

CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: Airport
AGENDA DATE: January 27, 2009
CONTACT PERSON/PHONE: Monica Lombraña, A.A.E.
Acting Director of Aviation
780-4793
DISTRICT(S) AFFECTED: 3

SUBJECT:

Approve a Resolution authorizing the City Manager to sign new Commercial Site Lease agreement, between the CITY OF EL PASO ("Lessor") and PATRIOT PLACE, LTD., a Texas Limited Partnership ("Lessee")

BACKGROUND / DISCUSSION:

Patriot Place, Ltd currently holds the ground lease for the shopping center known as Hawkins Plaza at the intersection of Hawkins Blvd and Montana Ave. The new site consisting of 19,700 Sq Ft is located within the shopping center, however has never been leased, and is still unimproved. Patriot Place, Ltd wishes to lease the unimproved lot to increase the number of parking places available to the customers of Hawkins Plaza. In addition to Patriot Place, Ltd using the lot to increase parking capacity, Patriot Place, Ltd would also have the option to construct additional retail facilities on the lot.

LEASE: Area: 19,700 Sq Ft
Rate: \$1.2376 per Sq Ft (\$24,380.72 per annum)
Term: 40-Years
Options: 2, five year options to extend the lease

PRIOR COUNCIL ACTION:

None, this is a new Commercial Site Lease Agreement

AMOUNT AND SOURCE OF FUNDING:

N/A This is a revenue generation lease.

BOARD / COMMISSION ACTION:

The Airport Advisory Board at their January 15, 2009 meeting recommended approval of the Assignment.

*****REQUIRED AUTHORIZATION*****

LEGAL: Cynthia Osborn **FINANCE:** (if required) _____
Cynthia Osborn, Ass. City Attorney

OTHER: Monica Lombraña
Monica Lombraña, A.A.E., Acting Director of Aviation

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

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

That the City Manager be authorized to sign a Commercial Site Lease Agreement ("Lease") by and between the City of El Paso ("Lessor") and Patriot Place, Ltd. ("Lessee") for the following described property: a portion of Lot 1, Block 1, Hawkins Plaza, City of El Paso, El Paso County, Texas ("Premises").

ADOPTED this the ____ day of _____ 2009.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Acting Director of Aviation

COMMERCIAL SITE LEASE

**EL PASO INTERNATIONAL AIRPORT
EL PASO, TEXAS**

PATRIOT PLACE, LTD.
Lessee

FEBRUARY 1, 2009
Effective Date

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ATTACHMENTS

EXHIBIT A – Property Description

EXHIBIT B - Declarations of Restrictions and Covenants

COMMERCIAL SITE LEASE

THIS COMMERCIAL SITE LEASE AGREEMENT ("Lease") is made this __ day of _____
_____ 2009, between the **CITY OF EL PASO** ("Lessor") and **PATRIOT PLACE,
LTD.**, a Texas Limited Partnership ("Lessee").

WITNESSETH:

WHEREAS, Lessor owns and operates the El Paso International Airport, located in the County of El Paso, State of Texas, ("Airport"), which is managed by the Director of Aviation ("Director") of the City of El Paso's Department of Aviation; and

WHEREAS, Lessor deems it advantageous to itself and to its operation of the Airport to lease unto Lessee the parcel of land described herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out;

NOW THEREFORE, for and in consideration of the terms, conditions and covenants of this Lease to be performed by Lessee, all of which Lessee accepts, Lessor hereby leases to Lessee and Lessee hereby hires and takes from Lessor certain real property, and certain attendant privileges, uses and rights, as hereinafter specifically set out.

ARTICLE I - PREMISES AND PRIVILEGES

Section 1.01 Description of Premises. The real property subject to this lease is described as follows:

Being a portion of Lot 1, Block 1, Hawkins Plaza, City of El Paso,
El Paso County, Texas, more fully described in **EXHIBIT "A"**,
attached hereto and incorporated herein by reference ("Premises").

Section 1.02 Right to Construct. In addition to the general privileges, uses, rights, and interests attaching to the Premises hereinbefore described and without limiting the generality thereof, Lessee shall have the right and shall provide for the location, construction, erection, maintenance, and removal of improvements, including but not limited to improvements required for the operation of a parking facility, in any lawful manner, upon or in the Premises, for the purpose of carrying out any of the activities provided for herein, subject, however, to the conditions herein generally or particularly set forth.

Section 1.03 Restrictions of Privileges, Uses and Rights. The rights granted hereunder are expressly limited to the construction and operation of facilities in accordance with the "Declaration of Restrictions and Covenants", attached hereto as **EXHIBIT "B"**, and incorporated herein by reference.

Section 1.04 Conditions of Granting Lease. The granting of this Lease and its acceptance by Lessee is conditioned upon the following covenants:

- A. That no functional alteration of the Premises or functional change in the uses of the Premises shall be made without the prior written consent of Lessor.
- B. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority with reference to aviation and air navigation; and all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.

