

CITY OF ARDMORE
Office of City Manager

Council Letter No. 4892
Meeting Date: August 17, 2020

Mayor and City Commission
City of Ardmore, Oklahoma

RE: Consent to Ardmore Development Authority Amended Ground Sublease Agreement at
the Ardmore Municipal Airport

Dear Commission Members:

The Amended Ground Sublease Agreement (Sublease Agreement) is between the Ardmore Development Authority (ADA) and Dolgencorp, LLC (Lessee). The ADA leases from the City of Ardmore the Ardmore Municipal Airport (Airport) in Ardmore, Oklahoma. This amendment is necessary due to fire code restrictions based on the size of the building. The amendment is to add an additional 60 feet on the east boundary and 60 feet on the south boundary as shown on Exhibit "A". The ADA desires to amend the Sublease Agreement to Lessee. The Lessee likewise desires to amend the Sublease Agreement for the construction and operation of a Warehouse and Distribution Center.

Staff respectfully recommends approval of the Amended Ground Sublease Agreement for the lease of certain property located at the Ardmore Municipal Airport.

Respectfully Submitted,



J.D. Spohn
City Manager

**Ardmore Municipal Airport
Amended*
Ground Sublease Agreement
The Ardmore Development Authority and Dolgencorp, LLC**

This Sublease Agreement ("Sublease") made and entered into this ___ day of _____, 2020, (the "Effective Date") by and between the Ardmore Development Authority (ADA), a Public Trust of the City of Ardmore and Dolgencorp, LLC, a Kentucky limited liability company, ("LESSEE"). The City of Ardmore, a municipal corporation ("City"), is a consenting party to this Sublease.

W I T N E S S E T H

The ADA leases the property described herein located in the Ardmore Industrial Airpark from the City ("Airpark"¹). The ADA desires to sublease the property described herein within the Airpark to the Lessee for the purpose of the construction and operation of a Warehouse and Distribution Center. The lessee likewise desires to sublease such property under the same terms and conditions.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions herein stated and in consideration of the mutual benefits, which will accrue to the parties, the sufficiency of which is acknowledged by the parties, the parties agree as follows:

1. Leased Premises. For and in consideration of the rentals as hereinafter provided, and the stipulations and conditions hereinafter set out and the mutual advantages moving to the parties hereunder, the ADA does hereby demise and sublease and assign to the LESSEE the surface rights only in and to the lands described on Exhibit "A", attached hereto and incorporated herein by reference, (containing approximately 6.1 acres), the "Leased Premises," in the Ardmore Municipal Airport, located in Section 18, Township 3S, Range 3 E Carter County, Ardmore, Oklahoma.

2. Term. The initial term of the Sublease shall be forty (40) years (the "Initial Term"). The Initial Term shall commence on the date Lessee commences operations for shipping and receiving from the Leased Premises. Notwithstanding anything contained herein to the contrary, the Commencement Date shall occur no later than April 1, 2021. When the Commencement Date is determined in accordance with this Sublease, ADA and Lessee shall enter into the Commencement Date Agreement in the form of Exhibit B hereof to establish the

*Amended to reflect revised legal description

¹ The Airpark is an approximately two thousand one hundred (2,100) acre tract of land more particularly described in the Lease Agreement, effective on the 1st day of October 1983, and on file with the Carter County Clerk and recorded at Book 1080, Page 550, as amended, by and between the Authority and the City. As used herein, the words "Airpark" also includes any other lands adjoining such tract that are hereafter purchased or leased by the Authority and used together as part of the same project.

Commencement Date and expiration date of this Sublease. The sole purpose of the Sublease Commencement Date Agreement shall be to establish the matters more particularly set forth on the form attached hereto as **Exhibit B**.

In addition to the Initial Term, the Lessee shall be entitled to extend the term of the Sublease for two (2) successive periods of twenty-five (25) years each, (each, a "Renewal Term"), upon the same terms and conditions as herein set forth, except as to term and number of renewals. Lessee may extend this Sublease by giving ADA written notice as provided herein and not less than 90 days prior to the expiration of the Initial Term. In the event Lessee does not give notice of exercising its right to renew this Sublease, all succeeding renewals shall terminate.

3. Inspection Period. During the sixty (60) day period following the Effective Date (the "Inspection Period"), Lessee shall have the right, but not the obligation, to take all steps necessary, in Lessee's sole and absolute discretion, to evaluate the feasibility of developing and operating the Leased Premises for Lessee's Permitted Use (as hereinafter defined). In the event Lessee is not completely satisfied with the feasibility thereof or for any other reason or no reason at all, Lessee may terminate this Sublease by sending written notice to ADA prior to the expiration of the Inspection Period, in which event the parties shall be released from further liability pursuant this Sublease.

Notwithstanding anything herein to the contrary, in the event Lessee discovers any condition relating to the Leased Premises after the end of the Inspection Period and prior to the Commencement Date which (i) prohibits or limits construction of Lessee's planned improvements, in Lessee's reasonable opinion or (ii) increases the cost of constructing the improvements contemplated by Lessee by more than ten (10%) percent in Lessee's reasonable opinion ("Unanticipated Condition"), Lessee shall have the right to terminate this Sublease upon written notice to ADA.

