

R-23- 154

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE LEASE AGREEMENT TO LEASE CERTAIN REAL PROPERTY LOCATED AT 1400 MARYLAND AVENUE IN THE CITY OF NORTH LITTLE ROCK, ARKANSAS FROM THE NORTH LITTLE ROCK AIRPORT COMMISSION; AND FOR OTHER PURPOSES.

WHEREAS, Arkansas Code Ann. § 14-54-302 authorizes the City to enter into lease agreements when authorized by a resolution approved by a majority vote of the City Council present and participating; and

WHEREAS, the North Little Rock Electric Department (NLRED) wishes to lease property located at 1400 Maryland Avenue, more particularly described in the Lease Agreement attached hereto as Exhibit A; and

WHEREAS, the owner of the property, the North Little Rock Airport Commission, has agreed to lease the property to the NLRED for a period of forty (40) years for an annual payment to be calculated according to the terms of the Agreement; and

WHEREAS, it is in the best interest of the City and its residents to enter into the Lease Agreement with the North Little Rock Airport Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execute a Lease Agreement (substantially similar to Exhibit A attached hereto) and to lease the premises at 1400 Maryland Avenue from the North Little Rock Airport Commission.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Terry C. Hartwick

SPONSOR:

ATTEST:

TERRY C. Hartwick
Mayor Terry C. Hartwick

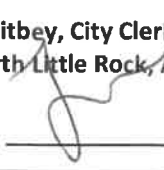
Diane Whitbey, City Clerk

APPROVED AS TO FORM:



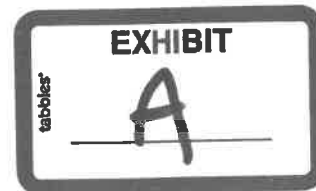
Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/kt

| | | | | |
|--|--|------|----|------|
| FILED | <u>10.26</u> | A.M. | __ | P.M. |
| By | <u>Amy Fields, CA</u> | | | |
| DATE | <u>9/8/23</u> | | | |
| Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas | | | | |
| RECEIVED BY | _____  | | | |

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enforce rules and regulations with respect to all common areas including but not limited to limitations on use.

8. **INSURANCE BY LESSEE.** Lessee, a governmental entity, has tort immunity pursuant to Arkansas law, and is not required to maintain general liability insurance under this Lease.

9. **COMPLIANCE WITH FEDERAL, STATE & LOCAL LAWS.** Lessee agrees that its use of the property will conform to all federal laws and regulations, state laws, local ordinances, and operational rules and regulations of the North Little Rock Airport Commission. This provision specifically includes but is not limited to federal air spacing requirements.

10. **CONSTRUCTION OR IMPROVEMENTS/BUILDINGS BY LESSEES.** Lessee shall have the right at any time during the term of this Lease to erect, maintain, alter, remodel, reconstruct, rebuild and replace buildings and other improvements on the leased premises and to alter the contour of the leased premises, subject to the covenants and Agreements contained herein and subject to the following general conditions:

- (a) All costs of such construction, reconstruction, demolition, repair, remodel or reconstruction or any change alteration or improvements shall be the responsibility of and shall be paid by the Lessee. Lessee shall hold Lessor harmless from any such lien or claim of lien.
- (b) Any and all improvements and construction shall be generally consistent with the purposes hereinafter provided in this Agreement and shall be diligently pursued to completion and performed in a good, clean workmanlike manner.
- (c) No construction, improvements, material additions to or alterations or removal of any existing improvements, shall be commenced or constructed until the plans, specifications, and proposed location or such improvements have been submitted to and approved by Lessor. Lessor shall not unreasonably withhold such approval. Any plans or specifications submitted by Lessee for Lessor's approval shall be submitted no later than thirty (30) days prior to the Commission meeting at which Lessee requests that such items be placed on the agenda. Such consent by Lessor shall not be unreasonably withheld. Lessor's approval or disapproval shall occur within 30 days following the referenced Commission meeting.
- (d) The following items do not require submission for approval by Lessor (For purposes of this subsection, minor repairs and alterations shall be considered those less than \$10,000, and minor repairs and alterations):
 1. Minor repairs and alterations to existing structures and improvements and signage as shown on Exhibit B
 2. Minor repairs and alterations required by an authorized public official having authority or jurisdiction over such structure(s) and/or improvements(s).