ARTICLE II - OBLIGATIONS OF LESSOR

Section 2.01 Quiet Enjoyment. Lessor covenants and agrees that it has good title to the Premises, free and clear of all liens and encumbrances; and that Lessor has the right and authority to lease the same as herein set forth. Lessor further covenants that all things have happened and been done to make its granting of said Lease effective and Lessor warrants to Lessee peaceful possession and quiet enjoyment of the Premises during the term hereof, including any extensions thereto, upon performance of Lessee's covenants herein.

Section 2.02 Condition and Maintenance of Premises "As Is". Lessee accepts the Premises "As Is", with all faults, relying on Lessee's own inspection and judgment and not in reliance on any representations of Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

ARTICLE III - OBLIGATIONS OF LESSEE

Section 3.01 Net Lease. This Lease in every sense shall be without cost to Lessor for the development, maintenance and improvement of the Premises. It shall be the sole responsibility of Lessee to keep, maintain, repair and operate the entirety of the Premises and all improvements and facilities placed thereon at Lessee's sole cost and expense.

Section 3.02 Condition of Premises. Lessee accepts the Premises in their present condition and, without expense to Lessor, will repair and maintain any installations thereon and remove or cause to be removed any debris to the extent required for its use thereof.

Section 3.03 Compliance With Laws. Lessee, at Lessee's expense, agrees that it will design, construct, operate, and maintain the tenant improvements on the Premises in accordance with **EXHIBIT "B"**, and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may

hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made any alterations to the Premises and improvements thereon including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act, as amended and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of Premises and any improvements thereon by disabled persons ("Disabilities Laws").

Lessee shall, at Lessee's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Lessee's use, operation, occupation or alteration of the Premises and any improvements thereon.

A. Definitions.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including, but not limited to, the ambient air, ground water, surface water, and land use, including sub-strata land.
- (2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and gasoline, oil, jet fuel, lubricants, and all other petroleum products.
- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

- (1) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its agents, employees, contractors, invitees, or a third party in violation of any Environmental Law; it being expressly understood and agreed that Lessee may have Hazardous Materials stored on the Premises and in such case shall do so in accordance with this Lease and all applicable laws, rules and regulations of governmental agencies exercising jurisdiction. **Without limiting the generality of any other indemnity clauses contained in this Lease, Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon.** This obligation includes but is not limited to all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material located on the Premises or in any improvements thereon or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Lessee results in any contamination of the Premises, any improvements thereon, or any surrounding property, Lessee shall promptly take all actions, at its sole cost and expense, as are necessary to return the

Premises, and any improvements thereon or the surrounding property to the condition existing prior to the introduction of any such Hazardous Material to the Premises, any improvements thereon or the surrounding property; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises, any improvements thereon or the surrounding property.

- (3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Leased Premises, any improvements thereon or on surrounding property then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties, which is related to environmental contamination.
- (4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (5) Lessee shall insert the provisions of this Section into any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

C. Reporting:

- (1) At any time that Lessee submits any filing pertaining to its property, operations, or presence of the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the Federal Aviation Administration, the Environmental Protection Agency (EPA) or the Texas Commission on Environmental Quality (TCEQ), Lessee shall provide duplicate copies of the filing(s) and all related documents to Lessor.
- (2) Upon expiration, termination or cessation of this Lease for any reason, Lessee shall provide a current Phase I environmental site assessment of the

Premises acceptable to Lessor; and if, in the opinion of Lessor, the Premises shall require environmental remediation, Lessee shall perform same to return the Premises into a (like new) condition equal or better to that as of the effective date of the Lease.

Notwithstanding any other provision in this Lease to the contrary, Lessor shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of any law on, under or about the Premises, the cost of which shall be borne by Lessee

Lessee's failure or the failure of its agents, employees, contractors, invitees or the failure of a third party to comply with any of the requirements and obligations of this Section shall constitute a material default of this Lease and, shall permit Lessor to pursue the remedies as set forth in Section 10.02 hereinbelow, in addition to all other rights and remedies provided by law or otherwise provided in the Lease, to which Lessor may resort cumulatively, or in the alternative.

Section 3.04 Minimum Improvement Standard. In the event Lessee desires to construct improvements on the Premises, Lessee covenants and agrees that it shall construct such facilities, exclusive of paving and landscaping, to a maximum extent of fifty percent (50%) of the Premises' land area.

Section 3.05 Lessor's Approval of Plans. Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of improvements shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with all laws, rules, and regulations of federal, state, county and municipal authorities.

Section 3.06 Maintenance. Lessee shall, at its sole cost and expense, maintain the Premises and the buildings, improvements, landscaping and appurtenances thereto, in a presentable condition consistent with good business practice and equal in appearance and character to other similar improvements on Airport property. Lessee shall repair all damages to said Premises caused by its employees, patrons or its operation thereon; shall maintain and repair all equipment thereon, including any drainage installations, paving, curbs, islands, buildings and improvements; and shall repaint its own buildings as necessary.

Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform whatever maintenance Lessor deems necessary. If said maintenance is not undertaken by Lessee within thirty (30) days after receipt of written notice, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which plus ten percent (10%) shall be borne by Lessee. Prior to entry upon the Premises to perform the required maintenance obligations, Lessor will provide Lessee at least ten (10) days written notice of the time of its entry and will use commercially reasonable efforts not to interfere with the business operations conducted upon the Premises.