4. Approval Period. Following the expiration or earlier termination of Lessee's Inspection Period, Tenant shall have a period of sixty (60) days (the "Approval Period") in which to obtain all permits, variances, subdivisions, re-zonings and any other municipal and private approvals deemed by Lessee to be necessary or appropriate for Lessee to develop and operate the Leased Premises for Lessee's Permitted Use (as hereinafter defined) (collectively, the "Approvals"). All Approvals must be "final" and not subject to any third-party approvals. Lessee's receipt of all the Approvals shall be a condition precedent to Lessee's obligations under this Sublease. If Lessee is unable to obtain all of the Approvals, in Lessee's sole and absolute discretion, in a form acceptable to Lessee prior to the end of the Approval Period, then Lessee may terminate this Sublease by sending written notice of such termination within thirty (30) days after the end of the Approval Period, in which event the parties shall be released from further liability pursuant this Sublease. Notwithstanding the foregoing, Lessee shall have the right at any time during the Approval Period upon written notice to ADA to waive the remaining term of the Approval Period.

5. Rent. The rental to be paid by LESSEE to the ADA during the Initial Term and any Renewal Term for the Leased Premises is \$9,800.00 per year. The following terms shall apply:

- a. The rent for the first two (2) years of the Initial Term will be waived. ("Abatement Period")
- b. The rent for the remaining Initial Term of the Sublease will be \$9,800.00 annually.
- c. A late fee of ten percent (10%) of the payment amount may be assessed for any rent not received within 15 days of the due date.
- d. Rent will be paid annually on February 1 of each year during the Term except during the Abatement Period.

Notwithstanding anything contained herein to the contrary, if the first Rent payment date is other than the first day of February, Tenant shall pay Annual Rent on a pro rata basis calculated from the first Rent payment through January 31 of the following calendar year. After the first Rent payment date, all annual Rent payments shall be payable in advance on the first day of February during the Term.

4. Use of Leased Premises. The Leased Premises is leased for the purpose of construction, maintenance, and operation of a warehouse and distribution center and uses ancillary thereto (the "Permitted Use"). LESSEE understands that the property and/or materials stored on the Leased Premises must be stored in compliance with applicable law and that if any property and/or materials stored thereon fail to comply with applicable law, ADA may provide written notice to Lessee and if Lessee fails to cure such non-compliance within sixty (60) days of such notice, in addition to other remedies, the ADA shall have the right to require removal of such property and/or materials. LESSEE shall not use the Leased Premises for any unlawful purpose or for any purpose that may constitute a legal nuisance.

5. Right of Ingress and Egress. LESSEE shall have the right of ingress to and egress from the Leased Premises. 24 hours a day, 7-days a week, Additionally, LESSEE shall comply with any commercially reasonable safety and security planning efforts adopted by the ADA & CITY OF ARDMORE provided such measures do not prohibit Lessee's access to the Leased Premises.

6. Memorandum of Lease and Estoppel Certificates. LESSEE may, at its option and expense, record a memorandum or short form of this Sublease in the office of the Carter County Clerk. If LESSEE desires to do so, ADA agrees to take the necessary actions to execute such memorandum or short form. Further, the Parties agree to execute and deliver to each other, within ten (10) business days after a request from the other party, a certificate stating (i) whether this Sublease is in full force and effect; (ii) whether this Sublease has been modified or amended in any respect and providing copies of any modifications or amendments, if any; (iii) whether there are existing defaults and specifying the nature of the such defaults, if any. The Form of Estoppel certificate is attached hereto as Exhibit C.

7. Taxes. LESSEE shall be liable for all personal property taxes assessed against LESSEE'S personal property or LESSEE'S improvements. In the event the Leased Premises is assessed

and for any reason included on the Carter County assessor's tax roll, the amount of rent as specified in Paragraph 2 herein, will increase to include the amount of the yearly ad valorem tax assessed to the Leased Premises, and included in the annual rent amount. The ADA shall provide a copy of any such ad valorem assessment invoice to Lessee for Lessee's records. Lessee may contest any real estate tax, charge, or assessment attributable to the Leased Premises at its expense, and the Lessee shall notify the ADA of the contest, and ADA shall fully cooperate with Lessee in any such proceeding. In such event should Lessee successfully obtain any refund or rebate of any Tax or assessment, Lessee shall receive any assessment refunds or rebates paid to ADA in any proceeding to obtain such refunds or rebates.

8. Environmental Matters.

- a. *Definitions.* For the purposes of this Lease Agreement, "Hazardous Substances" shall mean pollutants, contaminants, toxic wastes or any other substances, the removal of which is required or the use of which is regulated, restricted, prohibited or penalized by any Environmental Law. "Environmental Law" means any federal, state, or local law or regulation relating to pollution or the protection of the environment. "Release" means the dispersal, release, storage, treatment, generation, disposal, or escape of any Hazardous Substances.
- b. *ADA Representations.* ADA has no knowledge of the existence of, or the release in, on, or under the Leased Premises and ADA has had no notice from any federal, state, county or other authority as to the existence of or Release of any Hazardous Substances at the Leased Premises or the violation of any Environmental Law related to the Leased Premises.
- c. ADA is not aware of any storage tanks located on the Premises, either above or below ground, and the ADA has no knowledge that the Leased Premises was previously used as a landfill or as a dump for garbage or refuse.
- d. In the event any Hazardous Substances or asbestos shall be discovered on the Premises prior to the date of this Sublease, ADA covenants to have same, at its sole cost and expense, encapsulated, removed, cleaned, maintained and/or monitored in compliance with all Environmental Law. ADA shall comply with, and shall pay all costs incurred in complying with, any Environmental Law, including the performance of and payment for any environmental cleanup work and the preparation of any closure or other required plans.
- e. Unless occasioned by the actions of Lessee, its agents, employees or independent contractors, ADA shall indemnify, defend, protect and hold harmless Lessee (and anyone claiming by, through, or under Lessee) from and against any and all claims, liabilities, damages, losses, costs, and expenses (including reasonable attorneys' fees

and court costs) actually incurred by Lessee or anybody claiming by, through, or under Lessee as a result of the existence of any Hazardous Substances on the Premises or any environmental problems relating to the Leased Premises; it being agreed and understood that this indemnity shall specifically survive the expiration or earlier termination of this Sublease.