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- (e) It is acknowledged and agreed that Lessor assumes no, nor shall it have liability or, responsibility for any defect in any improvement constructed pursuant to plans or specifications which it has approved.
- (f) ALL BUILDINGS AND IMPROVEMENTS PLACED UPON THE LEASED PREMISES BY THE LESSEE SHALL BE THE PROPERTY OF THE LESSEE DURING THE TERM OR ANY OPTION OR EXTENSION OF THIS LEASE. AT THE TERMINATION OF THIS LEASE, ALL BUILDINGS AND IMPROVEMENTS SHALL BECOME THE PROPERTY OF THE LESSOR.
- (g) Lessee shall be responsible for the direct and prompt payment of all charges for water, heat, gas, electricity, sewer, telephone, and any and all other utilities on the leased premises throughout the term of this Lease.
- (h) Lessee shall be responsible for direct and prompt payment of all fees, costs, and expenses associated with providing utility services to the leased premises. Lessee shall obtain the prior, written approval of Lessor with respect to the placement of any utility lines, which may be necessary; such approval shall not be unreasonably withheld. All utility lines shall be underground and shall comply with all laws, ordinances, and regulations governing installation and maintenance of such utility lines. It is acknowledged and agreed that the Lessor shall have no liability resulting from Lessee's installation of such utility lines.
- (i) Lessee shall at all times during the term of this Lease and any option or extension thereof at Lessee's cost and expense, keep and maintain in a good state of appearance and repair or cause to be kept and maintained in a good state of appearance and repair, all buildings and improvements which may be erected on the leased premises. Lessor shall have the right to enter and inspect any premises at any time during normal business hours.
- (j) Lessee shall have the right, from time to time, to assign or encumber Lessee's leasehold interest, by deed of trust, mortgage, or other security instrument. No such assignment or encumbrance shall constitute a lien on the fee title of Lessor.
- (k) Lessee shall obtain all necessary approvals and building permits required from the City of North Little Rock and any other governmental entity before undertaking any construction on the premises.

11. EMINENT DOMAIN-CONDEMNATION. In the event that all or any part of the premises, or any leasehold or other interest in the premises shall be taken or damaged by the exercise by any governmental authority of the power of eminent domain, then (whether or not this lease shall terminate by operation of law upon such exercise of the power of eminent domain) the amount of damages resulting to Lessor and Lessee, respectively, and to their respective interests in and to the premises, if applicable, and in, to and in connection with this lease, by reason of the exercise of the power of eminent domain, shall be separately determined (Lessee may also pursue its own award separately) and computed by the court having

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jurisdiction and separate awards and judgments with respect to damages to Lessor and Lessee, respectively, and to each of their respective interests, shall be made and entered.

12. CONDUCT OF BUSINESS BY TENANT. Lessee agrees to store garbage, trash, and other refuse in rat-proof and insect-proof containers inside the premises, and remove the same from the premises frequently and regularly. Lessee will not commit or permit waste or a nuisance upon the premises. Lessee will not permit the loading or unloading or the parking or standing of delivery vehicles outside any area designated therefore, nor permit any use of vehicles which will interfere with the use of any common area of the Airport. Lessor agrees to allow Lessee to operate in accordance with Lessee site plan attached as Exhibit B

13. SIGNS, AWNINGS AND CANOPIES. Lessee shall abide by the rules and regulations for signs, awnings, and canopies as stated in the City of North Little Rock sign ordinance.

14. ASSIGNMENT AND SUBLETTING. Except as otherwise expressly permitted in this Lease, Lessee will not sell, assign, mortgage, pledge or in any manner transfer this Lease without Lessor's prior written consent such consent shall not be unreasonably withheld..

15. AD VALOREM TAXES-IMPROVEMENTS. Lessee shall be responsible for the prompt timely payment of all ad valorem taxes of any nature or kind relating to any of the improvements or personality located on the leased premises. Lessee agrees to promptly pay all of such assessed taxes and to indemnify and hold Lessor harmless with respect to the assessment and/or penalties relating thereto.

16. AD VALOREM TAXES-REAL PROPERTY. Lessee shall be responsible for the prompt timely payment of all ad valorem taxes of any nature or kind relating to the real property constituting the leased premises. This includes any tax or fee based on the ownership or use of property.

17. WRITTEN NOTICE. Except where otherwise specified herein notice to be provided under the terms and conditions of this Lease, notice shall be provided by hand-delivery with a signed receipt or by mailing such written notice to the parties as follows:

TO THE LESSOR: Director
North Little Rock Municipal Airport
8240 Remount Road
North Little Rock, AR 72118

TO THE LESSEE: NLR Electric Dept.
c/o General Manager
1400 Maryland Ave.
North Little Rock, AR 72120

18. TRASH PICKUP/GROUND MAINTENANCE FOR LEASED AREA. Lessee shall be responsible for providing for regular and proper trash pickup and removal with respect to all of the leased premises and improvements thereon and for any and all tenants or occupants

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which Lessee may have on such leased premises. Lessee shall be responsible for the maintenance of all of the grounds on the leased premises and that all grounds and improvements placed thereon within ten (10) feet of the leased premises are mowed and maintained.

