

STATE OF TEXAS           §  
  §  
COUNTY OF LUBBOCK   §

**PERFORMANCE AGREEMENT**

30 

This Performance Agreement (the "Agreement") is made effective on August 24, 2016, ("Execution Date") by and between MARKET LUBBOCK ECONOMIC DEVELOPMENT CORPORATION, a Texas nonprofit corporation (hereinafter referred to as "MLI") and Severn Peanut Company, Inc., a Foreign for-profit corporation, (hereinafter referred to as "Recipient"), by and through their duly authorized officers and affiliate organizations under the terms and conditions that follow.

1. **Applicable Law:** It is understood by and between the parties that the term "Act," as used herein, is intended to mean Article 3, Section 52-a of the Texas Constitution and Sections 380.001-002 of the Texas Local Government Code which authorize a municipal governing body to establish and provide for the administration of one or more economic development programs to promote local economic development and to stimulate business and commercial activity in the municipality. The parties hereto covenant and agree to comply with the terms of the Act applicable to this Agreement.

2. **Parties:**

- A. MLI, a Texas non-profit corporation as well as a tax exempt 501(c) 4 entity, was created by the City of Lubbock, Texas, as an Economic Development Corporation under the Act for the purpose of creating and retaining positions and encouraging new businesses to be established in Lubbock, Texas, to stimulate business and commercial activities, as well as all other purposes allowed by the Act.
- B. Recipient is preparing a new "Project" which shall include a manufacturing and distribution facility located in Lubbock Railport, Lubbock, Texas (NAICS 31191). Its business project is anticipated to result in 80 new Primary Jobs for the City of Lubbock on the Measurement Date. Total capital investment is estimated to be \$8,750,000.
- C. Recipient is a Foreign for-profit Corporation authorized to do business in Texas.

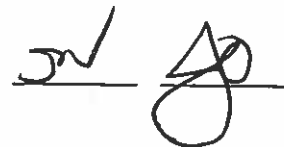
3. **Purpose:** The purpose for this Agreement is to formalize the agreements between MLI and Recipient for the payment of certain costs associated with Recipient's Project and specifically state the covenants, representations of the parties, and the incentives associated with Recipient's commitment to abide by the provisions of the Act and to abide by the terms of this Agreement which has been approved by the Board of Directors of MLI as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction. A failure to perform any obligation by Recipient may constitute a breach of the entire Agreement, and may result in penalties for noncompliance.

Initials: 

4. **Definitions:**

- A. The "Act" shall refer to Article 3, Section 52-a of the Texas Constitution and Sections 380.001-002 of the Texas Local Government Code which authorizes a municipal governing body to establish and provide for the administration of one or more economic development programs to promote local economic development and to stimulate business and commercial activity in the municipality.
- B. "MLI" shall refer to Market Lubbock Economic Development Corporation, a Texas non-profit corporation, created by the City of Lubbock as an economic development corporation pursuant to the Act.
- C. "Recipient" shall refer to Severn Peanut Company, Inc., a Foreign for-profit Corporation authorized to do business in Texas, and the recipient party to this Agreement.
- D. "Project" shall mean the project identified in Paragraph 2B, above.
- E. "Full-Time Equivalent Employee" shall include individuals employed in "Primary Jobs" as defined herein, as well as contract or leased employees performing "Primary Jobs" in the City of Lubbock on behalf of Recipient.
- F. "Term", as used herein, shall begin with the Start Date (herein so called) of \_\_\_\_\_,\* and end on \_\_\_\_\_,\* unless earlier breached by Recipient's failure to perform.<sup>1</sup>
- G. "Termination Date" shall mean the end of the Term, as defined herein, unless earlier breached by Recipient's failure to perform.
- H. "Baseline Employment Level" is defined to mean the employee census on the day preceding the Execution Date of this Agreement, which is zero.
- I. "Baseline Measurement Date" is defined to mean the employee census on the day preceding the Execution Date of this Agreement.
- J. "Census" is defined as a compilation listing of the employee name, address, date of hire, date of termination, position, and indication of full-time or part-time status (such information is preferred to be presented in Excel format) which shall be made available to the Accountant in performing the review.
- K. "Primary Jobs" is defined by the Development Corporation Act, as amended, at Sec. 501.001 *et seq.*, *Local Government Code*.
- L. "Payback Provisions" shall mean payment for jobs not timely created as provided herein.

<sup>1</sup> Dates to be completed by mutual agreement of the parties hereto.





- B. MLI represents that it has authority to enter into this Agreement. MLI understands and agrees that any variation in terms of this Agreement or the incentives offered to Recipient or commitment by Recipient will only be binding if mutually agreed to in writing.
- C. MLI desires to provide economic assistance to Recipient in pursuit of Recipient's Project.
- D. MLI is the current owner of the Property.

7. **Conveyance of Property:** MLI shall convey the surface estate to Recipient of 10.4 acres, more or less, being Tracts R & U, Lubbock Railport as more particularly described on Exhibit "A" attached hereto (the "Property"). The conveyance shall be by special warranty deed in substantially the form set forth on Exhibit B, shall occur on the Execution Date, and shall convey the Property to Recipient in its current "as is" condition, subject to the terms of this Agreement and the right of reversion set forth herein. The Property will be conveyed subject to the covenants, restrictions and rules of the Lubbock Railport attached hereto as Exhibit "C" and to all easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and other instruments, other than liens and conveyances, that affect the property; rights of adjoining owners in any walls and fences situated on a common boundary, any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; taxes for 2016, the payment of which grantee assumes; and subsequent assessments for that and prior years due to chance in land usage, ownership, or both, the payment of which grantee assumes. Recipient and its successors in interest, if any, in their respective capacities, shall comply with such covenants, restrictions and rules.

8. **Omitted.**

9. **Covenants for Conveyance of Property:**

It is specifically agreed and understood by and between the parties that MLI has agreed to convey the Property to Recipient strictly upon the following terms and conditions:

- A. Any use of MLI's name for publicity in connection with Recipient's business or activities must be approved in advance by MLI. It is understood that MLI may make known its contributions to Recipient in whatever public manner MLI deems appropriate.
- B. Recipient shall have delivered to MLI a certified copy of the authorization by the applicable officer of Recipient, authorizing the execution and performance of this Agreement, as well as timely delivery of all other information expressly called for in this Agreement.
- C. Recipient must maintain a business location in the City of Lubbock or Lubbock County and its legal status under federal and state law duly and remain qualified to do business in the State of Texas during the Term of this Agreement.

- D. The operations or activities of Recipient and its employees shall be performed and conducted in a professional and businesslike manner and shall be in keeping in all material respects with federal and state laws and regulations, and any ordinances of the City of Lubbock and/or governmental entities which may have jurisdiction over operations and activities of Recipient.
- E. Recipient agrees to, in good faith, engage in a confidential review and examination of all material records applicable to the Project by MLI's accountants and the parties mutually agree that such review is necessary to insure compliance with the conditions of the conveyance of Property. Recipient agrees to timely provide to MLI's accountants all information applicable to the Project reasonably requested by MLI's accountants. Should Recipient fail to provide to the accountants the specifically requested information within thirty (30) days following the Measurement Date necessary to complete the review within six (6) months from the Measurement Date, the provisions of Section 10 below, shall apply.
- F. Recipient certifies that the Recipient does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Recipient is convicted of a violation under 8 U.S.C. § 1324a(f), Recipient shall repay the amount of the public subsidy provided under this Agreement, with interest at the legal pre-judgment interest rate, with attorney's fees, not later than the 120th day after a non-appealable judgment has been entered against Recipient for violations of 8 U.S.C. § 1324a(f).
- G. Any information obtained by MLI or its agents or assigns during negotiations leading up to the execution of the Agreement or otherwise about the business of Recipient, will be held confidential by MLI and will be returned upon the execution of this Agreement, subject to a right to a continuing examination by MLI in order to comply with MLI's reporting obligations, if any. All information delivered by Recipient shall be considered confidential and beyond the scope of any Open Records request as proprietary information.

**10. Payback Provisions and Events of Default:** Recipient acknowledges that MLI and Recipient are required to remain in conformance with the statutory provisions of the Act.

The Recipient has provided to MLI a schedule by which Recipient projects to create 80 Primary Jobs. Recipient agrees to establish a Baseline Employment Level and Census (as defined herein) and shall timely provide such information to MLI's accountants when requested. Recipient agrees to create and maintain the additional Full-Time Equivalent job positions over the five year term as intended to qualify for the Project incentive, as offered by MLI. Notwithstanding anything stated herein to the contrary, the parties acknowledge and agree that

none of the Employees holding a Primary Job need to be a resident of the City or County of Lubbock, Texas, but the Employees must perform a substantial portion of their work in the Project. The job creation over the Term is projected to be a total of 80 Primary Jobs over a five year period ("Target Job Positions"). MLI based its decision to convey the Property to Recipient partly upon such job creation. Should Recipient fail to attain the Target Job Positions on the Measurement Date, MLI shall give written notice of such default to Recipient, and if Recipient fails to cure such default within sixty (60) days after such notice, Recipient shall pay to MLI, upon demand, the sum of \$10,925 for each job not timely created. Job creation shall be measured in Full Time Equivalent Employees.

If, within ten (10) years from the date hereof, Recipient attempts to assign this Agreement to a party who is not an affiliate of Recipient or a Qualified Third Party Assignee defined in Section 11 hereinbelow, or abandons or vacates the Property, MLI shall have the following options: Option (1): MLI or its designee may exercise an exclusive ninety (90) day option to purchase the Property from the Recipient. The purchase price of the Property will be the sum equivalent to the market value of the Property's facility and improvements (including paving, curbs, and outdoor lighting and landscaping) at the time of MLI's exercise of the option, exclusive of land value as of the date of this Agreement; or Option (2): require that Recipient pay to MLI the stipulated sum set forth below. Should MLI choose Option (2) and the Recipient fails or refuses to pay to MLI the stipulated sum set forth below within one hundred eighty (180) days from MLI exercising Option (2), the ownership of the Property, including the facility located on the Property, shall revert back to MLI. It is stipulated that the value of the land underlying the Property as of the date of this Agreement is \$874,000. On the date hereof, the parties shall execute a Memorandum of Purchase Option, in the form attached hereto as Exhibit "D", to evidence MLI's rights under this Section 10.