- f. Lessee agrees that it will not use any Hazardous Substances in the Leased Premises in violation of any governmental laws, ordinances, or restrictions. Lessee shall indemnify, defend, protect and hold harmless ADA (and anyone claiming by, through, or under ADA) from and against any and all claims, liabilities, damages, losses, costs, and expenses (including attorneys' fees and court costs) actually incurred by ADA or anybody claiming by, through, or under ADA as a result of Lessee's use of any Hazardous Substances in the Leased Premises in violation of any governmental laws, ordinances or restrictions unless said Hazardous Substances or environmental problems existed in the Leased Premises prior to the date of this Sublease or were caused by acts of ADA, its agents, employees or contractors in which event this indemnity shall not apply; it being agreed and understood that this indemnity shall specifically survive the expiration or earlier termination of this Sublease.

9. Conditions and Maintenance:

- a. LESSEE shall keep the Leased Premises free of debris, tall grass, weeds, parts, inoperable vehicles and any other public nuisances or Hazardous Substances during the Term hereof.
- b. LESSEE shall be responsible for the cleanup of Hazardous Substances or other spills from LESSEE's vehicles or containers. LESSEE shall dispose of used oil and other Hazardous Substances in approved receptacles only.
- c. LESSEE shall be responsible for and agrees to remedy any damage to the Leased Premises arising by or through LESSEE's use of the Leased Premises.
- d. Lessee shall be responsible for the maintenance of all Lessee's improvements located on the Leased Premises.

10. Utilities. If utilities have already been extended to the Leased Premises, the ADA agrees to furnish water and sewer to the Leased Premises and LESSEE agrees to be responsible for payment of all utilities, including but not expressly limited to, the aforementioned water and sewer. If utilities have not been extended to the Leased Premises, LESSEE agrees to pay any costs necessary to extend such utilities.

11. Airport Operations. The ADA reserves the right to further develop or improve the Airpark outside of the boundaries of the Leased Premises regardless of the desires or views of the said LESSEE, and without interference or hindrance. The ADA reserves the right to take any action it considers commercially reasonable and 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, any building or other structure on the Leased Premises in excess of fifty (50) feet in height, which, in the commercially reasonable opinion of the ADA, would materially limit the usefulness of the Airpark or constitute a hazard to aircraft. Notwithstanding anything contained herein to the contrary in no event shall alterations occur to the Airpark that would alter or impair access to and from the Leased Premises for Lessee's employees or trucks handling shipping and receiving therefrom.

12. Improvements. LESSEE may make improvements to the Leased Premises at LESSEE's expense. Upon compliance with the following:

- a. LESSEE must obtain necessary permits and/or permission before beginning any construction, including, but not limited to, any permits or permission required by the ADA, City of Ardmore, the Federal Aviation Administration, and the Oklahoma Aeronautics Commission. ADA agrees to cooperate with Lessee and assist as reasonably necessary to obtain such permits and approvals for Lessee's improvements.
- b. Any improvements constructed on the Leased Premises must conform to the City of Ardmore building codes, subject to any variances obtained by Lessee.
- c. LESSEE shall have no obligation to remove the improvements at the end of the Term.
- d. Prior to beginning any construction of improvements upon the Leased Premises, Lessee shall furnish a bond or shall cause its contractor to furnish a bond payable to the ADA in a sum not less than the total sum of the construction contract. The bond shall ensure the proper and prompt completion of the work in accordance with Lessee's contracts with its contractors and shall ensure that the contractor shall pay all indebtedness the contractor incurs for the contractor's, subcontractors and all suppliers of labor, material, rental of machinery or equipment, and repair of any parts for equipment that contract requires the contractor to furnish. Lessee shall provide ADA with written proof of such bond prior to the beginning of any construction upon Leased Premises. Lessee shall not be required to comply with the bidding requirements under the Competitive Bidding Act when receiving bids for the construction of improvements