Section 3.07 Utilities. Lessee shall assume and pay for all costs or charges for utility services furnished to Lessee during the term hereof; provided, however, that Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; subject to approval by all appropriate governmental authorities responsible for the approval of the use of storm and sanitary sewers and water utility outlets in the City of El Paso.

Section 3.08 Trash, Garbage and Other Refuse. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of the operation of its business. Lessee shall provide and use suitable covered commercial type receptacles, whether on the Premises or on adjoining leased premises of Lessee, for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

Section 3.09 Permitted Uses. Lessee covenants and agrees that, in no event, will it enter into any business activity on the Airport other than those specified in EXHIBIT "B".

ARTICLE IV - TERM OF LEASEHOLD

Section 4.01 Initial Term. This Lease shall be for a term of forty (40) years, commencing on the Effective Date first noted on the Title Page.

Section 4.02 Options to Extend. In the event that Lessee is not in default of any terms of this Lease, Lessee shall have the option to extend this Lease for two (2) additional terms of five (5) years each. Lessee may exercise the first five (5) year option ("First Option Period") by notifying Lessor in writing at least one hundred and twenty (120) days prior to the expiration of the initial term. In the event Lessee exercises its first option, the Lease shall be extended for five (5) years on the same terms and conditions, except that the Ground Rental shall be adjusted as set forth in Section 5.04 below. In no event, however, shall the adjusted Ground Rental during the First Option Period be less than the Ground Rental established at the beginning of the Lease.

Lessee may exercise the second five (5) year option ("Second Option Period") by notifying Lessor in writing at least one hundred and twenty (120) days prior to the expiration of the First Option Period. In the event Lessee exercises its second option, the Lease shall be extended for an additional five (5) years on the same terms and conditions, except that the Ground Rental for this Second Option Period shall be readjusted as set forth in Section 5.04 below. In no event, however, shall this adjusted Ground Rental during this Second Option Period be less than the Ground Rental established in the First Option Period.

Lessee's options to extend the Lease shall terminate if Lessee fails to notify Lessor in writing 120 days before the expiration of the initial term or any relevant option period. Time is of the essence with regard to the 120 day notice requirement.

Section 4.03 Holding Over. It is agreed and understood that any holding over by Lessee of the Premises at the expiration or early termination of this Lease shall operate and be construed as a tenancy from month to month at a rental of one and one-half (1.5) times the current monthly installments of rental. Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or early termination of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or early termination of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

Section 4.04 National Emergency. In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, at the option of Lessee, the term of this Lease shall be extended by the amount of the period of such suspension.

ARTICLE V - RENTALS

Section 5.01 Ground Rental. For the purpose of computing the annual rental to be paid by Lessee to Lessor for the Premises ("Ground Rental"), Lessor and Lessee agree that the Premises comprise 19,700 square feet. The Ground Rental for the Premises will be calculated on the basis of 19,700 square feet at \$1.2376 per square foot per annum. Initially, therefore, the Annual Ground Rental shall be \$24,380.72.

Section 5.02 Commencement of Ground Rental. Payment of Ground Rental by Lessee to Lessor as aforesaid shall commence on the Effective Date of this Lease.

Section 5.03 Readjustment of Ground Rental. The Ground Rent payable under this Lease during the Term shall be adjusted as follows, with each adjustment becoming effective as of the appropriate anniversary date, regardless of the date the actual adjustment is made. The Ground Rent shall be adjusted every fifth (5th) year anniversary of the Effective Date of this Agreement by the cumulative percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), issued by the Bureau of Labor Statistics of the United States Department of Labor; provided, however, that the adjustment of such Ground Rent during the Term shall never result in the Ground Rent exceeding twenty percent (20%) of the Ground Rent for the five (5) year period immediately preceding the respective lease anniversary. Nor shall any such adjustment be permitted to result in the reduction in Ground Rent from the five (5) year period immediately preceding such adjustment.

Lessor and Lessee agree that percentage increases in the CPI-U shall govern Ground Rent readjustments. The parties further agree that for the purposes of computing such percentage increases, the Base Year CPI-U shall be established as that rate in place ninety (90) calendar days prior to the Effective Date of this Lease. Ground Rent shall be adjusted pursuant to the percentage increase in the CPI-U from the Base Year CPI-U to the rate in place ninety (90) days prior to the applicable date of readjustment (i.e. five (5) year intervals from the Effective Date).