**11. Assignment, Merger, and Termination Due to Merger, Etc.:** This Agreement shall not be assignable, either in whole or in part. Termination as the result of assignment or merger or change in business form shall not disqualify the remaining or new entity from applying to MLI for new incentive consideration.

Notwithstanding anything herein to the contrary, this Agreement may be assigned, transferred, or sold by Recipient without any approval or consent of MLI to a Qualified Third Party Assignee which is defined as any principal, affiliate, or subsidiary of Recipient or to any entity which acquires all or substantially all of Recipient's assets by merger, acquisition, or other business reorganization. As to other parties, this Agreement may not be assigned, transferred, or sold without the written consent of MLI, which such consent will not be unreasonably withheld, delayed, or conditioned. No change of stock ownership, partnership interest, or control of Recipient or transfer upon partnership or corporate dissolution of Recipient shall constitute an assignment hereunder.

**12. Insurance/Hold Harmless:** Recipient covenants and agrees to provide, assign, and include MLI as additional named insured to all policies of liability insurance coverage and insurance policies regarding Recipient's ownership and operations whereby MLI is provided

insurance coverage against all liability for injury or damages caused by Recipient's employees, customers, clients, patrons, visitors, or guests. Additionally, Recipient agrees to indemnify and hold MLI harmless from all loss, cost, or expenses (including reasonable attorney's fees) arising out of the existence of this Performance Agreement or any interpretation, application, or performance thereunder, except to the extent caused by the gross negligence or willful misconduct of MLI, its employees or agents.

13. **No Privity of Endeavor Nor Joint Venture:** It is specifically agreed that there shall be no privity of endeavor nor joint venture whatsoever between MLI and Recipient and the sole connection between the parties is the contribution of the economic assistance by MLI under the restricted conditions as set forth herein and that such contributions as stated herein are for the sole purposes as set forth herein and it shall in no way be construed as a continuing basis of financial support by MLI to Recipient. The parties hereto have entered into this Agreement in an arms-length transaction. No agency relationship or fiduciary relationship is intended to be created by this Agreement and no such relationship shall be determined to exist.

14. **Good Faith -Normal Business Operations:** The parties agree that this Agreement has been entered into in good faith and that each party shall act in good faith in complying with its provisions. The parties further agree to transact all their business under and that which relates to this Agreement in accordance with their normal business operations.

15. **Miscellaneous Provisions:**

A. **Notices:**

For the purposes of any notices to be given, pursuant to the terms of this Agreement, the parties shall use the following addresses or any other address as may be changed by the parties, upon written notice to the other party, as follows:

- (1) John Osborne  
CEO and President  
MARKET LUBBOCK ECONOMIC DEVELOPMENT CORPORATION  
1500 Broadway, 6<sup>th</sup> Floor  
Lubbock, TX 79401

With a copy to:

Ann Manning  
Attorney at Law  
UNDERWOOD LAW FIRM  
P.O. Box 16197  
Lubbock, Texas 79490

(2) Jeff Vinson  
CFO  
SEVERN PEANUT COMPANY, INC.  
413 Main Street  
Severn, NC 27877

With a copy to:

Winston W. Walp, II  
Norton Rose Fulbright  
2200 Ross Avenue, Suite 3600  
Dallas, TX 75201

Notices shall be deemed to be given (i) upon the placing in the United States Mail, Certified Mail, Return Receipt Requested, to the above-described addresses or as may be changed, pursuant to the terms and conditions hereof, or (ii) by overnight delivery service with proof of delivery.

- B. Entire Agreement: This instrument constitutes the entire agreement between the parties hereto and neither this Agreement nor any of the Exhibits attached hereto, if any, can be altered, changed, or amended in any respect except by an instrument in writing duly executed by both parties.
- C. Governing Law and Performance: This Agreement shall be governed by the laws of the State of Texas and shall be deemed to be executed in and performance called for in Lubbock, Lubbock County, Texas.
- D. Partial Invalidity: In the event that any portion of this Agreement should be found or declared to be invalid for any reason, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties. The parties agree that it is their intent for this Agreement to be determined as being an indivisible obligation of the parties.
- E. Binding Effect: This Agreement shall be binding upon the undersigned, their successors and assigns, subject to the express terms of this Agreement concerning assignment.
- F. Force Majeure: If any default or performance of any other covenant or term of this Agreement is delayed by reason of strike, riots, shortages of labor, materials, supplies, or transportation, war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire, or other casualty, or any other circumstances beyond a signatory party's control, then the duty to do or perform the term or covenant, regardless of whether the circumstance is similar to any of those enumerated above or not, is excused during the delay period.

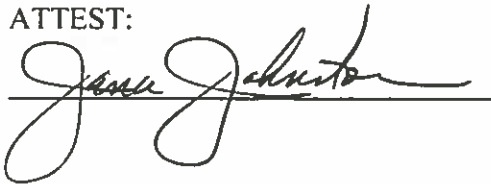


- G. Time is of the Essence: The parties agree that time is of the essence in the execution of this Agreement.
- H. Counterparts: This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original.
- I. Survival: All of the terms and conditions set forth in this Agreement shall survive the conveyance of the Property.


EXECUTED in multiple counterparts, each of which is an original, on the Execution Date.

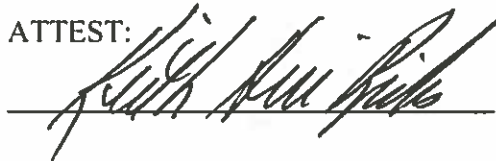
MARKET LUBBOCK ECONOMIC  
DEVELOPMENT CORPORATION


  
\_\_\_\_\_  
John Osborne, CEO and President

ATTEST:  
  
\_\_\_\_\_

RECIPIENT:  
SEVERN PEANUT COMPANY, INC.

By:   
Its: CFO & TREASURER

ATTEST:  
  
\_\_\_\_\_

Initials: sj 

## EXHIBIT "A" LEGAL DESCRIPTION

### TRACT I:

Tract B, Lubbock Railport, an Addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat, and/or dedication deed thereof, recorded in/under Clerk's File No. 2014024323, Official Public Records, Lubbock County, Texas.

### TRACT II:

METES AND BOUNDS DESCRIPTION of a 2.50 acre tract of land located in Section 38, Block D, Lubbock County, Texas, being further described as follows:

BEGINNING at a 1/2" iron rod with cap found at the Northeast corner of Tract B, Lubbock Railport, an Addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof, recorded in/under County Clerk's File Number 2014024323 of the Official Public Records of Lubbock County, Texas, and the Southeast corner of this tract which bears N. 88°33'49" W. a distance of 3144.40 feet and N. 01° 08'50" E. a distance of 740.00 feet from the Southeast corner of Section 38, Block D, Lubbock County, Texas;

THENCE N. 88°33'49" W., along the Northern boundary of said Tract "B", a distance of 327.84 feet to a 1/2" iron rod with cap found in the East right-of-way line of North Fir Avenue as described under County Clerk File Number 2013007060 of the Official Public Records of Lubbock County, Texas, at the Northwest corner of said Tract "B" and the Southwest corner of this tract;

THENCE N. 01°21'47" E., along said East right-of-way line, a distance of 332.81 feet to a 1/2" iron rod with cap found at the Northwest corner of this tract;

THENCE S. 88°33'49" E. a distance of 326.59 feet to a 1/2" iron rod with cap found at the Northeast corner of this tract;

THENCE S. 01°08'50" W., a distance of 332.81 feet to the Point of Beginning.

Contains: 108,900 square feet

### TRACT III:

METES AND BOUNDS DESCRIPTION of a 2.698 acre tract out of a 170.5 acre tract as described under County Clerk File No. 2007001226 of the Official Public Records of Lubbock County, Texas, located in Section 38, Block D, Lubbock County, Texas, being further described as follows:

BEGINNING at a 1/2" iron rod with cap marked "HRA" found at the Southeast corner of this tract, which bears N. 88° 33'49" W. a distance of 3144.41 feet and N. 01°08'50" E. a distance of 1072.82 feet from the Southeast corner of Section 38, Block D, Lubbock County, Texas;

THENCE N. 88°33'49" W. a distance of 326.59 feet to a 1/2" iron rod with cap marked "HRA" found in the East right-of-way line of North Fir Avenue as described under County Clerk File No. 2013007060 of the Official Public Records of Lubbock County, Texas, at the Southwest corner of this tract;

THENCE N. 01°21'47" E., along said East right-of-way line, a distance of 354.41 feet to a 1/2" iron rod with cap marked "HRA" set for a point of curvature;

THENCE Northeasterly, continuing along said East right-of-way line around a curve to the right, said curve having a radius of 21.00 feet, a central angle of 17°18'40", tangent lengths of 3.20 feet and a chord distance of 6.32 feet to a 1/2" iron rod with cap marked "HRA" set for the Northwest corner of this tract;

THENCE S. 88°33'49" E. a distance of 323.30 feet to a 1/2" iron rod with cap marked "HRA" set for the Northeast corner of this tract;

THENCE Southeasterly around a curve to the right, said curve having a radius of 727.19 feet, a central angle of 03°05'40", a chord bearing of S. 00°17'12" E. and a chord distance of 39.27 Feet to a 1/2" iron rod with cap marked "HRA" set for a point of intersection;

THENCE S. 01°08'50" W. a distance of 321.41 feet to the Point of Beginning.