13. Indemnification and Hold Harmless:

- a. LESSEE agrees to indemnify, defend, and hold ADA harmless from and against any and all injury, loss, damage, liability claims, costs or expenses, including reasonable attorney's fees and court costs, arising directly or indirectly out of the use, maintenance, or repair of the Leased Premises or LESSEE's breach of any provision of this Sublease, except in those situations arising out of the ADA's negligence or intentional act.
- b. ADA agrees to release and hold harmless LESSEE from all claims, actions, demands, damages, liabilities or expenses which may be made against ADA arising out of the gross negligence or intentional act of ADA, its agents or employees, or ADA's breach of this Sublease. Further, ADA shall and does hereby release LESSEE from all claims, liabilities, losses, damages, actions, suits, and costs and expenses therewith, arising from the existence of or any Release of Hazardous Substances on, in, or under the Leased Premises or for any violation of Environmental Law that occurred at any time prior to the LESSEE's occupancy of the Leased Premises.
- c. ADA and LESSEE each release and waive any claim it might have against the other for any damage to or theft, destruction, loss, or loss of use of any property, to the extent the same is insured against under any insurance policy that covers the Leased Premises, the building thereon, ADA's or LESSEE's fixtures, personal property, leasehold improvements, or business, or is required to be insured against under the terms hereof. ADA and Lessee further agree to provide for or endorse said insurance policies required hereunder agreeing to this waiver of subrogation.
- d. It is expressly understood that there shall be no liability whatsoever of the ADA (except as related to the ADA's gross negligence or willful misconduct) for any buildings erected by LESSEE and that such buildings and improvements shall be at the sole cost and responsibility of LESSEE. All maintenance, repairs and improvements of such buildings shall be at the sole cost and responsibility of LESSEE.
- e. LESSEE does hereby assume sole responsibility for any liability, of whatever nature, incurred to any third parties, that arises out of the LESSEE's use of the Leased Premises (except as related to the ADA's gross negligence or willful misconduct).
- f. The provisions of this Paragraph 13 are intended to survive the expiration or termination of this Lease Agreement.

14. Inspections and Entry Upon Leased Premises Authorized. Authorized officers, agents, officials, and employees of the United States of America, and authorized officers, officials, agents and employees of the Federal Aviation Administration, the Oklahoma Aeronautics Commission, and agents of the ADA or City of Ardmore, Oklahoma, appointed for such purposes by the City Commission, shall have the right and authority upon reasonable prior notice to Lessee to go upon the Leased Premises and into buildings and structures thereon during

Lessee's normal business hours when accompanied by a Lessee representative, for the purpose of viewing and inspecting the same, and for such other purposes as the ADA shall, in its commercially reasonable discretion, deem fit and proper so long as said officers, officials, agents and employees do not unreasonably hinder or interfere with the operation by LESSEE of said Leased Premises.

15. Insurance Limits. LESSEE, at the sole expense of LESSEE, shall keep in force during the Term of this Lease, liability insurance, issued by an insurance company authorized to do business in the State of Oklahoma naming ADA and the City of Ardmore as an additional insured by reason of damages to the property of, injury to, or death of any persons on account of any manner of things which may occur on the Leased Premises during the terms of this Lease, or any extensions thereof, in a policy or policies not less than:

- a. Twenty-five (\$25,000.00) for any claim or to any claimant who has more than one claim for loss of property arising out of a single act, accident, or occurrence.
- b. One Hundred Twenty-five Thousand Dollars (\$125,000.00) to any claimant for a claim for any other loss arising out of a single act, accident, or occurrence.
- c. One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single occurrence or accident.

16. Additional Insurance Information. In addition, LESSEE pay all the premiums related to such insurance as they become due. The following shall also apply:

- a. the LESSEE agrees to furnish following the ADA's written request copies of the certificates of such insurance that name the ADA and City of Ardmore as additional insureds under the policies required by the terms of this Sublease;
- b. All such insurance certificates shall contain a provision that the respective insurers will not cancel such insurance coverage required under this Sublease without first giving thirty (30) days prior written notice to ADA;
- c. LESSEE'S failure to effectuate any and all such insurance and renewal policies of insurance required and to pay the premiums and renewal premiums on all such policies of insurance as they become due and payable, and to deliver all such certificates of insurance and renewals thereof of duplicate originals to the ADA, shall constitute a default by LESSEE under the terms of this Sublease; and
- d. LESSEE shall be liable for insuring LESSEE'S personal property and improvements located upon the Leased Premises.

17. ADA's Right of First Refusal to Purchase Improvements. Should this Sublease expire, be terminated or assigned by Lessee to an unrelated third party, the ADA, at its sole option, shall

have the first right to purchase any improvements constructed by Lessee on the Leased Premises at a price equal to the best bona fide offer made to said LESSEE in writing; and any contract which may be entered into between said LESSEE and bona fide purchaser shall provide that the sale of the improvements upon the Leased Premises shall be subject to ADA'S right of first refusal. In the event that said LESSEE receives a written offer or executes a contract as above set forth, the ADA shall have the option, to be exercised within twenty (20) days ("Review Period") after receipt of written notice of the terms of such offer, to enter into a contract with LESSEE on the same terms and conditions as said offer to purchase. If LESSEE enters into a contract to sell the improvements, LESSEE shall submit a duplicate original of the executed contract embodying all of the terms and conditions of said executed contract to ADA before the twenty (20) day Review Period shall begin. If the ADA shall fail to exercise its option by signing and returning the contract within the twenty (20) day period, LESSEE shall have the right to conclude the proposed sale on the same terms, and no others, as in the offer or contract originally forwarded to the ADA.

18. Surrendering Possession. It is further mutually agreed that at the expiration or other termination of this Sublease, LESSEE's rights to use the Lease Premises shall cease and LESSEE shall immediately cease operations, vacate the Leased Premises, and deliver peaceable possession of the Leased Premises to the ADA in as good condition as at the commencement of the lease, normal wear and tear excepted. In the event of Lessee's continued occupancy of the Leased Premises after the expiration of the Term, or any earlier termination provided or permitted by this Sublease, such tenancy shall be a month-to-month tenancy terminable by either party upon ninety (90) days written notice, and such continued occupancy shall not defeat ADA's right to possession of the Leased Premises. All other covenants, provisions, obligations, and conditions of this Sublease shall remain in full force and effect during such month-to-month tenancy.