Section 5.04 Readjustment of Ground Rent for Option Periods

- A. Upon the commencement of the "First Option Period", if so exercised, and upon the commencement of the "Second Option Period", if so exercised, the Ground Rental shall be adjusted to eight percent (8%) of the then fair market value of the Premises, disregarding the value of any Lessee-owned improvements located on the Premises. In no event, however, shall the Ground Rental be less than the Ground Rental for the rental period immediately preceding the beginning of the respective rental adjustment. The readjustment of ground rent shall become effective as of the appropriate option date, regardless of the date the actual adjustment is made.
- B. The fair market value of the Premises shall be determined by an appraisal of the Premises; however, if mutually agreeable to Lessor and Lessee, the appraisal to determine the fair market value, may be foregone if the Director and Lessee agree on the fair market value of the Premises established by a recent appraisal of similar property located in the surrounding area.
- C. In the event Lessor and Lessee do not so mutually agree, Lessor shall select a qualified appraiser who shall appraise the market value of the Premises disregarding the value of any Lessee-owned improvements located on the Premises. The cost of said appraisal shall be borne by the Lessor. If Lessee does not object to said appraised value within ten (10) days of notice, the market value shall be established and basic land rental shall be adjusted accordingly. If Lessee does not concur with the market value as established by Lessor's appraisal, Lessee shall so state in written notice to Lessor within ten (10) days after receipt of notice of the new value. In such event, Lessee shall then select a qualified appraiser who shall appraise the Premises and submit its determination of the current market value in writing to both the Lessee and Lessor within thirty (30) days after notice of Lessee's original objection. The cost of this second appraisal shall be borne by Lessee. Upon receipt of Lessee's appraisal, Lessor shall call the two appraisers together in order that a fair appraisal value can be agreed upon. Once the value is established, the rental rate shall be adjusted accordingly. Such readjusted Ground Rental shall be effective as of the effective date of the option period for which the adjustment is being determined, without regard to the date actually agreed upon. Further, any appraiser designated to serve in accordance with the provisions of this Lease shall be disinterested and shall be qualified to appraise real estate of the type covered by this Lease situated in El Paso County, Texas, and shall have been actively engaged in the appraisal of real estate similar to the Premises and located in El Paso County, Texas for a period of not less than five (5) consecutive years immediately preceding his or her appointment.

Section 5.05 Time of Payment. All Ground Rentals due hereunder shall be paid in twelve (12) equal monthly installments. Said monthly rental payments shall be paid, in advance, on or before the first day of each and every month during the Initial Term, Option Period or any extension of this Lease.

Section 5.06 Unpaid Rent, Fees and Charges. Any installment of Ground Rental, any fees, or other charges or monies accruing under any provisions of this Lease that are not received by the twentieth (20th) day of the month in which payment is due, shall bear interest at the rate equal to the maximum allowed by law the date when the same was due according to the terms of this Lease until actually paid by Lessee.

Section 5.07 Place of Payment. All rental payments provided herein shall be paid to Lessor at the following address:

Accounting Department
El Paso International Airport
P. O. Box 971278
El Paso, Texas 79997-1278

ARTICLE VI - INSURANCE AND INDEMNIFICATION

Section 6.01 Fire and Other Risks Insurance. Lessee, at its sole cost and expense, shall, throughout the term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Premises insured for the mutual benefit of Lessor and Lessee against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief, in an amount equal to the actual replacement cost of such improvements, including costs of replacing excavations and foundation, but without deduction for depreciation ("Full Insurable Value"). In the event a dispute arises as to the Full Insurable Value, which cannot be resolved by agreement, an appraisal of the Premises and all improvements thereon shall be made by an appraiser selected by Lessee, and reasonably acceptable to Lessor, to determine the Full Insurable Value. The expense of the appraisal shall be borne by Lessee. The resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser selected by Lessee be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value.

Section 6.02 Liability Insurance. Lessee, at its sole cost and expense shall, throughout the term of this Lease, provide and keep in force for the benefit of Lessor and Lessee, as their respective interests may appear, comprehensive general liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for bodily injury to one person for each occurrence, One Million Dollars (\$1,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

Section 6.03 Performance Bonds. Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded.

This bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work described as herein provided.

- B. Prior to the date of commencement of any construction, a payment bond with Lessee's contractor or contractors as principal, in a sum equal to the full amount of the construction contract awarded.

This bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

Section 6.04 Authorized Insurance Companies. All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld.

Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Each such certificate shall contain:

- A. A statement of the coverage provided by the policy;
- B. A statement of the period during which the policy is in effect;
- C. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance;
- D. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days' prior written notice to Lessor; and
- E. A statement certifying the Lessor has been listed as an additional named insured on the policy.

Section 6.05 Indemnification. LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF LESSEE'S BUSINESS ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF LESSEE OF ANY TERMS OF THIS LEASE, OR FROM ANY ACT OR NEGLIGENCE OF LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF LESSOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LESSOR BY REASON OF ANY SUCH CLAIM, LESSEE, UPON NOTICE FROM LESSOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LESSOR.

ARTICLE VII - DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY

Section 7.01 Obligations of Lessee. During the term hereof, except as provided in Paragraph 7.03 below, should the improvements constructed by Lessee or Lessor upon the Premises be damaged or destroyed in whole or in part by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessee, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessee in accordance with the following terms and conditions:

- A. Prior to commencing such work, Lessee shall deliver to Lessor a set of the preliminary construction plans and specifications in accordance with the terms and provisions of **EXHIBIT "B"**. In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefore and the requested modifications or alterations thereto.
- B. Upon approval of the preliminary plans and specifications, Lessee shall prepare or cause to be prepared final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one (1) complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable

therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.