19. FURTHER DEVELOPMENT/IMPROVEMENTS OF LANDING AREAS. Lessor reserves the right to further develop or improve the landing areas of the airport as Lessor sees fit, regardless of the desires or views of the Lessee, and without interference or hindrance to the operations of the Lessee.

20. MAINTENANCE OF RUNWAYS AND PUBLIC FACILITIES. Lessor reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport.

21. WAR OR NATIONAL EMERGENCY. Lessee acknowledges that during the time of war or national emergency that the Lessor retains and has the right to lease its landing areas, or any part thereof, to the United States Government for military, air, or naval use, and if such lease is executed, any and all provisions of this Agreement are suspended, to the extent that such provisions are inconsistent with the provisions of the lease to the United States Government.

22. PROTECTION OF AERIAL APPROACHES/USEFULNESS OF AIRPORT. The Lessee agrees that the Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, or require the removal of any building or other structure on or adjacent to the airport which, in the opinion of the Lessor, would limit the usefulness of the airport or constitute a hazard to the aircraft.

23. SUBORDINATION OR AGREEMENT TO LESSOR'S FUTURE AGREEMENTS WITH THE UNITED STATES. Lessee agrees that all of its rights under this Lease are, and shall be subordinate and subject to any and all existing or future agreements between the Lessor and the United States, or its officers or agencies, relative to the operation or maintenance of the airport, the execution of which are required as a condition for the expenditure or receipt of federal funds for the development of the airport or any related aeronautic project.

24. ACCESS BY LANDLORD. Lessor, its agents and employees shall have the right to enter the premises from time to time at reasonable times during normal Lessee business hours to examine the same, show them to prospective purchasers and other persons. During the last six (6) months of the lease term, Lessor may exhibit the premises to prospective tenants and maintain upon the premises notices deemed advisable by Lessor. Nothing herein contained, however, shall be deemed to impose upon Lessor any obligations, responsibility or liability whatsoever, for any care, maintenance or repair except as otherwise herein expressly provided by actions of Lessor.

25. QUIET ENJOYMENT. If Lessee pays the rents and other amounts herein provided, observes and performs all the covenants, terms and conditions, Lessee shall peaceably and quietly hold and enjoy the premises for the lease term without interruption by Lessor or any

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other persons claiming by, through or under Lessor, subject, nevertheless, to the terms and conditions of this Lease.

26. COVENANTS RELATING TO TITLE VI OR CIVIL RIGHTS ACT. Pursuant to Title VI of the Civil Rights Act of 1964, the Lessee agrees, on behalf of Lessee's personal representatives, successors in interest, and/or assigns, as a part of the consideration hereof, does hereby covenant and agrees that as a covenant running with the land that: (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (ii) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination; (iii) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended; and (iv) that in the event of breach of any of the preceding nondiscriminatory covenants, Lessor shall have the right to take such action, anything to the contrary herein notwithstanding, as the United States may direct, to enforce this nondiscrimination covenant.

27. COVENANTS RELATING TO AFFIRMATIVE ACTION PROGRAMS. The Lessee assures that it will undertake an affirmative action program if required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the ground of race, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Lessee assures that no person shall be excluded on these grounds from participating or receiving the services or benefits of any program or activity covered by this subpart. The Lessee assures that it will require that its covered sub organizations provide assurances to the Lessee agreeing that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

28. HOLDOVER BY LESSEE. The Lessee agrees that any holding over by Lessee of the leased premises after the expiration of the term of this Lease, or any extension thereof, shall operate and be construed as a tenancy from month-to-month at 100% of the rental rate computed from the rental rate then prevailing under this Lease.

29. WAIVER OF LIABILITY/INDEMNIFICATION. Lessee expressly assumes all responsibility and risk of accident, injury or damage to persons or property in or about the leased premises. Lessee agrees to defend, indemnify and hold harmless the Lessor against any claim, expense, loss or liability as a result of any breach by Lessee, Lessee's agents, servants, employees, customers, visitors or licensees of any covenant or condition of this Lease or as a result of Lessee's use or occupancy of the leased premises, as a result of the carelessness, negligence or improper conduct of Lessee, its agents, servants, employees, customers, visitors, licensees, or any claims occurring as a result of unforeseen circumstances.