19. Casualty or Condemnation. If any or all the Leased Premises shall be damaged by fire, earthquake, flood, or other casualty, or acquired by the right of condemnation or eminent domain for any public or quasi-public use or purpose, or be sold to a condemning authority under threat of condemnation, then, at the option of LESSEE, the Term of this Sublease shall cease and terminate as of the date of such fire, earthquake, flood, or other casualty, or as of the date of title vesting pursuant to such condemnation or eminent domain proceeding (or sale), and all rental shall be paid up to that date of termination.

20. Termination without Default. Should LESSEE desire to terminate this Sublease for any reason or no reason at all, termination shall be effective by providing written notice to the ADA of the intent to terminate and the date of termination. Such written notice must allow for a minimum of Ninety (90) days of notice.

21. Default.

- a. *Generally.* Under this Sublease, default generally occurs when either party fails to keep, observe, or perform any term or provision of this Sublease to be kept,

observed, or performed by it, and such conduct continues for a period of sixty (60) days after written notice thereof by the other party, except for a breach that cannot be cured within such 60-day period, then the cure period shall be extended for such additional time as reasonably necessary provided the defaulting party has commenced and is diligently pursuing a cure;

- b. *Specific Examples of Events of Default.* Default shall also occur should LESSEE be adjudicated as bankrupt, or insolvent, or take the benefit of any federal reorganization, or compositions proceed, or make a general assignment to creditors, or take the benefit of any insolvency law;
 - i. If LESSEE'S leasehold interest be sold under an execution or process of law;
 - ii. If the Leased Premises shall be abandoned or deserted; provided, however, a cessation of business by Lessee shall not be deemed abandonment or desertion of the Leased Premises;
 - iii. LESSEE shall fail to pay any payment required to be paid to ADA under this Lease, as and when the same shall become due, and such default is not cured within ten (10) business days after written notice of default, provided ADA shall not be required to provide such notice more than once in a calendar year; or
 - iv. If ADA fails to maintain its property abutting the Leased Premises and/or to ensure a safe, clear, and consistent path for aircraft and vehicle ingress and egress.
- c. The failure of LESSEE to pay rent within thirty (30) days of the due date, the failure to obtain insurance, failure to provide proof of insurance following ADA's written request, failure to properly dispose of and/or store Hazardous Substances, or the failure to obtain ADA permission prior to assigning this Sublease if required by Section 26, shall constitute a default and LESSEE shall only be allowed thirty (30) days to cure such default.

22. Remedies on Default:

- a. *Notice of Default.* Upon default, other than the events described in "Events of Immediate Default" above, and in addition to any other remedies available to it on account of such event or default, either party may provide the other party with notice that it intends to terminate this Sublease, in writing, which identifies the conduct, act, or condition constituting default, if the default is not cured within the following sixty (60) days, or another length of time that is specifically identified herein for a particular situation.

- b. *Termination.* If ADA or LESSEE fails to cure the conduct, act, or condition constituting default within sixty (60) days or another length of time that is specifically identified herein for a particular situation, the other party may immediately terminate this Lease Agreement.
- c. *Remedies Not Exclusive.* No right or remedy herein conferred upon or reserved to either of the parties is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative to any other right or remedy given hereunder or now or hereafter legally existing upon default.
- d. *No Waiver.* The failure of either party to insist upon the strict observance or performance of any of the provisions of this Sublease or to exercise any right or remedy provided in this Sublease shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Sublease to the parties may be exercised from time to time and as often as may be deemed expedient by the parties.
- e. *Costs and Attorney's Fees.* If either party hereto brings an action because of any event of default, each party hereto agrees to pay its own costs and attorney's fees incurred in connection with such action.
- f. Notwithstanding anything contained herein to the contrary, in no event shall acceleration of Rent be deemed a permitted remedy hereunder.

23. Force Majeure. For the purposes of this Sublease, an event of Force Majeure is an act of God, fire, earthquake, hurricane, flood, terrorist act or threat, storm, washout, wind, lightning, landslide, explosion, epidemic, inability to obtain materials or supplies, accident to machinery or equipment, or any cause of occurrence outside the reasonable control of the party claiming an inability to perform and which by the exercise of due diligence could not be reasonably prevented or overcome.

Neither party shall be liable or responsible to the other party for any delay, loss, damage, failure or inability to perform under this Sublease due to an Event of Force Majeure, provided that the party claiming failure or inability to perform provides written notice to the other party with ten (10) days of the date on which such party gains actual knowledge of such Event of Force Majeure.

24. Compliance with Laws. LESSEE shall conduct its activities under the terms of this Sublease in such a manner that it does not violate federal, state, or local laws or regulations applicable to the conduct of its activities under the terms of this Lease Agreement. LESSEE shall also obey and observe all rules and regulations promulgated and enforced by CITY or any other entity having jurisdiction over the conduct of the operations of the Ardmore Municipal Airport,

including, but not limited to, the Federal Aviation Administration. Provided, however, in no event shall such rules and regulations increase the obligations or impair the rights of Lessee under the terms of this Sublease.

25. Subordinate Lease. This Lease Agreement shall be subordinate to the provisions of any existing or future agreements with the federal or state government or any Public Trust or Authority with the City of Ardmore as a beneficiary, relative to the operation or maintenance of the Ardmore Municipal Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal or state funds for the development of the airport property.