- C. Prior to commencing construction, Lessor shall require Lessee to furnish a performance and payment bond and, if requested, Builder's Risk Insurance.
- D. Upon compliance with the foregoing, and after settlement shall have been made with the insurance company or companies and said proceeds of such insurance policy or policies shall have been paid to Lessee, Lessee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.

Section 7.02 Insurance Proceeds. Upon receipt by Lessee of the proceeds of the insurance policy or policies, Lessee shall deposit same in an escrow account to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed by Lessee during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Lessee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Lessee.

Section 7.03 Cancellation of Lease. Should the improvements on the Premises be damaged or destroyed, in whole or in part, by fire or other casualty during the last year of the Initial Term or last year of any option period or renewal term of this Lease, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessor, unless Lessor has elected to have the Premises returned to it clear of all improvements in accordance with the provisions of this Lease, in which case Lessee shall be entitled to such insurance proceeds. All rents payable under this Lease shall be prorated and paid to the date of such cancellation. The receipt of insurance proceeds by Lessor will relieve Lessee from any responsibility to restore the Premises to their former condition.

ARTICLE VIII - CONDEMNATION

Section 8.01 Definitions. The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are

pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.

- B. "Total taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
 - (1) The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;
 - (2) The conduct of Lessee's business on the Premises would be substantially prevented or impaired;
 - (3) The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Lease.
- D. "Partial taking" means the taking of a fee title that is not either a total or substantial taking.
- E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.
- F. "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of taking, as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the taking.
- G. "Award" means compensation paid for the taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

Section 8.02 Notice of Condemnation. The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of intended taking;
- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

Section 8.03 Rights of Parties During Condemnation Proceeding. Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

Section 8.04 Taking of Leasehold. Upon a total taking, Lessee's obligation to pay rent and other charges hereunder shall terminate on the Date of Taking, but Lessee's interest in the leasehold shall continue until the taking is completed by deed, contract or final order of condemnation. If the taking is substantial under the aforementioned definition, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives notice of the intended taking, elect to treat the taking as a total taking. If Lessee does not so notify Lessor, the taking shall be deemed a partial taking. Upon a partial taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

Section 8.05 Total Taking. All of Lessee's obligations under the Lease shall terminate as of the Date of Taking. Upon a total taking, all sums awarded for the Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the land and the Lessor-constructed improvement as unencumbered by the Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

Section 8.06 Partial Taking. Upon a partial taking, all awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises or property; and
- B. The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all sums awarded for Lessee-constructed improvements and the leasehold value of the Lease. Lessor shall receive all sums awarded for the land as unencumbered by the Lessee-owned improvements but subject to the Lease.

Section 8.07 Obligations of Lessee Under Partial Taking. Promptly after any such partial taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a partial taking in the last year of the initial term or any renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the Premises as aforesaid by notifying Lessor if its intention to that effect within thirty (30) days after the date of such taking.

Section 8.08 Taking of Temporary Use of Premises and Improvements. Upon any taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such taking, Lessee shall receive, hold and disburse the award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising there from, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

If any such taking is for a period extending beyond the expiration date of the term, the taking shall be treated under the foregoing provisions for total, substantial and partial takings.

ARTICLE IX - ENCUMBRANCES

Section 9.01 Encumbrance. As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiary under a deed of trust. Lessee may encumber its leasehold estate and its interest in the improvements constructed by Lessee on the Premises by the execution and delivery of a Mortgage. The Mortgagee of any such Mortgage may deliver to Lessor a written notice specifying:

- A. The amount of the obligation secured by the Mortgage;
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

After receipt of such notice, Lessor shall serve such Mortgagee by certified mail at the latest address furnished by such Mortgagee a copy of every notice or demand served by Lessor upon Lessee under the terms and provisions of this Lease so long as such Mortgage is in effect.

Section 9.02 Mortgagee's Rights. Upon receipt of a notice or demand in accordance with Section 9.01 above, Mortgagee shall have one hundred and twenty (120) days after receipt of such notice within which, at Mortgagee's election, either:

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;
- C. If the default cannot be cured within one hundred and twenty (120) days, to commence performance within such period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.

Section 9.03 Rights on Foreclosure. In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Lessee's interest in lieu of foreclosure shall succeed to all of Lessee's rights, interests, duties and obligations under this Lease.

**ARTICLE X - EXPIRATION, CANCELLATION,
ASSIGNMENT AND TRANSFER**

Section 10.01 Expiration. This Lease shall expire at the end of the Initial Term, Option Period or any extension thereof.

Section 10.02 Cancellation. Subject to the provisions herein, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due;
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises;
- E. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or

- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

In any of the aforesaid events, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Lease canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Lease by reason of that or any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the term of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

Section 10.03 Repossessing and Reletting. In the event of default by Lessee hereunder, which shall remain uncured after the required notices have been given pursuant to this Lease, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and
- B. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

Section 10.04 Assignment and Transfer. Lessee shall have the right and privilege to assign or transfer this Lease, subject to the prior written approval of Lessor. Provided, however, that Lessor's approval shall not be required in the event of an assignment of this Lease by Lessee to the first leasehold Mortgagee.