Contains: 117,527 square feet.

## EXHIBIT B

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

### SPECIAL WARRANTY DEED

**Effective Date:** August 30<sup>th</sup>, 2016

**Grantor:** Market Lubbock Economic Development Corporation

**Grantor's Mailing Address:** 1500 Broadway, 6th Floor  
Lubbock, Lubbock County, Texas 79401

**Grantee:** Severn Peanut Company, Inc.

**Grantee's Mailing Address:** 413 Main Street  
Severn, Northampton County, North Carolina 27877

**Consideration:**

Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

**Property (including any improvements):**

All of that property situated in Lubbock County, Texas, more particularly described on Exhibit A, attached hereto and made a part hereof for all purposes

**Reservations from and Exceptions to Conveyance and Warranty:**

Easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and other instruments, other than liens and conveyances, that affect the property; rights of adjoining owners in any walls and fences situated on a common boundary, any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; taxes for 2016, the payment of which, if any, Grantee assumes; and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the property, together with all and

singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through, or under Grantor, but not otherwise, except as to the reservations from and exceptions to conveyance and warranty.

When the context requires, singular nouns and pronouns include the plural.

MARKET LUBBOCK ECONOMIC  
DEVELOPMENT CORPORATION

By: *John Osborne*  
John Osborne, President and CEO

STATE OF TEXAS                   §  
   §  
COUNTY OF LUBBOCK         §

This instrument was acknowledged before me on the 30th day of August 2016, by John Osborne, President and CEO of Market Lubbock Economic Development Corporation, a Texas non-profit corporation, on behalf of said corporation.



*Linda M. Davis*  
Notary Public, State of Texas

AFTER RECORDING RETURN TO:  
Ann Manning  
1111 West Loop 289  
Lubbock, Texas 79416

PREPARED IN THE LAW OFFICE OF:  
Underwood Law Firm, P.C.  
1111 West Loop 289  
Lubbock, Texas 79416

## EXHIBIT "A" LEGAL DESCRIPTION

### TRACT I:

Tract B, Lubbock Railport, an Addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat, and/or dedication deed thereof, recorded in/under Clerk's File No. 2014024323, Official Public Records, Lubbock County, Texas.

### TRACT II:

**METES AND BOUNDS DESCRIPTION** of a 2.50 acre tract of land located in Section 38, Block D, Lubbock County, Texas, being further described as follows:

**BEGINNING** at a 1/2" iron rod with cap found at the Northeast corner of Tract B, Lubbock Railport, an Addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof, recorded in/under County Clerk's File Number 2014024323 of the Official Public Records of Lubbock County, Texas, and the Southeast corner of this tract which bears N. 88°33'49" W. a distance of 3144.40 feet and N. 01° 08'50" E. a distance of 740.00 feet from the Southeast corner of Section 38, Block D, Lubbock County, Texas;

**THENCE** N. 88°33'49" W., along the Northern boundary of said Tract "B", a distance of 327.84 feet to a 1/2" iron rod with cap found in the East right-of-way line of North Fir Avenue as described under County Clerk File Number 2013007060 of the Official Public Records of Lubbock County, Texas, at the Northwest corner of said Tract "B" and the Southwest corner of this tract;

**THENCE** N. 01°21'47" E., along said East right-of-way line, a distance of 332.81 feet to a 1/2" iron rod with cap found at the Northwest corner of this tract;

**THENCE** S. 88°33'49" E. a distance of 326.59 feet to a 1/2" iron rod with cap found at the Northeast corner of this tract;

**THENCE** S. 01°08'50" W., a distance of 332.81 feet to the Point of Beginning.

Contains: 108,900 square feet

### TRACT III:

**METES AND BOUNDS DESCRIPTION** of a 2.698 acre tract out of a 170.5 acre tract as described under County Clerk File No. 2007001226 of the Official Public Records of Lubbock County, Texas, located in Section 38, Block D, Lubbock County, Texas, being further described as follows:

**BEGINNING** at a 1/2" iron rod with cap marked "HRA" found at the Southeast corner of this tract, which bears N. 88° 33'49" W. a distance of 3144.41 feet and N. 01°08'50" E. a distance of 1072.82 feet from the Southeast corner of Section 38, Block D, Lubbock County, Texas;

**THENCE** N. 88°33'49" W. a distance of 326.59 feet to a 1/2" iron rod with cap marked "HRA" found in the East right-of-way line of North Fir Avenue as described under County Clerk File No. 2013007060 of the Official Public Records of Lubbock County, Texas, at the Southwest corner of this tract;

**THENCE** N. 01°21'47" E., along said East right-of-way line, a distance of 354.41 feet to a 1/2" iron rod with cap marked "HRA" set for a point of curvature;

THENCE Northeasterly, continuing along said East right-of-way line around a curve to the right, said curve having a radius of 21.00 feet, a central angle of 17°18'40", tangent lengths of 3.20 feet and a chord distance of 6.32 feet to a 1/2" iron rod with cap marked "HRA" set for the Northwest corner of this tract;

THENCE S. 88°33'49" E. a distance of 323.30 feet to a 1/2" iron rod with cap marked "HRA" set for the Northeast corner of this tract;

THENCE Southeasterly around a curve to the right, said curve having a radius of 727.19 feet, a central angle of 03°05'40", a chord bearing of S. 00°17'12" E. and a chord distance of 39.27 Feet to a 1/2" iron rod with cap marked "HRA" set for a point of intersection;

THENCE S. 01°08'50" W. a distance of 321.41 feet to the Point of Beginning.

Contains: 117,527 square feet.

return to: Tommy Swann, P.O. Box 6170, Lubbock, Texas 79493-6170



COVENANT 2007034660

20 PGS

AMENDED DECLARATION OF PROTECTIVE COVENANTS

LUBBOCK RAILPORT

STATE OF TEXAS  
COUNTY OF LUBBOCK



KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION is made by Lubbock Economic Development Alliance, Inc. (LEDA), (hereinafter called "Developer"), a Texas not-for-profit corporation serving as the development corporation for the City of Lubbock a municipal corporation (hereinafter called "City") pursuant to Art. 5190.6, Tex. R. Civil Statutes, and filed of record in substitution of the Declaration of Protective Covenants for Lubbock Railport recorded as Document Number 2007002929 of the Official Public Records of Lubbock County, Texas on January 23, 2007.

**RECTALS:**

- A. LEDA is the present owner and developer of the Lubbock Railport, (hereinafter called "the Initial Tract") real property described as a 301.648 acre tract of land out of the East Half being Section 38, Block D, Lubbock County, Texas, further described in Exhibit "A" attached hereto and incorporated herein by reference.
- B. This being the same property deeded to LEDA by Warranty Deed from the City of Lubbock.
- C. It is the desire and intention of the Developer to develop all of the property described in Exhibit "A".
- D. It is the desire and intention of Developer to subject and impose upon the Initial Tract (of the property described in Exhibit "A" as may be from time to time added to the scheme of this Declaration pursuant to the provisions of Article VI below) certain conditions, covenants, restrictions and reservations hereinafter set forth for the purpose of insuring the proper use and appropriate development and improvement of same.

NOW, THEREFORE, the Developer, joined by the City, hereby declares that the property described in Exhibit "A" as may be from time to time designated by Developer in accordance with the provisions of Article VI below is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the conditions, covenants, restrictions, reservations, charges and liens hereinafter set forth.

**ARTICLE I**

**DEFINITIONS AND PURPOSES**

Section 1.01 Definitions. The following words, when used in this Declaration and any Supplementary Declaration (defined in Article VI below), unless the context shall prohibit, shall have the following meanings:



(a) "Property" shall mean the real estate lying within the boundaries set out in Exhibit "A" attached hereto and incorporated herein by reference which may hereinafter be made subject to the conditions, covenants, restrictions and reservations of this Declaration pursuant to any Supplementary Declaration filed by the Developer in accordance with Article VI below, whether or not such additional real estate is owned by Developer on the date hereof.

(b) "Building Site" or "Site" shall mean any plot of land, the size and dimensions of which shall be established by the legal description in the original conveyance from Developer to the first fee owner of said plot of land other than Developer. A Building Site or Site may also be established by the Developer by an instrument in writing executed, acknowledged and recorded by the Developer which designates a plot of land as a Building Site for purposes of this Declaration. If two or more contiguous Building Sites, as defined above, are acquired by the same Owner in fee, such commonly owned contiguous Building Sites may, at the option of said Owner, be combined and treated as a single Building Site for purposes hereof.

(c) "Common Areas" shall mean and refer to the medians within public streets dedicated by the City or Developer within the Property and to the entry ways into the Property.

(d) "Developer" shall mean Lubbock Economic Development Alliance and its successors and shall also include any person or entity to which Lubbock Economic Development Alliance may assign (by specific assignment) its rights and duties under this Declaration as such assignment is contemplated by Section 7.05 below.

(e) "Owner" shall mean the party or parties owning fee title to any land (exclusive of Common Areas) within the Property; provided, however, that for purposes of this Declaration, the City shall not be included in the definition of Owner and provided further that Developer shall be considered the Owner of all land (exclusive of Common Areas) within the Property owned by the City to which the Developer has an option to purchase pursuant to the Option. In the event an Owner of any Building Site consists of more than one person or entity, such persons shall within thirty (30) days after the date of their acquisition of any Building Site, execute and deliver to the Developer a written instrument, including a power of attorney appointing and authorizing one individual or entity as their agent to receive all notices and demands required to be given pursuant to the terms and provisions of this Declaration, to execute any and all documents, consents and instruments required under the terms and provisions of this Declaration and to cast all votes and to take any and all actions required or permitted to be taken by them under the terms and provisions of this Declaration. The Owner may change its designated agent by written notice to the Developer, but such change shall be effective only after actual receipt of the notice by Developer.