26. Sublease and Assignment. The Leased Premises may not be subleased or assigned by the LESSEE without the prior written consent of the ADA & CITY which shall not be unreasonably withheld. Any sublease or assignment that is executed without ADA & CITY's consent is void. Provided, however, Lessee may sublet or assign the Leased Premises at any time upon prior written notice to ADA, provided the business which such subtenant or assignee proposes to conduct and actually conducts does not conflict with the Permitted Use. Lessee shall notify ADA of its intent to sublet or assign and the nature of the business proposed to be conducted by the subtenant or assignee. In the event Lessee shall assign this Sublease as permitted hereunder or shall sublease any portion of the Premises as permitted hereunder, Lessee shall remain liable for performance of each and every term of this Sublease to be performed by Lessee hereunder. Notwithstanding the foregoing, Lessee shall have the absolute right, without the prior written consent of ADA being required, to assign or sublet the Leased Premises to any parent, subsidiary or affiliate company of Lessee, or in connection with any merger, consolidation, sale of all or substantially all of Lessee's assets or stock, or a public or private offering, or in connection with a sale of three (3) or more of Lessee's warehouses as part of the same transaction. Lessee agrees to provide written notice to the ADA following any such assignment.

No assignment or transfer of the Sublease by ADA shall be binding on Lessee unless the assignee or transferee shall assume and agree to be bound by the terms of the Sublease and until notice of such assignment or transfer together with an executed copy of such assignment or transfer instrument is received by Lessee.

27. Intentionally Omitted.

28. Binding Effect. This Sublease binds the parties and any successors and assigns of the parties.

29. Severability. If any one or more of the sections, sentences, clauses, or parts of this Sublease be held invalid for any reason, the invalidity of such section, sentence, clause, or part shall not affect nor prejudice the applicability and validity of any other provision of this Sublease.

30. Counterparts. This Sublease may be executed in any number of counterparts, and when each party has signed and delivered to the other at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one agreement; provided, however, this Sublease shall not be binding upon the parties hereto until signed by all of the parties.

31. Third Party Beneficiaries. Nothing in this Lease Agreement, expressed or implied, is intended to confer upon any person other than the parties hereto and their respective assigns, any rights, or remedies under or by reason of this Lease Agreement, except as provided expressly herein.

32. No Agency. It is mutually understood and agreed that nothing contained in this Lease Agreement is intended, or shall be construed, as in anywise creating or establishing the relationship or co-partners or joint ventures between the parties hereto or as constituting LESSEE as the agent or representative of the ADA for any purpose.

33. Notices. Whenever notice is required to be given in writing, such notice shall be hand-delivered or mailed by certified mail, return receipt requested, and directed to the respective parties at the following addresses:

ARDMORE DEVELOPMENT AUTHORITY:

Attn: President
Ardmore Development Authority
410 W. Main
Ardmore, OK. 73401

CITY:

Attn: City Manager
City of Ardmore
23 South Washington
Ardmore, OK 73401

LESSEE:

Dolgencorp, LLC
100 Mission Ridge
Goodlettsville, TN 37072
Attn: Lease Administration Department

or at such other address as a party shall specify by like notice to the other party hereto. Notices shall be effective on the date of delivery.

34. Governmental Tort Claims Act. By entering into this Sublease Agreement, ADA and its "employees," as defined by the Governmental Tort Claims Act, 51 Okla. Stat. § 151 *et seq.*, do not waive sovereign immunity, any defenses, or any limitations of liability as may be provided for by law. No provision of this Lease Agreement modifies and/or waives any provision of the Local Government Tort Claims Act.

35. Non-Discrimination. The parties covenant (1) that no person shall be excluded from participation in, denied the benefit of, or otherwise subjected to discrimination under the terms of this Sublease on the ground of race, color, age, sex, handicap, or national origin; and (2) that, in carrying out the terms and conditions of this Sublease, no person shall be subjected to discrimination on the grounds of race, color, age, sex, handicap, or national origin. In the event of breach of any of the non-discrimination covenants, and Lessee's failure to cure such breach within 60 days following written notice, the ADA shall have the right to terminate this Sublease and to re-enter and re-possess said Leased Premises and hold the same as if said Sublease had never issued and the ADA shall reimburse Lessee for Lessee's then current book value of the improvements. In the event ADA terminates this Lease subject to this provision, LESSEE shall cease operations within sixty (60) days of such notice, but shall be authorized up to ninety (90) additional days to remove property and structures.

36. Interpretation of Law. This Sublease shall be deemed to have been made in the State of Oklahoma and shall be construed and interpreted in accordance with the laws of the State of Oklahoma.

37. Venue. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Lease Agreement may be brought against any of the parties in the courts of the State of Oklahoma, County of Carter, or, if it has or can acquire jurisdiction, in the United States District Court for the Eastern District of Oklahoma, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.

38. Lease Construction. Captions and other headings contained in this Lease Agreement are for reference and identification purposes only and do not alter, modify, amend, limit, or restrict the contractual obligations of the parties.

39. Bargaining. The ADA and the LESSEE have had the opportunity to seek independent legal counsel before entering into this Lease Agreement. The language of this Lease Agreement shall be construed simply, according to its fair meaning, and not strictly for or against either party.

