipt of an invoice for said services from Landlord. Tenant shall be entitled to receive and shall handle all documentation for reimbursement by insurance companies or other third party benefit plan providers.

§ 15.15. **Army Imposed Restrictions.**

a. Notwithstanding any other provision of this Lease, this Lease Agreement is made subject to, and Tenant agrees to be bound by those certain exceptions, limitations, covenants, conditions and reservations set forth in the Deed Without Warranty conveying the Premises from the United States of America, acting by and through the Secretary of the Army to Red River Redevelopment Authority dated September 1, 2010, and recorded in Volume 5898, Page 1 of the Real Property Records, Bowie County, Texas, to the extent said provisions apply to the Premises. A copy of the Deed Without Warranty is available at the offices of Landlord.

b. Lessee specifically acknowledges that the Deed Without Warranty contains the following language regarding Post Transfer Discovery of Contamination:

"A. If an actual or threatened release of a hazardous substance or petroleum product is discovered by the GRANTEE, its successors or assigns on the Property after the date of conveyance, GRANTEE, its successors or assigns, shall be responsible for the investigation and/or remediation of such release or newly discovered substance unless GRANTEE is able to demonstrate that such release or such newly discovered substance was due to GRANTOR's activities, use, or ownership of the Property. If the GRANTEE, its successors or assigns believe the discovered hazardous substance is due to GRANTOR's activities, use or ownership of the Property, GRANTEE will immediately secure the site and notify the GRANTOR of the existence of the hazardous substances, and GRANTEE will not further disturb such hazardous substances without the written permission of the GRANTOR.

B. GRANTEE, its successors and assigns, as consideration for the conveyance of the Property, agree to release GRANTOR from any liability or responsibility for any claims arising solely out of the release of any hazardous substance or petroleum product on the Property occurring after the date of the delivery and acceptance of this Deed, where such substance or product was placed on the Property by the GRANTEE, or its successors, assigns, employees, invitees, agents or contractors, after the conveyance. This paragraph shall not affect the GRANTOR's responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations, or the GRANTOR's indemnification obligations under applicable laws."

c. Lessee agrees to comply with the provisions of this subsection and will be responsible for all claims, damages, remediation expenses, fines and penalties related to violation of Hazardous Materials Laws, as defined in Section 3.02, and/or violation or breach of the restrictions and covenants set forth in this Section 15 after the commencement date of this Lease, including but not limited to such claims, damages, remediation expenses, fines and penalties related to the release, disturbance, spreading, extension, expansion or exacerbation of a release or substance by Lessee or those on the Premises with the consent or for the benefit of Lessee.

§ 15.16. Reservation of Rights. Landlord reserves the right to include the Premises including the easement locations, if any, together with other adjoining property owned by Landlord in a subdivision plat and subject the property described in said platted subdivision to utility easements and common restrictive covenants; provided, however, that said restrictive covenants and easements shall not interfere unreasonably with Tenant's use and related uses. It shall not be necessary or required that Tenant join in the execution of any such plat dedication or declaration of restrictive covenants and easements.

§ 15.17. Common Area Charges. Tenant acknowledges and agrees that it shall be responsible for and pay its proportionate share of the "TexAmericas Center-East common area charges" based upon the square footage of the Premises as a percentage of the total area of the TexAmericas Center-East development area (excluding the "common areas"). The "common areas" are those areas of TexAmericas Center-East used by and/or for the benefit of all property owners or tenants within TexAmericas Center-East, including but not limited to parks, recreational facilities, walkways, roadways and public parking areas. "Common area charges" are those property taxes, user charges, payments in lieu of taxes, maintenance, improvement, and betterment charges, and other local, county, TexAmericas Center, or other governmental assessments on or against the Commerce Park common areas. The common area charges, other than taxes, shall not exceed ten cents (\$0.10) per \$100.00 valuation of the Premises based upon the fair market value thereof as determined by the Bowie Central Appraisal District for the year in which the assessment is made. Landlord shall notify Tenant of the amount of the assessment, and Tenant shall pay said assessment within thirty (30) days.

§ 15.18. **License for Access to Premises.** Landlord grants Tenant a license to use the roadways of Landlord for access to and from the Premises, said roadways being identified as follows (select only one by placing an X in the applicable option):

- All roadways including paved and unpaved roads;
- Only the paved roadways; or
- The following specific streets:

Cass Street
Oak Street
Elm Circle

This is a non-exclusive license to use said roadways which shall terminate upon the termination of this lease.

§ 15.19. **Guarantee.** Intentionally Deleted

§ 15.20. **Option to Purchase.** Intentionally Deleted

§ 15.21. **Landlord's Additional Obligations.** Landlord, in addition to the obligations hereinabove set forth, has agreed to perform and will provide the following:

- A. Prior to lease commencement, Landlord shall improve the premises by completing the following actions:
 - a. Ensure lights work.
 - b. Ensure receptacles work and there are at least four separate circuits in the building.
 - c. Place a chain, or barrier, at rail door to prevent tenant or its employees from accessing rail dock area. Accessing rail dock area and climbing on railcars is expressly forbidden. It is the duty of the tenant to inform employees not to enter this prohibited area.
 - d. Replace locks on doors.
 - e. Repair center roll-up door.
 - f. Landlord shall pay the utility costs for the entire building and then bill Tenant. Tenant shall remit payment of utilities within ten days after receipt of the invoice.