30. DEFAULT. Lessee shall be in default under the provisions of this Agreement upon the happening of any of the following events or conditions:

- (a) Failure to pay rentals or any other amount due as set forth herein;

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- (b) Failure to keep or perform or observe any of the terms, provisions, conditions, covenants or Agreements as set forth herein;

31. **LESSOR'S REMEDIES UPON DEFAULT.** In the event of a default by Lessee during the term of the Lease, or any extension thereof, Lessor may, at Lessor's option, declare this Lease terminated. This remedy shall be in addition to any other remedies or Lessor at law or in equity including, but not limited to, the collection of delinquent rents, possession of the leased premises, damages for breach of this Lease by Lessee, or otherwise. No delay in or failure to exercise any of the options herein granted to Lessor by reason of a default shall be deemed a waiver thereof and the waiver on one occasion of a default shall not be deemed a waiver of Lessor's right to exercise its remedies by reason of the same or similar default at a later occasion.

33. **ATTORNEY'S FEES AND COSTS.** Upon a court finding of either Lessee or Lessor being in breach of covenant of this Agreement, the prevailing party may seek reasonable attorney's fees and costs, which may have been incurred, in accordance with Arkansas law.

35. **ACCORD AND SATISFACTION.** Lessor is entitled to accept, receive and cash or deposit any payment made by Lessee for any reason or purpose or in any amount whatsoever, and apply the same at Lessor's option to any obligation of Lessee and the same shall not constitute payment of any amount owed except that to which Lessor has applied the same. No endorsement or statement on any check or letter of Lessor shall be deemed an accord and satisfaction of otherwise recognized for any purpose whatsoever. The acceptance of any such check or payment shall be without prejudice to Lessor's right to recover any and all amounts owed by Lessee hereunder and Lessor's right to pursue any other available remedy.

36. **COMPLETION OF PROPOSED STRUCTURES.** Lessee intends to construct certain structures on the premises subject to this Lease. See Exhibit "D". At the sole cost and expense of the Lessee and pursuant to the proper building permits and in compliance and conformity with the plans and specifications, the Lessee shall construct to completion the proposed structures to the premises within 365 days of the "Effective Date" of this lease. During construction of the structures, Lessee shall not interfere with the use of or otherwise obstruct the Common Areas and shall use commercially reasonable efforts to cause the premises and the Common Areas to be and remain free of any debris, materials or trash generated by the construction of the proposed structures.

37. **ENTIRE AGREEMENT.** There are no representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, between Lessor and Lessee other than as herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Lessor or Lessee unless in writing and signed by them.

38. **SUBMISSION OF LEASE.** Submission of this Lease does not constitute an offer to lease; this Lease shall become effective only upon execution and delivery thereof by Lessor and Lessee, and approval by the North Little Rock City Council. The Effective date of this Lease shall be the date approved by the North Little Rock City Council.

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39. **JOINT AND SEVERAL LIABILITY.** If Lessee is a partnership or other business organization the members of which are subject to personal liability, the liability of each such member shall be deemed to be joint and several.

40. **SUCCESSORS AND ASSIGNS; GOVERNING LAWS.** This Lease shall be binding upon the undersigned, and upon the heirs, legal representatives, successors and assigns of the undersigned and shall be governed by the laws of the State of Arkansas.

WITNESS OUR HANDS AND SEAL on the Effective Date stated herein.

LESSOR: CITY OF NORTH LITTLE ROCK

BY: _____
TERRY C. HARTWICK, MAYOR

DATE

LESSEE: CITY OF NORTH LITTLE ROCK/NLR ELECTRIC DEPARTMENT

BY: _____
RYAN WILSON, GENERAL MANAGER

DATE

ATTEST: _____
DIANE WHITBEY, CITY CLERK

DATE

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EXHIBIT "A"
Legal Description of Premises

NORTH LITTLE ROCK ELECTRIC LEASE AREA

Lease Area Description

A tract of land situated in the Northeast 1/4 of Section 2, Township 2 North, Range 12 West, in Pulaski County Arkansas, more particularly described as follows:

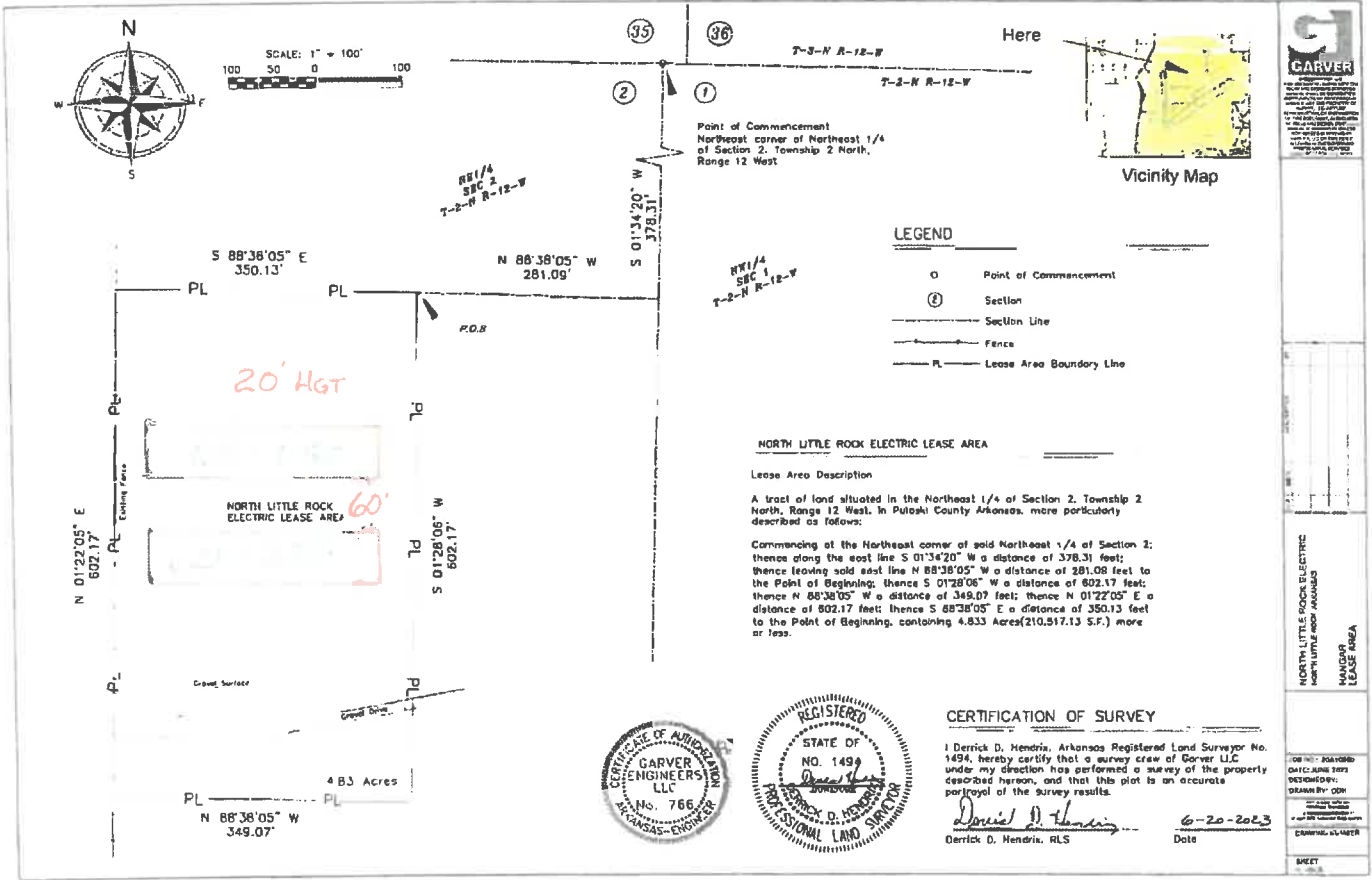
Commencing at the Northeast corner of said Northeast 1/4 of Section 2; thence along the east line S 01°34'20" W a distance of 378.31 feet; thence leaving said east line N 88°38'05" W a distance of 281.09 feet to the Point of Beginning; thence S 01°28'05" W a distance of 802.17 feet; thence N 88°38'05" W a distance of 349.07 feet; thence N 01°22'05" E a distance of 602.17 feet; thence S 88°38'05" E a distance of 350.13 feet to the Point of Beginning, containing 4.833 Acres(210,817.13 S.f.) more or less.

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EXHIBIT "B"
Site Plan
(Attached hereto)

EXHIBIT
"B"



NORTH LITTLE ROCK ELECTRIC
LEASE AREA
HANDICAP
LEASE AREA



DATE: 06/20/2023
DRAWN BY: DPH
CHECKED BY: DPH
DATE: 06/20/2023
DRAWN BY: DPH

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EXHIBIT "C"

Use of Leased Premises

The Lessee agrees it shall have the right to utilize the leased premises for one or more of the activities enumerated below:

Storage of North Little Rock Electric Department property, and any other activity related to the work of the Department, approved by the North Little Rock Airport Commission.

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EXHIBIT "D"

Proposed Structures

See Exhibit "B"