40. Integration, Amendments, and Interpretation. This Lease Agreement constitutes the entire agreement between the parties and may not be amended, altered, modified, or changed in any way except in writing signed by all parties to this Lease Agreement and which specifically references this Lease Agreement. There are no other agreements, representations, or warranties,

whether oral or written, regarding the subject matter of this Lease Agreement. No course of dealings involving the parties hereto and no usage of trade shall be relevant or admissible to interpret, supplement, explain or in any way vary any of the terms expressly set forth in this Lease Agreement. Any amendment to this Lease Agreement shall be attached to this Lease Agreement and all the terms in this Lease not addressed in the amendment shall remain in full force and effect.

41. Time of the Essence. Time is of the essence of this Lease, and of every covenant, term condition and provision hereof.

42. Lessee's Property. Any and all buildings, improvements, trade fixtures, equipment, signs, appliances, furniture and other personal property of whatever nature or kind installed in or on the Premises at any time (all of the foregoing being collectively referred to in this Sublease as "Tenant's Property"), including, without limitation, all shelving, lighting and track lighting, panel wall systems and valance accents shall not become a part of the realty and may be removed from the Leased Premises by Lessee at any time during the Term or within thirty (30) days after termination thereof. ADA hereby waives any and all liens (including, without limitation, any and all statutory and contractual liens), claims, demands, or rights, including, but not limited to, rights of levy, execution, sale and distraint for unpaid rent, or any other right, interest or lien which ADA has or may hereafter acquire in any of Tenant's Property.

43. Lessee Financing. Lessee shall have the right to finance the acquisition and installation of Lessee's Property (by granting a security interest); and in connection therewith, ADA agrees to execute and to use reasonable efforts to cause the holder of any mortgage covering all of the Leased Premises to execute and deliver a landlord's and mortgagee's waiver and all other documentation reasonably required by any landlord or holder of any security interest in and to Lessee's Property.

44. Termination of Prime Lease. In the event the Lease Agreement dated October 1, 1983 by and between the ADA and the City is terminated, the City agrees to recognize this Sublease as a direct lease between the City and Lessee.

45. Self Help. If ADA defaults in the performance of any obligation imposed on ADA by this Sublease and does not cure such default within thirty (30) days after written notice (unless otherwise specified elsewhere in this Sublease) from Lessee specifying the default (or does not within said period commence and diligently proceed to cure such default), Lessee, without waiver of or prejudice to any other right or remedy it may have, shall have the right at any time thereafter to cure such default for the account of ADA, and ADA, within thirty (30) days of invoice therefore, shall reimburse Lessee for any reasonable amount paid and any expense or contractual liability so incurred upon invoice; it being agreed that any amounts expended by Lessee on behalf of ADA and nor reimbursed by ADA as provided above may be setoff by Lessee, with interest equal to the lessor of (i) the maximum rate of interest permitted in the state in which the Leased Premises is located, or (ii) the prime rate from time to time published in the Wall Street Journal (or, if the Wall Street Journal is no longer being published, then another

similar financial publication) plus two hundred (200) basis points (the "Lease Interest Rate"), against future Rent owing under this Lease until Lessee is reimbursed in full, and in no event shall such setoff be deemed a default of Lessee under the Sublease.

46. Quiet Enjoyment. So long as Lessee shall pay the Rent herein reserved and perform all of the covenants and provisions of this Sublease to be performed by Lessee, Lessee shall during the Term freely, peaceably, and quietly enjoy and occupy the full possession of the Leased Premises and the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, without molestation or hindrance by any person or entity whomsoever. In the event Lessee's quiet possession of the Leased Premises shall be disturbed by any person or entity claiming title to the Leased Premises superior to ADA's title, (i) the Rent and other charges due hereunder shall be equitably abated during any such period, and (ii) the running of the Term shall be tolled during such period, and the expiration date of the Term (or Renewal Term, as applicable) shall be extended for the same number of days as the Term was tolled. If such period shall continue for more than thirty (30) days after notice from Lessee, Lessee shall have the right, in addition to its other remedies at law or in equity, to terminate this Sublease and all of its rights to damages shall survive such termination.

47. Brokers. ADA and Lessee hereby warrant and represent that in connection with this Sublease that neither have dealt with any broker or other person or entity entitled to any brokerage commission, fee, or other compensation. Each party shall indemnify, defend protect and hold harmless the other, their agents and legal representatives, against any fee, commission, or other compensation due to any person, firm, or corporation claiming to have acted in said party's behalf.

48. Attorney's Fees. The unsuccessful party in any action or proceeding shall pay for all costs, expenses and reasonable attorney's fees incurred by the prevailing party or its agents or both in enforcing the covenants and agreements of this Sublease, including, but not limited to, reasonable attorney's fees, reasonable out-of-pocket litigation expenses, and court costs at all trial and appellate levels. The term "prevailing party" as used herein shall include without limitation a party who obtains legal counsel and brings an action against the other party by reason of the other party's breach or default and obtains substantially the relief sought by virtue of an adjunction on the merits thereof.