§ 15.22. **Early Termination.** Tenant shall have the right to terminate the Lease any time after June 1, 2017 by giving 30 days written notice to Landlord.

The undersigned Landlord and Tenant execute this agreement on the 25th day of April, 2017.

LANDLORD
TexAmericas Center

By: 

Name: **Scott Norton**
Title: **Executive Director**

TENANT
Jackson Melons, Inc.

By: 

Name: **Scott Gorges**
Title: **Sales Representative**

Guarantor

Intentionally Deleted

EXHIBIT "A"

PREMISES DESCRIPTION

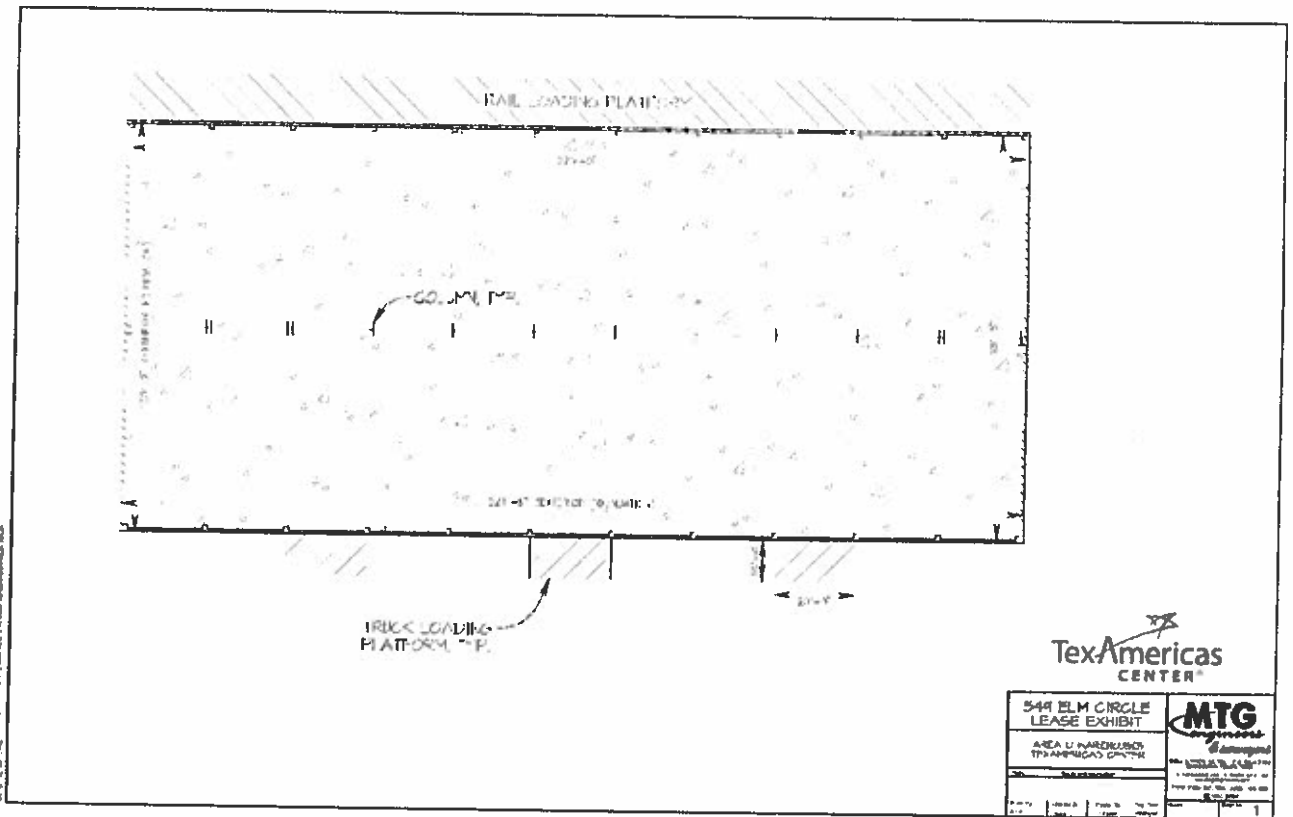


549 ELM CIRCLE - LEASE EXHIBIT
TEXAMERICAS CENTER EAST CAMPUS

0 140 280 560 840 1,120
Feet



See attached Plan, # 12017 Project # 78102 'AC Property Sales and Marketing' 549 Elm Circle Lease Exhibit.mxd



The Premises are a portion of the Property conveyed by the United States of America to Red River Redevelopment Authority by that certain Deed Without Warranty dated September 1, 2010, recorded in Volume 5898, Page 1 of the Real Property Records of Bowie County, Texas.

EXHIBIT "B"
OPTION TO PURCHASE

Intentionally Deleted