Section 1.02 Purpose. The Property is hereby made subject to the conditions, covenants, restrictions and reservations contained herein, all of which shall be deemed to run with the Property and each and every parcel thereof, to insure proper use and appropriate development and improvement of said Property so as to (a) protect the Owners (and their tenants) against the improper development and use of acreage within the Property; (b) prevent the erection within the Property of improvements constructed of improper or unsuitable materials or with improper quality and methods of construction; (c) insure adequate and reasonably consistent development of the Property; (d) encourage and insure the erection of attractively designed permanent improvements appropriately located within the Property in order to achieve harmonious appearance and function; (e) provide

adequate off-street parking and loading facilities; and (f) generally promote the welfare and safety of the Owners, tenants and occupants of acreage within the Property.

## ARTICLE II

### BUILDING SITE MAINTENANCE

Section 2.01 Duty of Maintenance. Each Owner and occupant (including a tenant) of any Building Site shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that Building Site so owned or occupied, including buildings, improvements, private drives, easement areas and grounds in connection therewith or appurtenant thereto in a well-maintained, clean, neat, wholesome and attractive condition at all times and shall comply in all respects with all governmental health, fire and safety statutes, ordinances, regulations or requirements. Maintenance requirements shall include, but are not limited to, the following:

- (a) All rubbish, trash, garbage, litter, refuse and other waste shall be stored in clean and sanitary solid waste receptacles and shall be promptly removed from the Building Site prior to its accumulation.
- (b) All exterior lighting and mechanical facilities shall be kept in good working order.
- (c) All parking areas shall be striped and all parking areas, driveways and roads kept in good repair.
- (d) All exterior damage to any improvements shall be promptly repaired and the exterior of all improvements shall be repainted as needed.
- (e) All lawn areas shall be timely mowed and edged during the growing season of March through October and as needed to keep an even, well groomed appearance during the months of November through February; shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive; and shall be kept free of weeds.
- (f) All trees, shrubs, plants and ground covers shall be timely and properly trimmed (including the removal of deadwood therefrom) according to their plant culture and the landscape design and shall be watered and fertilized at such times and in such quantities as required to keep them alive and attractive. Any dead tree, shrub, plant or ground cover shall be removed and replaced immediately. All bed areas shall be kept free of weeds and cultivated periodically as needed.

Section 2.02 Enforcement of Maintenance Duties. If, in the opinion of the Developer, any Owner has failed in any of the foregoing obligations or duties, then the Developer may give the Owner written notice of such failure and the Owner must within ten (10) days after receiving such notice, perform the obligation or duty required. Should any Owner fail to fulfill this obligation or duty within such period, then the Developer through its authorized agent or agents shall have the right and power to enter onto the premises and perform such obligation or duty without any liability for damages for wrongful entry, trespass or otherwise to any person. Each Owner of any Building Site on which such work is performed shall be liable for the cost of such work and shall

promptly reimburse the Developer for such cost. If such Owner shall fail to reimburse the Developer within ten (10) days after receipt of a statement for such work from the Developer, then said indebtedness shall be a debt of Owner and shall constitute a lien against the Building Site on which said work was performed. This debt shall bear interest and be subject to the costs as provided for in Section 2.03 below and shall be collectable in the same manner as provided for therein. Similarly, the lien referred to herein shall have the same attributes as the lien set forth in Section 2.04 below, which provisions are incorporated herein by reference, and the Developer shall have identical powers and rights with respect to said lien as it has with respect to the lien described in Section 2.04, including but not limited to the right to release, subordinate or foreclose same.

Section 2.03 Owner's Obligation for Building Site Maintenance. In the event the Developer incurs cost to maintain the Owners property, this debt shall be the debt of said Owner. In the event of default of payment for indebtedness incurred in paragraph 2.02 above, the Owner of the property shall be obligated to pay interest at the annual interest rate stated below. The Owner shall be responsible for building site maintenance costs incurred by the Developer, as described in paragraph 2.02 above, together with all costs and expenses of collection, including reasonable attorneys' fees and the Developer shall have the right to bring suit against the Owner to recover a money judgment for these amounts (i.e., the cost of maintenance described in paragraph 2.02 above plus interest, costs and reasonable attorneys' fees) without foreclosing or waiving the liens securing same as provided for in Section 2.04 below. The annual interest rate shall be a rate equal to three percent (3%) over the prime interest rate as published from time to time in the Wall Street Journal, from the due date until paid, but not to exceed the maximum rate of interest which Developer may lawfully charge.

Section 2.04 Lien and Foreclosure. All sums assessed resulting from the failure of the Owner to maintain the Building Site in the manner provided in Article II but unpaid, together with interest thereon and the cost of collection, including attorney's fees as provided above, shall become a continuing lien and charge on the property, which shall bind such property in the hands of the Owner, and his heirs, devisees, personal representatives, successors and assigns. The aforesaid lien shall be superior to all other liens and charges against the said property, except only for ad valorem tax liens and all sums unpaid on a mortgage lien or deed of trust lien of record, securing in either instance sums borrowed for the acquisition or improvement of the property in question. The Developer shall have the power to release the aforesaid lien or to subordinate it to any other lien and such power shall be entirely discretionary with the Developer. To evidence the aforesaid lien, the Developer shall prepare a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the property covered by such lien and a description of the property. Such notice shall be signed by the Developer and shall be recorded in the office of the Lubbock County Clerk. Subsequent to the recording of a notice of lien as provided above, the Developer may institute suit against the Owner to foreclose the lien judicially. In any such suit or proceeding, the Owner shall be required to pay the costs, expenses and reasonable attorney's fees incurred. The Developer shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any mortgagee holding a lien on any part of the property, the Developer shall report to said mortgagee any unpaid indebtedness remaining unpaid on that property for longer than thirty (30) days after the same are due. Also, any mortgagee holding a lien on any part of the property affected by the lien may, but shall not be required to, pay any unpaid indebtedness and upon such payment such mortgagee shall be assigned the debt and lien securing same, said assignment to be without recourse or warranty.

Section 2.05 Common Areas Exempt. All Common Areas as defined in Article I, Section 1.01 hereof and all portions of the Property owned by or otherwise dedicated to any political subdivision shall be exempted from the potential lien created herein.

### ARTICLE III

#### ARCHITECTURAL CONTROL

Section 3.01 Architectural Review Committee. There is hereby established an Architectural Review Committee (the "Committee"). The Committee shall consist of three (3) members which may consist of three (3) individuals approved by the Developer. The vote of two members shall constitute action of the Committee. The members of the Committee shall be appointed by and serve at the pleasure of the Developer.

Section 3.02 Function of the Committee. The Committee shall have the sole authority and responsibility subject to LEDA Directors' ratification and Resolution to approve and regulate the design and construction of all Improvements (as that term is defined in Section 3.03 below) within the Property so as to assure compliance with the intent and purpose of this Declaration. All Improvements shall be designed and constructed strictly in accordance with the plans and specifications approved by the Committee and no Improvement shall be commenced until the plans and specifications for same (in such form, content and detail as the Committee may deem necessary) have been submitted to and approved by the Committee, which approval shall not be unreasonably withheld. Approval of plans and specifications shall be based, among other things, on the adequacy of Site dimensions, structural design, conformity and harmony of the external design with neighboring structures and Sites, the relation of finished grades and elevations to neighboring Sites, and conformity to both the specific and general intent of this Declaration. The Committee shall have the right to employ, at Developer's expense, professional consultants to assist it in discharging its duties. Any decision of the Committee in its areas of responsibility shall be final, conclusive, and binding upon all Owners and their tenants.

Section 3.03 Definition of "Improvement". An "Improvement" shall mean and include all land preparation or excavation, landscaping, buildings, structures, parking areas, trackage, fences, walls, hedges, mass plantings, poles, driveways, ponds, lakes, swimming pools, tennis courts, signs, glazing or reglazing of exterior windows and any other construction which affects the exterior color or appearance of any building or structure. The term "Improvement" specifically includes both original improvements and all later changes or alterations. It does not, however, include garden shrub or tree replacements or any other replacement or repair of any magnitude which ordinarily would be expensed in accounting practice and which does not change exterior colors or appearances.

Section 3.04 Submission of Plans and Specifications. Plans and specifications submitted shall be in triplicate and shall include the following:

- (a) A statement regarding the proposed use of the building.

- (b) A grading plan showing existing contour grades (in 1-foot contour intervals), finished spot grades, building finished floor elevation, and showing the location of all improvements, structures, walks, curbs, patios, driveways, shown at lot corners and at improvements. Lot drainage provisions sewer locations, shall be indicated as well as cut and fill details if any changes occur in the finished lot contour at any exterior boundary of the plat.
- (c) A site plan showing the location of all improvements, structures, walks, curbs, patios, driveways, fences, walls, all parking areas with number and size of parking spaces, trash receptacle location, required fire lanes, site ingress and egress, and the location of all truck doors, rail doors, personnel doors, entry doors, exterior glass or windows, and any other opening in the building.
- (d) A soil report.
- (e) A structural design.
- (f) A roof drainage plan.
- (g) All exterior elevations.
- (h) All exterior materials, textures and shapes.
- (i) Screening sizes, shapes, locations, methods and materials.
- (j) A landscaping plan, including walkways, fences, walls, elevation changes, water features, vegetation and ground cover. Plans shall include plant material list, spacing and sizes.
- (k) An irrigation plan showing area coverages and manufacturer's name and equipment type.
- (l) Utility connections, utility casements, location of any above ground equipment and proposed screening. Utilities are defined as telephone or other data transmission cable, gas, electrical, sanitary sewer, water, storm sewer.
- (m) Exterior paint, material and colors for all improvements, structures, signs, screening, fence and walls.
- (n) Exterior illumination, including location and fixture type.
- (o) A rail spur plan if applicable.
- (p) Signs (including any building marketing and tenant identification signs), sizes, shapes, locations and materials.