49. Lessee's Right of First Refusal. Lessee shall have the preemptive right during the initial Term to purchase the Leased Premises or any larger tract of land of which the Leased Premises may be a part on the same terms and conditions as those of any bona fide offer received by and acceptable to ADA. Before making any sale or any agreement to sell with such third party, ADA shall notify Lessee of the terms and conditions of such third party's offer, in which case, within thirty (30) days after receipt of such notice, Lessee may exercise this preemptive right by written notice to ADA. Failure of Lessee to exercise this preemptive right on one or more occasions shall not affect Lessee's right to exercise it on any subsequent occasion. Any sale or transfer of the Lessee's Lease Premises, or any part thereof, or of any larger tract of land of which the Lease Premises may be a part, shall be expressly made subject to all of the terms, covenants and

conditions of the Sublease. This provision may be specifically enforced by Lessee and shall be included in the Memorandum of Sublease being recorded herewith.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed on the day and year written below.

Date: _____

Ardmore Development Authority,
an Oklahoma Public Trust

By: _____
Nancy Sjulín, Chairman

ATTEST:

Secretary

Date: _____

Dolgencorp, LLC
a Kentucky limited liability company

By: _____

Name: _____

Title: _____

CONSENTED TO BY:

Date: _____

The City of Ardmore, Oklahoma,
An Oklahoma Municipal Corporation

By: _____
Doug Pfau, Mayor

ATTEST:

Lori Linney, City Clerk

EXHIBIT A
Legal Description of the Leased Premises (Revised)

TRACT 1B

A tract of land lying in the Southwest Quarter (SW/4) of Section Eighteen (18), Township Three (3) South, Range Three (3) East of the Indian Meridian, Carter County, Oklahoma, being more particularly described as follows:

Commencing at the Northwest Corner of said SW/4; THENCE S 00°20'02" E along the West line of said SW/4 a distance of 69.00 feet; THENCE N 89°39'58" E to a point on the East right of way line of State Highway 53 a distance of 25.00 feet; THENCE continuing N 89°39'58" E a distance of 100.00 feet; THENCE S 79°42'12" E a distance of 102.00 feet; THENCE N 89°39'58" E a distance of 754.76 feet; THENCE S 00°20'02" E a distance of 510.00 feet to the Point of Beginning; THENCE N 89°39'58" E a distance of 559.61 feet; THENCE S 00°20'02" E a distance of 412.00 feet; THENCE S 89°39'58" W a distance of 359.62 feet; THENCE N 00°20'02" W a distance of 204.09 feet; THENCE S 89°39'58" W a distance of 200.00 feet; THENCE N 00°20'02" W a distance of 207.91 feet to the Point of Beginning.

TRACT 1C

A tract of land lying in the Southwest Quarter (SW/4) of Section Eighteen (18), Township Three (3) South, Range Three (3) East of the Indian Meridian, Carter County, Oklahoma, being more particularly described as follows:

Commencing at the Northwest Corner of said SW/4; THENCE S 00°20'02" E along the West line of said SW/4 a distance of 69.00 feet; THENCE N 89°39'58" E to a point on the East right of way line of State Highway 53 a distance of 25.00 feet; THENCE continuing N 89°39'58" E a distance of 100.00 feet; THENCE S 79°42'12" E a distance of 102.00 feet; THENCE N 89°39'58" E a distance of 754.76 feet; THENCE S 00°20'02" E a distance of 374.00 feet to the Point of Beginning; THENCE N 89°39'58" E a distance of 559.61 feet; THENCE S 00°20'02" E a distance of 136.00 feet; THENCE S 89°39'58" W a distance of 559.61 feet; THENCE N 00°20'02" W a distance of 136.00 feet to the Point of Beginning.

EXHIBIT B
Commencement Date Agreement

THIS LEASE COMMENCEMENT DATE AGREEMENT is entered into this ____ day of _____ 202__, by and between _____, a ("Landlord"), and _____, a _____, with its principal office and place of business in Goodlettsville, Tennessee ("Tenant").

The lease between Landlord and Tenant dated _____ for the Demised Premises located at _____, City of _____, County, State of _____, (the "Lease") requires that the parties execute this Agreement to memorialize their understanding as to the Commencement Date of the Lease. Accordingly, the parties hereby agree as follows:

1. The Commencement Date as referred to in the Lease is established as _____, and the expiration date of the initial Lease term is established as _____.

2. The first Lease Year as referred to in the Lease is established as _____, ending _____.

All other terms and conditions of the Lease remain unchanged. The provisions of this Lease Commencement Agreement shall bind and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors, and assigns.

Acknowledged and agreed to by:

LANDLORD:
Ardmore Development Authority

Date: _____

By: _____
Name: Nancy Sjulín
Title: Chair

Landlord's Federal Tax Identification Number: _____

TENANT:

Date: _____

By: _____
Dana Francis
Director of Lease Administration

EXHIBIT C

ESTOPPEL CERTIFICATE

[Insert Lender's name and address]

Demised Premises: DOLLAR GENERAL STORE # _____
ADDRESS: _____
CITY / STATE / ZIP: _____

THIS IS TO CERTIFY THAT THE FOLLOWING IS TRUE AND CORRECT:

1. That the undersigned is the tenant under that certain Lease dated _____ (the "Lease") conveying a leasehold interest in the property described therein.
2. That the Lease is in full force and effect and has not been modified (except as set forth following this sentence). _____
3. That the monthly base rent due under the Lease has not been paid more than thirty (30) days in advance.
4. That, to Tenant's knowledge as of the date hereof, Landlord is not in default under the Lease (except as set forth following this sentence).

IN WITNESS WHEREOF, the undersigned has executed this certificate on behalf of Tenant.

TENANT: _____

By: _____

Name: Dana Francis

Its: Director

Date: _____