Any person or entity to which this lease is assigned pursuant to the Bankruptcy Code U.S.C. 101, et seq., shall be deemed, without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

Section 10.05 Subleasing. Lessee shall have the right to sublease all or any part of the Premises hereunder for the same purposes permitted under the terms and provisions of this Lease. Any such sublease shall require the prior written consent of Lessor and shall be subject to the same conditions, obligations and terms as set forth herein including but not limited to all insurance requirements. Lessee shall be responsible for the observance by its sublessees of the terms and covenants contained in this Lease. Lessee shall promptly report to Lessor any subleases of the Premises and, upon request of Lessor, Lessee shall furnish Lessor with a copy of the sublease agreement.

Section 10.06 Rights Upon Expiration. At the expiration or early termination of this Lease, Lessor shall be entitled to have the Premises returned to Lessor clear of all improvements. Lessee shall have one hundred and eighty (180) days after expiration or early termination to remove such improvements; provided that any occupancy by Lessee for the purposes of removal shall be subject to the Ground Rental due hereunder. If Lessee fails to so remove said improvements, Lessor may remove same at Lessee's expense.

Lessor may, at its option, take title to the improvements in lieu of removal by or for Lessee. The Parties shall agree to Lessor's election to require removal of the improvements or take possession of the improvements at least ninety (90) days prior to the beginning of the last year of this Lease; provided Lessee may request Lessor to make such election at least one hundred and eighty (180) but not more than three hundred and sixty (360) days before the beginning of the last year of this Lease or any extension or renewal thereof.

Section 10.07 Landlord's Lien. It is expressly agreed that in the event of default in the payment of rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any

private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first the necessary proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this lease, with the balance, if any, to be paid to Lessee.

ARTICLE XI - GENERAL PROVISIONS

Section 11.01 Continuity of Declarations of Restrictions and Covenants. This Lease agreement is subject to the terms, covenants and conditions contained in EXHIBIT "B". Lessor reserves the right to revise the restrictions and covenants set for in EXHIBIT "B", by giving Lessee ten (10) days notice prior to such revision, provided, however, that such revisions will not cause a substantial reduction in the value of Lessee's leasehold interest, or require a substantial expenditure by Lessee to comply with such revisions, impose additional obligations upon Lessee or impair or diminish Lessee's rights to the Leased Premises. Lessor's right to revise the restrictions and covenants contained in EXHIBIT "B" includes but is not limited to, the right to revise said document because of the development of new concepts or improved construction and architectural techniques.

Section 11.02 Right of Flight. The City of El Paso reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on the Airport.

The City of El Paso reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Premises, to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at the Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations and any amendments or successor regulations.

The City of El Paso reserves for itself, its successors and assigns the right to prevent any use of the Premises which would interfere with aircraft landing on, or taking off from, the Airport and the right to prevent any other use of said land which would constitute an airport hazard.

Section 11.03 Time is of the Essence. Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

Section 11.04 Notices. All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LESSOR: City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901
Attn: City Manager

COPY TO: Director of Aviation
El Paso International Airport
6701 Convair Rd.
El Paso, Texas 79925-1091

LESSEE: Patriot Place Ltd.
7355 Remcon #200
El Paso, Texas 79912
Attn: David Brandt

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown on the return receipt for delivery, rejection, or undeliverable. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this paragraph.

Section 11.05 Attorney's Fees. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

Section 11.06 Agreement Made in Texas. The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

Section 11.07 Nondiscrimination Covenant. Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for the purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.
- B. That no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Premises.

- C. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- D. That Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- E. Economic Discrimination. To the extent that, under this Lease, Lessee furnishes goods or services to the public at the Airport, Lessee agrees that it shall:
1. Furnish each and every good and service on a fair, reasonable, and not unjustly discriminatory basis to all users of the Airport; and
 2. Charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers as otherwise permitted under the law.
- F. That, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Lease and re-enter and repossess Premises, and hold the same as if said Lease had never been made or issued.

Section 11.08 Affirmative Action. Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from the Lessor, to insure that no person shall, on the grounds of race, color, sex, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Lessee assures that it will require that its covered suborganizations (sublessees or otherwise) provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their suborganizations (sublessees or otherwise) to the same effect.

Section 11.09 Cumulative Rights and Remedies. All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

Section 11.10 Interpretation. Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires. Any provision of the Lease permitting or requiring discretion, consent, or approval by Lessor, or satisfaction, judgment, or opinion of Lessor, will be deemed to require that the same be exercised or made reasonably and in good faith.

Section 11.11 Agreement Made in Writing. This Lease is made by and between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

Section 11.12 Paragraph Headings. The table of contents and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit or augment the scope, context or intent of this Lease or any part or parts of this Lease.

Section 11.13 Severability. If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there may be added a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 11.14 Successors and Assigns. All of the terms, provisions, covenants and conditions of this Lease shall inure to exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

Section 11.15 Taxes and Other Charges. The Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against the Lessee or the Lessor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, or any improvements thereon, during the term of this Lease including any extensions or option periods granted thereto. Lessor is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from the Lessee's use of the property or possession of the Premises.