- (q) Specifications.
- (r) A detailed list of all requested waivers or variances.
- (s) Such other information as may be requested by the Committee.

The Committee may at its sole discretion permit plans and specifications to be submitted in scheduled phases and may, but shall not be required to, give conditional or partial approvals to plans or specifications; provided, however, no permitted delay in the submission of plans or specifications and no conditional or partial approval shall in any way obligate the Committee to any subsequent or additional approval, waiver or variance.

Section 3.05 Form of Committee Action. All actions of the Committee, including approval of plans and specifications and the granting of waivers or variances, shall be in writing, signed by at least one member of the Committee. Any approval, waiver or variance in any form other than as set forth in the immediately preceding sentence shall not be binding on the Committee or the Developer. However, if the Committee fails either to approve or to disapprove an Owner's plans and specifications (including resubmission of disapproved plans and specifications which have been revised) within forty-five (45) days after they have been submitted to it (provided that all required information has been submitted), it shall be conclusively presumed that said plans and specifications have been approved; subject, however, to the conditions, covenants, restrictions and reservations contained elsewhere herein. The Committee shall notify the Owner in writing upon receipt of all required plans and specifications and the aforesaid forty-five (45) day period shall commence on the date of such notification.

Section 3.06 Limitation of Liability. Neither the Developer, the Committee nor any of the members of such Committee shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any Owner of land affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications. Further, the construction of any Improvement shall be the sole responsibility of the Owner and any recommendation with respect to any plans or specifications or the means or method of construction made by the Committee or any member thereof shall not alter the Owner's responsibility for the safe and proper design and construction of said Improvement; nor shall it give rise to any claim by anyone against the Developer or Committee or any member thereof for any defect in design or construction of any Improvement.

Section 3.07 Enforcement by Committee. No Improvement shall be constructed, erected, placed, altered (by addition or deletion), maintained or be permitted to remain on any Site except in accordance with plans and specifications which have been approved by the Committee. Any Improvement not designed and constructed in accordance with plans and specifications approved by the Committee shall conclusively be deemed in violation of this Declaration and shall be removed or corrected by the Owner to the satisfaction of the Committee. In addition to any other remedy provided for in this Declaration, the Developer may bring suit to enjoin the commencement or continuance of construction of any Improvement for which the Committee has not approved plans and specifications and may also bring suit to enjoin the continuance of construction of any Improvement that is not being constructed in accordance with plans and specifications previously approved by the Committee.

ARTICLE IV  
REGULATION OF USE AND IMPROVEMENTS WITHIN  
THE LUBBOCK RAILPORT

Section 4.01 Property Involved. The provisions of this Article IV shall apply only to Building Sites within the property described in Exhibit A.

Section 4.02 Permitted Uses. Sites within the Lubbock Railport may be used only for those purposes designated in Article 5190.6, Texas Revised Civil Statutes as amended.

Section 4.03 Prohibited Uses. The following use of Sites within the Initial Tract are prohibited:

- (a) Any use which is offensive by reason of odor, fumes, dust, smoke, noise or pollution, or which constitutes a nuisance or is hazardous by reason of fire or explosion, or injurious to the reputation of any Site in the Initial Tract.
- (b) Any use which is in violation of the laws of the United States, the State of Texas, or any other governmental authority having jurisdiction over the Initial Tract, and, in particular Article 5190.6, Texas Revised Civil Statutes.
- (c) Overnight parking of campers, mobile homes, boats, or motor homes.
- (d) Any use which involves the raising, breeding, or keeping of any animals or poultry.
- (e) Uses not otherwise permitted in Section 4.02 above.

Section 4.04 Building Setback Lines. No building, fence, wall or other structure or any part thereof, shall be erected or placed within the following setback lines:

- (a) Thirty feet (30') from any street right-of-way.

(b) Ten feet (10') from the side and rear property line.

(c) Seventeen feet (17') from the right-of-way line of any railroad spur or lead track, or as approved by the servicing railway organization.

Section 4.05 Site Coverage. No more than seventy percent (70%) of any Building Site shall be covered by buildings or any lesser amount as defined in the Zoning Ordinance of the City of Lubbock.

Section 4.06 No Subdivision of Sites. No Building Site shall be subdivided or resubdivided.

Section 4.07 Parking. Parking shall be governed as follows:

(a) Adequate off-street parking shall be provided by each Owner. If parking needs increase, additional off-street parking shall be provided by the Owner. No parking shall be permitted on any street or at any place other than on the on-site paved parking spaces to be provided by the Owner of a Building Site. Each Owner and tenant shall be responsible for compliance with the foregoing by his employees and Visitors.

(b) The location, number and size of parking spaces shall meet the requirements defined in the Zoning Ordinance of the City of Lubbock.

(c) All parking areas shall be paved with concrete or asphalt having strength and durability appropriate for the planned use.

(d) All parking areas shall be illuminated.

Section 4.08 Loading & Receiving Areas. Loading and receiving areas shall be governed as follows:

(a) All loading and receiving areas shall be paved with concrete or asphalt having the strength and durability appropriate for the planned use.

Section 4.09 Outside Storage. No materials, supplies, equipment, finished or semi-finished products or articles of any nature shall be permitted to be stored on any area exterior to the building without the approval of the Architectural Review Committee..

Section 4.10 Solid Waste Receptacle. Each Building Site shall have a minimum of one commercial solid waste container. Said Commercial waste container shall be maintained in good mechanical condition. All waste containers shall be emptied as often as necessary so as to prevent such container from overflowing and at least once every seven days if such container is used for deposit of garbage or other putrescible material. All garbage or putrescible material must be bagged or wrapped so as to be air tight before depositing in the waste containers. Lids and doors of waste containers are to be kept in a closed position at all times except during times when such container is being emptied or filled.



Section 4.11 Landscaping. All areas of the lot that are not built upon (building, drives or parking lot) are to be landscaped; minimum softscape/landscape lot coverage to be 20%. Each Building Site, including portions thereof located within any setback lines or easement areas and including the area between the property line and any adjacent street curb, shall be landscaped in accordance with landscaping plans submitted to and approved by the Architectural Review Committee. Such landscaping plan shall include information regarding the total Site, scale, type of sodding, seeding, trees, shrubs and plants, their size and locations. The landscape plan shall provide information regarding other customary landscape treatment for the entire Site, including fences, walls, drainage and screening. All landscaping shall be undertaken and completed in accordance with such approved plan and said plan may not be altered, amended or revised without the prior approval of the Architectural Review Committee. Further, it shall be the responsibility of the Owner of a Building Site to maintain all landscaped areas of his property including those portions lying within setback lines and easement areas .

All landscaping required hereunder or otherwise to be provided on any Building Site shall be completed within sixty (60) days after the substantial completion of construction of any building on the Building Site; provided, however, if weather conditions do not permit installation at such time, then such landscaping shall be completed as soon thereafter as weather conditions permit. If any Owner fails to undertake and complete the required landscaping, the Developer may at its option, and after ten (10) days notice to said Owner, complete same in accordance with previously approved landscape plans or if no landscape plans have been approved, in accordance with Developer's own plan as approved by the Architectural Review Committee. If the Developer performs any landscape work, the Owner of the Building Site on which such work is performed shall be liable for the cost of such work and shall promptly reimburse the Developer for such cost. If such Owner shall fail to reimburse the Developer within ten (10) days after receipt of a statement for such work from the Developer, then said indebtedness shall be a debt of Owner and shall constitute a lien against the Building Site on which said work was performed. This debt shall bear interest at the rate and be subject to the costs as provided for in Section 2.03 above and shall be collectable in the same manner as provided for therein. Similarly, the lien referred to herein shall have the same attributes as the lien set forth in Section 2.04 above, which provisions are incorporated herein by reference, and the Developer shall have identical powers and rights with respect to said lien as it has with respect to the lien described in Section 2.04 including, but not limited to, the right to release, subordinate or foreclose same.

Section 4.12 Signs. It is the desire and intention of the Developer to maintain a signage standard for the Railport. All entrance and tenant identity signs shall be approved by the architectural review committee. Generally, signs shall be governed as follows:

(a) No sign (including, but not limited to, a building marketing sign or a tenant identification sign) shall be permitted on any Building Site without the prior approval of the Architectural Review Committee as to size, number, location, design and color. Normally, such approval will be limited to those signs which:

- (1) Identify the name and business of the occupant, or which give directions, or which offer the premises for sale or for lease.
- (2) Are not of an unusual size or shape when compared to the building or buildings on the premises.

- (b) Any permitted sign shall conform to all governmental ordinances and regulations applicable to same.

Section 4.13 Utility Connections. All utility connections and installation, including electrical and telephone or other data transmission cable, shall be underground.

Section 4.14 Height Restrictions. No building or appurtenance, including, but not limited to, water towers, standpipes, penthouses, elevators or elevator equipment, stairways, ventilation fans, or similar equipment required to operate and maintain any building, fire or parapet walls, skylights, tanks, cooling or other towers, wireless radio or television masts or antennas, shall exceed a height equal to the the Federal Aviation Administration (FAA) height restrictions for proposed construction in the vicinity of the Lubbock Preston Smith International Airport. The maximum building height in this calculation will be measured as if the finish floor elevation were the same as the top of the curb elevation at the midpoint of the lot along the front yard of the Site. Height restrictions must be pre-approved by FAA.

Section 4.15 On-Site Drainage. No water shall be drained or discharged from any Building Site, except in accordance with grading plans approved by the Architectural Review Committee. Further no Owner shall interfere with the drainage established by the grading plan for the remainder of the Property or any other property adjacent to such Site. All roof drainage shall flow from the roof to the ground through a downspout interior to the building's outer walls.