The Lessee in good faith may contest any tax or governmental charge; provided that the Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to the Lessor, such action will not adversely affect any right or interest of the Lessor.

Section 11.16 Authorization To Enter Lease. Each of the persons executing this Lease on behalf of Lessee warrants to Lessor that he/she has full right and authority to enter into this Lease, and is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

Section 11.17 Survival of Certain Provisions. All Provisions of this Lease, which expressly or impliedly contemplate or require performance after the expiration or termination of this Lease for the benefit of Lessor hereunder, shall survive such expiration or termination of this Lease, including without limitation, the indemnification and compliance with law provisions.

Section 11.18 Restrictions and Reservations. This Lease is subject to all rights-of-way, easements, dedications, restrictions, and other encumbrances of record and running with the land. Lessor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

Section 11.19 Subordination of Lease. All rights granted in this Lease shall be subordinate to the rights in any deed from the United States to the City of El Paso. This Lease shall further be subordinate to the provisions of any existing or future agreements between Lessor and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States Government be to substantially destroy the commercial value of the Premises, Lessee may cancel this Lease in its entirety.

Section 11.20 Waiver of Warranty of Suitability. LESSOR DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY OTHERWISE HAVE ARISEN BY OPERATION OF LAW. LESSOR DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS IN THE FACILITIES THAT ARE VITAL TO LESSEE'S USING THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE AND THAT THESE ESSENTIAL FACILITIES WILL REMAIN IN A SUITABLE CONDITION. LESSEE LEASES THE PREMISES "AS IS", WHETHER SUITABLE OR NOT, AND WAIVES THE IMPLIED WARRANTY OF SUITABILITY.

Section 11.21 Effective Date. Regardless of the date signed, this Lease shall be effective as of the date first noted on the title page.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

APPROVED on the date first noted above.

LESSOR: CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Acting Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2009,
by **Joyce A. Wilson as City Manager of the City of El Paso (Lessor).**

Notary Public, State of Texas

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

PROPERTY DESCRIPTION

19,700 Square Feet or 0.452 Acre

Being a portion of Lot 1, Block 1, Hawkins Plaza (recorded in volume 61, page 14, plat records), City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING FOR REFERENCE at a found ½ inch rebar at the Southwest corner of said Lot 1 in the East right-of-way line of Hawking Boulevard;

THENCE, North 05°37'33" East, a distance of 540.73 feet to a found concrete nail with shiner and **POINT OF BEGINNING** for the herein described tract and a found "x" in concrete in said East right-of-way line of Hawking Boulevard bears, South 85°18'25" West, 134.95 feet;

THENCE, North 08+50'00" West, a distance of 197.00 feet to a set ½ inch rebar with cap marked (Tx2027) in the South right-of-way line of Montana Avenue;

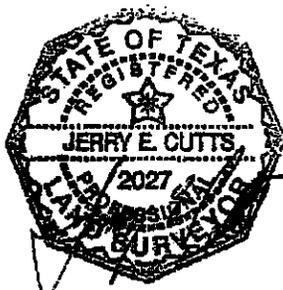
THENCE, along said South right-of-way line, North 81°10'00" East, a distance of 100.00 feet to a set ½ inch rebar with cap marked (Tx2027);

THENCE, leaving said South right-of-way line, South 08°50'00" East, a distance of 197.00 feet to a found concrete nail with shiner;

THENCE, South 81°10'00" West, a distance of 100.00 feet to the **POINT OF BEGINNING** and containing 19,700 square feet or 0.452 acre of land.

This description was prepared from a survey made on the ground on February 28, 2002.