Section 4.16 Building Exteriors. All colors and materials on the building exteriors must be approved by the Architectural Review Committee.

Water towers, storage tanks, processing equipment, stand fans, skylights, cooling towers, communication towers, solar equipment and any other structure or equipment shall be architecturally compatible with the building or shielded from view from any public street by means and materials approved by the Architectural Review Committee and the FAA where applicable.

Section 4.17 Roofs. Roof materials shall be approved by the architectural review committee.

Section 4.18 Driveways. The following shall govern driveways serving a Building Site:

- (a) Driveways shall be located no closer than twenty-five feet (25') to the corner of an intersecting Street. Distances shall be measured from the tangency line of the curb radius to the tangency line of the closest driveway curb radius.
- (b) All driveways shall have a minimum radius of twenty feet (20') and a maximum width of forty feet (40').
- (c) Driveways shall be paved with concrete or asphalt having a strength and durability appropriate for the intended use.

Section 4.19 Exterior Lighting. Exterior lighting shall be governed as follows:

All exterior lighting shall be compatible and harmonious throughout the Property and shall be designed, installed, directed, altered and maintained in accordance with plans and Specifications submitted to and approved by the Architectural Review Committee.

Section 4.20 Approvals, Waivers and Variances. It is the intent of this Declaration that the regulation of Sites within the Initial Tract as set forth in this Article IV be strictly adhered to. Notwithstanding that intent, it is recognized that particular circumstances may from time to time and on a case-by-case basis necessitate the waiving or varying of certain of the requirements set out in this Article IV. Therefore, for good cause shown, the Architectural Review Committee may, in its sole discretion, and on a case-by-case basis waive or vary the requirements and standards set forth in this Article IV so long as such waiver or variance does not violate the overall scheme and intent of this Article IV. Any waiver or variance, when granted, shall be final and binding upon all Owners. The granting of a waiver or variance to one Owner shall not automatically entitle another Owner to the same waiver or variance, it being understood that each request for a waiver or variance shall be treated on its own merits. Further, the granting of a waiver or variance to an Owner shall not automatically entitle that Owner to any subsequent or additional waiver or variance. All approvals, waivers and variances by the Committee shall be in writing and signed by at least one member of the Committee and, if requested by the applicant, shall be in recordable form. Any approval, waiver or variance in any form other than as set forth in the immediately preceding sentence shall not be binding on the Committee or the Developer.

## ARTICLE V

### DEVELOPER'S RIGHT OF RECONVEYANCE

Section 5.01 Right of Repurchase. If an Owner of a Building Site, his successors or assigns unless expressly excepted by the terms of its Performance Agreement, fails to commence construction of a building thereon within two (2) years from the date of the deed conveying the Building Site from the Developer to the Owner, then in such event, the Developer, its successors or assigns, at any time thereafter prior to commencement of construction as defined in Section 5.03, shall have the continuing right to require reconveyance of the Building Site by giving the Owner written notice of its requirement to reconvey. Upon the exercise of the Developer's reconveyance right, the Owner shall reconvey the Building Site to the Developer within thirty (30) days after the date of the Developer's notice of intent. The reconveyance deed from the Owner to the Developer shall be by Special Warranty Deed containing no exceptions other than the exceptions contained in the original deed from the Developer to the Owner. Ad valorem taxes and other assessments against the Building Site shall be prorated on and as of the date of such reconveyance. The rights of the Developer to require conveyance of the Building Site shall be specifically enforceable and shall be binding upon the original Owner, his successors and assigns, and shall be considered a covenant running with the Building Site. This provision shall not be enforceable against holders as options to purchase or rights of first refusal until such time as the option or right is exercised or based upon the terms of the existing Performance Agreement whereby failure to perform results in termination of the option.

Section 5.02 Release and Waiver. Upon commencement of construction of a building on the Building Site within the said two-year period, the reconveyance right provided in Section 5.01 above shall terminate and the Developer shall upon receipt of a written request from Owner, execute a release of such repurchase right in recordable form. In addition, by written instrument executed by Developer, Developer may, in its sole discretion, extend the two-year period within which construction of a building must commence; or otherwise limit or waive entirely its right of repurchase under Section 5.01.

Section 5.03 Definition of "Commencement of Construction". For purposes of Sections 5.01 and 5.02 above, "commencement of construction of a building" shall mean that the Owner of the Building Site has obtained approval of the Architectural Review Committee as set forth in Article III hereof; obtained building permits from the appropriate governmental authorities authorizing construction of a building and improvements as approved by the Architectural Review Committee; entered into a construction contract with a contractor licensed to do business in Texas for the construction of a building; and expended at least the sum of one hundred thousand dollars (\$100,000.00) pursuant to such construction contract for on-site construction work.

## ARTICLE VI

### EXTENSION OF DECLARATION TO INCLUDE ADDITIONAL PROPERTY

Section 6.01 Means of Extending this Declaration to Additional Property. The Developer may add to the scheme of this Declaration any additional Property located within the boundaries set out on Exhibit "A" attached hereto and incorporated herein by reference, whether or not the Property to be added is contiguous to other properties covered by this Declaration. This may be done by the Developer filing a Supplementary Declaration (herein so called) in the recording office where this Declaration is recorded, at which time, the scheme of this Declaration shall be extended to the property so added. The property so added shall then come within the definition of "Property" as set forth in Article I, Section 1.01 hereof.

Section 6.02 Contents of a Supplementary Declaration. Each Supplementary Declaration shall include a legal description of the property so added and shall designate that Property with the term "Area" followed by an Arabic numeral and "Section" followed by another Arabic numeral so as to differentiate each respective Area and Section from other Areas and Sections within the Property. Each Supplementary Declaration shall also contain covenants and restrictions to which the added property shall be subject. Such covenants and restrictions may contain additions, deletions and modifications from those contained in Article IV of this Declaration as may be necessary to reflect the different character or use, if any, of the added property. In no event, however, shall such Supplementary Declaration revoke, modify or in any way change the provisions of the other Articles hereof, nor shall any Supplementary Declaration revoke, modify or add to the covenants established by Article IV of this Declaration for the Initial Tract. **It is the intention of the Developer that the requirements established by this Declaration are to replace any covenants established by any previously filed Declaration for the Initial Tract.**

Section 6.03 Developer's Right to Exempt Additional Property. At any time prior to the time a property has been added to this Declaration, the Developer may, at its sole and unimpaired discretion, exempt that property from being subject to being added to this Declaration. This shall be done by Developer filing in the recording office where this Declaration is recorded a written

instrument describing the property to be exempted and stating that said property shall not thereafter be subject to being added to the scheme of this Declaration. Upon such filing no person (including the Developer) shall have the right to add to this Declaration the property so exempted without the prior written consent of the owner thereof.

## ARTICLE VII

### ENFORCEMENT OF COVENANTS AND ASSIGNMENT OF DEVELOPER'S RIGHTS AND DUTIES

Section 7.01 Abatement and Suit. The conditions, covenants, restrictions and reservations contained in this Declaration shall run with the land and be binding upon and inure to the benefit of the Developer and the Owners of every Building Site within the Property. Violation of any condition, covenant, restriction or reservation herein contained shall give to the Developer the right to enter upon the portion of the Property wherein said violation or breach exists and to summarily abate and remove at the expense of the Owner any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions of this Declaration, or to institute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these conditions, covenants, restrictions and reservations, to enjoin or prevent them from doing so, to cause said violation to be remedied or to recover damages for said violation.

The conditions, covenants, restrictions and reservations of this Declaration may be enforced as herein provided only by Developer or the Architectural Review Committee; provided, however, that if an Owner notifies Developer of a claimed violation of these conditions, covenants, restrictions and reservations and Developer fails to act within sixty (60) days after receipt of such notification, then and in that event only, an Owner may separately, at his own cost and expense, enforce the conditions, covenants, restrictions and reservations herein contained.

Section 7.02 Deemed to Constitute a Nuisance. Every violation of this Declaration or any part thereof is hereby declared to be and constitute a nuisance, and every public or private remedy allowed therefor by law or equity against an Owner, tenant or occupant shall be applicable against every such violation and may be exercised by Developer. In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provision thereof, the losing party or parties shall pay the reasonable attorneys' fees of the prevailing party or parties in the amount as may be fixed by the court in such proceedings.

Section 7.03 Remedies Cumulative. All remedies provided herein or at law or in equity shall be cumulative and not exclusive. The failure of the Developer to enforce any of the conditions, covenants, restrictions or reservations herein contained shall in no event be deemed to be a waiver of the right to do so for subsequent violations or of the right to enforce any other conditions, covenants, restrictions or reservations and Developer shall not be liable therefor.

Section 7.04 Certificate of Compliance. Upon payment of a reasonable fee not to exceed fifty dollars (\$50.00) and upon written request of any Owner, tenant, mortgagee, prospective Owner, prospective tenant or prospective mortgagee of a Building Site, Developer shall issue and acknowledge a certificate in recordable form setting forth the amounts of any unpaid assessments, if

any, against that Building Site; and setting forth generally whether or not said Owner is in violation of any of the terms and conditions of this Declaration. Said written statement shall be conclusive upon the Developer in favor of the persons who rely thereon in good faith. Such statement shall be furnished by Developer within a reasonable time, but not to exceed fifteen (15) business days from the receipt of a written request for such certificate. In the event Developer fails to furnish such certificate within fifteen (15) business days, it shall be conclusively presumed that there are no unpaid assessments relating to the Building Site as to which the request was made and that said Building Site is in conformance with all of the terms and conditions of this Declaration.

Section 7.05 Assignments of Developer's Rights and Duties. Any and all of the rights, powers and reservations of Developer herein contained may be assigned by Developer to any person, corporation, association or other entity which will assume any or all of the duties of Developer hereunder, provided such an assignment complies with the provisions of Article 5190.6 as amended, its corporate purposes, and with City of Lubbock Approval. To be effective, such assignment must be in writing and specifically refer to the rights, powers and reservations of the Developer hereunder which are being assigned. Upon acceptance of such assignment by any such person or entity, said assignee shall, to the extent of such assignment, assume Developer's duties hereunder and shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Developer herein. Upon such assignment, and to the extent thereof, Developer shall be relieved from all liabilities, obligations and duties hereunder from and after the date of such assignment. The term "Developer", as used herein, includes all such assignees and their heirs, successors and assigns.

Anything contained elsewhere herein to the contrary notwithstanding, the mere conveyance or transfer of ownership of land within the Property by Developer to any third party, whether by deed or other instrument of conveyance, shall in no way convey any right, power or reservation of Developer hereunder.

Section 7.06 Relinquishment of Rights by or Dissolution of Developer. If at any time: (i) the Developer notifies the City of Lubbock of its intent to cease to exist and has not made an assignment of the rights, powers and reservations of Developer herein contained; (ii) the Developer or the assignee of its rights, powers and reservations hereunder, files a written notice in the recording office where this Declaration is filed that it has relinquished its rights, powers and reservations hereunder to the City of Lubbock or its designee and complies with the statutory requirements as applicable to Texas not-for-profit corporations; (iii) the Developer ceases to be an Owner (as that term is defined in Article I, Section 1.01 above) of land within the Property, then, upon the occurrence of any such event, continuing Ownership shall be determined by the City of Lubbock. At such point, the Owners of a majority of the acreage (exclusive of Common Areas) within the Property may organize a Property owner's association to be incorporated under the laws of the State of Texas as a non-profit 501(c)(4) tax exempt corporation, which association shall petition the City to and assume all of the Developer's rights, powers and reservations hereunder. Such an association shall have as its members all of the Owners of the Building Sites within the Property. Each member shall be entitled to one vote for each one thousand (1,000) square feet (or major fraction thereof) of land owned within the Property by such member. Upon such approval and transfer by the City, the association shall assume Developer's duties hereunder and shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by the Developer herein.

ARTICLE VIII  
MISCELLANEOUS PROVISIONS

Section 8.01 Term. This Declaration, every provision hereof and every covenant, condition, restriction and reservation contained herein, shall continue in full force and effect for a term beginning on the date this Declaration is recorded and continuing through and including December 31, 2037, and shall thereafter be automatically extended for successive periods of five (5) years until terminated as provided in Section 8.02 below.

Section 8.02 Termination and Modification.

(a) Article IV of this Declaration (or any equivalent Article contained in any Supplementary Declaration), dealing with the regulation of uses and improvements, may be terminated, extended, modified or amended as to that area of the Property, upon a vote of the Owners owning a majority of the acreage (exclusive of the Common Areas) within that area of the Property voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Owners at least thirty (30) days in advance and shall set forth the purpose of the meeting; provided, however, that during the initial period of this Declaration, to-wit, prior to December 31, 2037, no such termination, extension, modification or amendment shall be effective without the written approval of Developer. Such termination, extension, modification or amendment shall be immediately effective upon recording a proper instrument in writing, executed and acknowledged by such Owners (and by Developer as required herein) in the recording office where this Declaration is filed. All other Articles of this Declaration or any provision thereof, or any covenant, condition, restriction or reservation contained herein, may be terminated, extended, modified or amended as to the whole of said Property or any portion thereof, upon a vote of the Owners owning a majority of the acreage (exclusive of the Common Areas) within the Property voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Owners at least thirty (30) days in advance and shall set forth the purpose of the meeting; provided, however, that during the initial period of this Declaration, to-wit, prior to December 31, 2037, no such termination, extension, modification or amendment shall be effective without the written approval of Developer. Such termination, extension, modification or amendment shall be immediately effective upon recording a proper instrument in writing, executed and acknowledged by such Owners (and by Developer as required herein) in the recording office where this Declaration is filed.

(b) If for any reason the Developer's rights under the Option expire or are terminated pursuant to the terms of said Option, then in such event any portion of the Property which has not been conveyed by the Developer at or prior to the time of such expiration or termination shall no longer be subject to this Declaration.

Section 8.03 Notices. All notices, approvals, or other communications required or permitted to be given under this Declaration shall be in writing and shall be considered as properly given or made: (i) on the second day after being mailed from within the United States by first class United States mail, certified mail, return receipt requested, postage prepaid and addressed to the person to whom it is intended at the address of said person as set forth below, whether actually received or not; or (ii) when actually received by the person to whom it is intended if given in any other manner. The mailing address for a Building Site

Owner shall be the address of said Owner as shown on the tax rolls of the city having taxing authority over the Building Site. The mailing address for the Developer shall be in care of Lubbock Economic Development Alliance, Wells Fargo Center, 1500 Broadway, 6th Floor Lubbock, Texas 79401: Lubbock Railport Manager. Developer may change its address by filing a written instruction in the recording office where this Declaration is filed stating its new address.

Section 8.04 Parties Bound. The terms and provisions contained in this Declaration shall bind and inure to the benefit of the Developer, the Owners of all Building Sites located within the Property, the Owners of additional property made subject to this Declaration and their respective heirs, successors, personal representatives and assigns. Notwithstanding the above, upon the sale of a Building Site, the Owner so selling shall not have any further liability for the obligations thereon which shall accrue against that Building Site after the date of the conveyance; provided, however, that nothing herein shall be construed so as to relieve an Owner of any Building Site from any liabilities or obligations incurred prior to such sale pursuant to this Declaration. Furthermore, any such sale shall not enlarge or extend the time for commencement of construction of a building upon a Building Site nor modify Developer's right of repurchase pursuant to Article V hereof.

Section 8.05 Severability of Provisions. If any Article, Section, subsection, paragraph, sentence, clause or phrase of this Declaration or any Supplementary Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining Articles, Sections, subsections, paragraphs, sentences, clauses and phrases of this Declaration or any Supplementary Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that the remaining Articles, Sections, subsections, paragraphs, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more of the other Articles, Sections, paragraphs, sentences, clauses or phrases shall become or be illegal, null or void.

Section 8.06 Number and Gender. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number (singular or plural) and any other gender (masculine, feminine or neuter) as the context requires.

Section 8.07 Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration, or any part thereof.

Section 8.08 Applicable Law and Venue. This Declaration and the rights and obligations created hereby shall be construed in accordance with the laws of the State of Texas and venue for the enforcement of same shall lie exclusively in Lubbock County, Texas, and any person or entity affected hereby expressly waives the right to be sued elsewhere.



WITNESS THE EXECUTION hereto as of the date of acknowledgment by each of the parties hereto.

LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC.

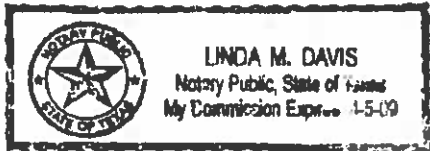
By: [Signature]  
Its: Gary C. Lawrence  
Chief Executive Officer and President

MOLINOS ANAHUAC INC.

By: [Signature]  
Gary C. Lawrence pursuant to Agreement Regarding  
Conveyance of Land, Easement, Covenants and  
Restrictions and Power of Attorney Coupled with an  
Interest, filed as Document 2007002980, Lubbock, County,  
Texas

STATE OF TEXAS §  
COUNTY OF LUBBOCK §

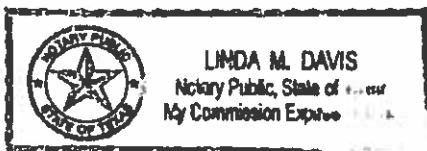
This instrument was acknowledged before me this 20th day of August, 2007, by Gary C. Lawrence, Chief Executive Officer and President of Lubbock Economic Development Alliance, Inc., a Texas non-profit corporation, on behalf of said corporation.



[Signature]  
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS §  
COUNTY OF LUBBOCK §

This instrument was acknowledged before me this 20th day of August, 2007, by Gary C. Lawrence pursuant to Agreement Regarding Conveyance of Land, Easement, Covenants and Restrictions and Power of Attorney Coupled with an Interest, filed as Document 2007002980, Lubbock, County, Texas.



[Signature]  
NOTARY PUBLIC, STATE OF TEXAS

## EXHIBIT "A"

**Tract One:** THE SURFACE ESTATE ONLY in and to a 170.53-acre tract of land located in Section 38, Block D, Lubbock County, Texas, being further described as follows:

BEGINNING at a "PK" nail found at the Southwest corner of this tract which bears North 88°33'49" West a distance of 5287.13 feet from the Southeast corner of said Section 38;

THENCE North 01°04'04" East, along the centerline of a paved county road (old U.S.87), a distance of 1825.72 feet to a point of intersection;

THENCE Northeasterly, along said centerline, along a curve to the right, said curve having a radius of 2864.60 feet, a central angle of 10°07'00", a chord bearing of North 06°08'40" East, and a chord distance of 505.14 feet to a point of intersection;

THENCE North 11°12'08" East, continuing along said centerline a distance of 309.80 feet to a point of intersection;

THENCE Northeasterly, continuing along said centerline, along a curve to the left, said curve having a radius of 2864.99 feet, a central angle of 03°37'14", a chord bearing of North 09°24'14" East, and a chord distance of 181.01 feet to a point of intersection;

THENCE South 88°46'27" East, 50.31 feet pass a 1/2" iron rod with cap found in the East right-of-way line of said county road, continuing for a total distance of 2531.92 feet to a 1/2" iron rod with cap set for the Northeast corner of this tract;

THENCE South 01°13'33" West, at 2773.02 feet pass a 1/2" iron rod with cap found in the North right-of-way line of FM Highway No. 1294, continuing for a total distance of 2823.02 feet to a point in the South line of said Section 38;

THENCE North 88°33'49" West, along the South line of said Section 38 a distance of 2649.62 feet to the POINT OF BEGINNING.

**Tract Two:** THE SURFACE ESTATE ONLY in and to a 131.12-acre tract of land located in Section 38, Block D, Lubbock County, Texas, being the North portion of that 301.648-acre tract of land recorded in Volume 7108, page 73, Real Property Records of Lubbock County, Texas, being further described by metes and bounds as follows:

BEGINNING at a cross chiseled on concrete found in the centerline of a paved county road (old U.S. 87), at the Southwest corner of this tract which bears North 88°33'49" West a distance of 5179.77 feet and North 01°26'11" East a distance of 2813.69 feet from the Southeast corner of said Section 38, Block D, Lubbock County, Texas;

THENCE Northeasterly, along said centerline, along a curve to the left, said curve having a radius of 2864.99 feet, a central angle of 05°54'38", a chord bearing of North 04°38'18" East, and a chord distance of 295.42 feet to a point of intersection;

THENCE North 01°44'07" East, continuing along said centerline a distance of 343.52 feet to a point of curvature;

THENCE Northeasterly, continuing along said centerline, along a curve to the right, said curve having a radius of 1432.39 feet, a central angle of 25°00'00", a chord bearing of North 14°05'40" East, and a chord distance of 620.05 feet to a point of intersection;

THENCE North 26°37'44" East, continuing along said centerline a distance of 574.36 feet to a point of curvature;

THENCE Northeasterly, continuing along said centerline, along a curve to the left, said curve having a radius of 1273.24 feet, a central angle of 32°52'21", a chord bearing of North 10°12'07"

East, and a chord distance of 720.52 feet to a point of intersection in the North line of said Section 38;

THENCE South  $88^{\circ}44'36''$  East, along the North line of said Section 38, at 50.41 feet pass a 1/2" iron rod with cap set in the East right-of-way line of said county road, continuing for a total distance of 2014.38 feet to a 1/2" iron rod with cap set for the Northeast corner of this tract;

THENCE South  $01^{\circ}13'33''$  West, a distance of 2472.32 feet to a 1/2" iron rod with cap found at the Southwest corner of this tract;

THENCE North  $88^{\circ}46'27''$  West, a distance of 2531.92 feet to the POINT OF BEGINNING.

**FILED AND RECORDED**  
OFFICIAL PUBLIC RECORDS  
*Kelly Pinion*  
Kelly Pinion, County Clerk  
Lubbock County TEXAS  
August 22, 2007 03:02:42 PM  
FEE: \$87.00

2007034660

## EXHIBIT D

### MEMORANDUM OF OPTION

THIS MEMORANDUM OF OPTION (this "Memorandum"), effective as of \_\_\_\_\_, 2016, is made by and among MARKET LUBBOCK ECONOMIC DEVELOPMENT CORPORATION ("Market Lubbock"), having an address of 1500 Broadway, 6th Floor, Lubbock, Lubbock County, Texas 79401, and SEVERN PEANUT COMPANY, INC. ("Severn"), having an address of 413 Main Street, Severn, Northampton County, North Carolina 27877.

### RECITALS

A. Market Lubbock and Severn have entered into that certain Performance Agreement, dated \_\_\_\_\_, 2016 (the "Agreement"), pursuant to which Market Lubbock has agreed to convey to Severn certain real property located in Lubbock County, Texas, as described on Exhibit "A" attached hereto and incorporated herein, upon certain terms and conditions.

B. Market Lubbock and Severn desire to execute this Memorandum to provide notice of Market Lubbock's rights, titles, and interest under the Agreement in and to the Premises.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Market Lubbock and Severn agree as follows:

1. **Definitions.** Unless the context shall otherwise require, capitalized words used in this Memorandum shall have the meanings assigned to them in the Agreement.

2. **Conveyance.** The Premises have been conveyed to Severn pursuant to the terms and conditions of the Agreement, subject to certain rights and restrictions set forth in the Agreement, which is incorporated by reference in its entirety into this Memorandum. In the event of any conflict or inconsistency between this Memorandum and the Agreement, the Agreement shall control.

3. **Option.** If, within ten years from the date hereof, Severn attempts to assign the Agreement to a party who is not an affiliate of Severn or a Qualified Third Party Assignee, as defined in the Agreement, or abandons or vacates the Property, Market Lubbock shall have the following options:

OPTION 1: Market Lubbock or its designee may exercise an exclusive ninety day option to purchase the Property from Severn in accordance with the terms of the Agreement; or

OPTION 2: Market Lubbock or its designee may require that Severn pay a stipulated sum as set forth in the Agreement and, if Severn fails to do so within one hundred eighty days from the date Market Lubbock exercises Option 2, the ownership of the Property, including all improvements situated thereon, shall revert back to Market Lubbock.

4. **Sole Purpose of Memorandum.** The sole purpose of this Memorandum is to give notice of the Agreement and the terms of the option and reversion. This Memorandum shall not be deemed, in any way, to amend or alter the terms of the Agreement.

*[SIGNATURE PAGE FOLLOWS]*

*[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, this Memorandum of Option has been duly executed by the parties as of the day first above written.

MARKET LUBBOCK ECONOMIC  
DEVELOPMENT CORPORATION

By: *John Osborne*  
John Osborne (Name)  
President & CEO (Title)

STATE OF TEXAS

COUNTY OF Lubbock

§  
§  
§

This instrument was acknowledged before me on the 30th day of August 2016, by JOHN OSBORNE, PRESIDENT & CEO of Market Lubbock Economic Development Corporation, a Texas non-profit corporation, on behalf of said corporation.



*Linda M. Davis*  
Notary Public, State of Texas

SEVERN PEANUT COMPANY, INC.

By:

[Signature]  
Jeffrey T. Vinson (Name)  
CEO & Treasurer (Title)

STATE OF NORTH CAROLINA §

COUNTY OF Northampton §

This instrument was acknowledged before me on the 25<sup>th</sup> day of August, 2016, by Jeffrey T. Vinson, CEO & Treasurer of Severn Peanut Company, Inc., a North Carolina corporation, on behalf of said corporation.

[Signature]  
Notary Public, State of North Carolina  
Commission Expires July 17, 2020

## EXHIBIT "A" LEGAL DESCRIPTION

### TRACT I:

Tract B, Lubbock Railport, an Addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat, and/or dedication deed thereof, recorded in/under Clerk's File No. 2014024323, Official Public Records, Lubbock County, Texas.

### TRACT II:

METES AND BOUNDS DESCRIPTION of a 2.50 acre tract of land located in Section 38, Block D, Lubbock County, Texas, being further described as follows:

BEGINNING at a 1/2" iron rod with cap found at the Northeast corner of Tract B, Lubbock Railport, an Addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof, recorded in/under County Clerk's File Number 2014024323 of the Official Public Records of Lubbock County, Texas, and the Southeast corner of this tract which bears N. 88°33'49" W. a distance of 3144.40 feet and N. 01° 08'50" E. a distance of 740.00 feet from the Southeast corner of Section 38, Block D, Lubbock County, Texas;

THENCE N. 88°33'49" W., along the Northern boundary of said Tract "B", a distance of 327.84 feet to a 1/2" iron rod with cap found in the East right-of-way line of North Fir Avenue as described under County Clerk File Number 2013007060 of the Official Public Records of Lubbock County, Texas, at the Northwest corner of said Tract "B" and the Southwest corner of this tract;

THENCE N. 01°21'47" E., along said East right-of-way line, a distance of 332.81 feet to a 1/2" iron rod with cap found at the Northwest corner of this tract;

THENCE S. 88°33'49" E. a distance of 326.59 feet to a 1/2" iron rod with cap found at the Northeast corner of this tract;

THENCE S. 01°08'50" W., a distance of 332.81 feet to the Point of Beginning.

Contains: 108,900 square feet

### TRACT III:

METES AND BOUNDS DESCRIPTION of a 2.698 acre tract out of a 170.5 acre tract as described under County Clerk File No. 2007001226 of the Official Public Records of Lubbock County, Texas, located in Section 38, Block D, Lubbock County, Texas, being further described as follows:

BEGINNING at a 1/2" iron rod with cap marked "HRA" found at the Southeast corner of this tract, which bears N. 88° 33'49" W. a distance of 3144.41 feet and N. 01°08'50" E. a distance of 1072.82 feet from the Southeast corner of Section 38, Block D, Lubbock County, Texas;

THENCE N. 88°33'49" W. a distance of 326.59 feet to a 1/2" iron rod with cap marked "HRA" found in the East right-of-way line of North Fir Avenue as described under County Clerk File No. 2013007060 of the Official Public Records of Lubbock County, Texas, at the Southwest corner of this tract;

THENCE N. 01°21'47" E., along said East right-of-way line, a distance of 354.41 feet to a 1/2" iron rod with cap marked "HRA" set for a point of curvature;



THENCE Northeasterly, continuing along said East right-of-way line around a curve to the right, said curve having a radius of 21.00 feet, a central angle of  $17^{\circ}18'40''$ , tangent lengths of 3.20 feet and a chord distance of 6.32 feet to a 1/2" iron rod with cap marked "HRA" set for the Northwest corner of this tract;

THENCE S.  $88^{\circ}33'49''$  E. a distance of 323.30 feet to a 1/2" iron rod with cap marked "HRA" set for the Northeast corner of this tract;

THENCE Southeasterly around a curve to the right, said curve having a radius of 727.19 feet, a central angle of  $03^{\circ}05'40''$ , a chord bearing of S.  $00^{\circ}17'12''$  E. and a chord distance of 39.27 Feet to a 1/2" iron rod with cap marked "HRA" set for a point of intersection;

THENCE S.  $01^{\circ}08'50''$  W. a distance of 321.41 feet to the Point of Beginning.

Contains: 117,527 square feet.