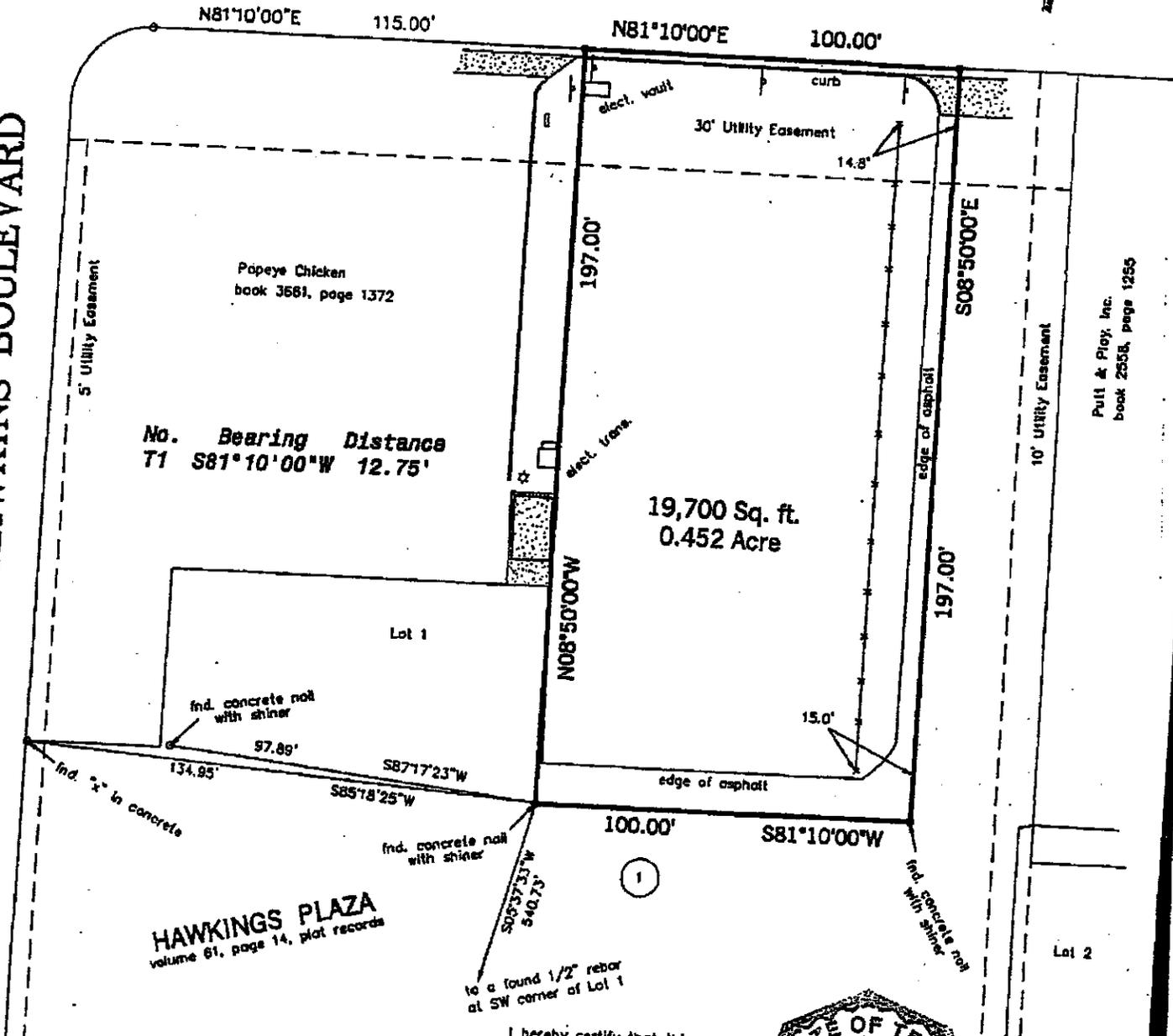
PREPARED BY:
Cutts Land Surveying, Inc.
El Paso, Texas
February 28, 2002
Jon No. 020210



MONTANA AVENUE

Scale: 1" = 40'

HAWKINS BOULEVARD



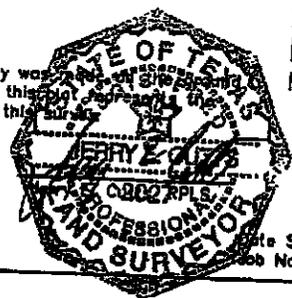
No. Bearing Distance
T1 $S81^{\circ}10'00''W$ 12.75'

19,700 Sq. ft.
0.452 Acre

HAWKINGS PLAZA
volume 61, page 14, plat records

I hereby certify that this survey was made under my supervision and that this plat represents the facts as found at the time of this survey.

2-28-02
Date



Date Surveyed: 02-28-02
Job No.: 020210

PLAT OF SURVEY
PORTION OF LOT 1, BLOCK 1,
HAWKINS PLAZA,
EL PASO, EL PASO COUNTY, TEXAS

Cutts Land Surveying, Inc.
Professional Land Surveyors
1100 Montana Avenue, Suite 206 Ph (915) 574-0700

EXHIBIT "B"

DECLARATIONS OF RESTRICTIONS AND COVENANTS

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DECLARATION OF RESTRICTIONS AND COVENANTS

THIS Declaration of Restrictions and Covenants (“Declaration”) is made, as of the effective date of the lease agreement to which it is attached (“Lease”), by the City of El Paso, El Paso County, Texas (“City or “Declarant”).

WHEREAS, Declarant is the owner of various parcels of real property collectively referred to as the El Paso International Airport, which is located in the City of El Paso, El Paso County, Texas (“Airport”);

WHEREAS, Declarant has established a general overall Master Plan for the development of said Airport; and

WHEREAS, Declarant has included in said overall Master Plan certain parcels of land for the establishment of a desirable environment for certain manufacturing, business, industrial or other uses;

NOW, THEREFORE, the following restrictions and covenants are established for the use, maintenance and development of the leased premises as more fully described in the Lease to which this Declaration is attached:

ARTICLE I - DEFINITIONS

Whenever used in this instrument or as used within the Lease to which this instrument is attached, the following terms shall have the following meanings:

- A. **“AIRPORT”** shall mean the El Paso International Airport as depicted on the Airport Layout Plan.
- B. **“BUILDING”** shall include all buildings and all projections or extensions therefrom, including any garages, outside platforms and docks, carports, canopies and porches, excluding ground cover.
- C. **“BUILDING COVERAGE”** shall mean the surface area of the Premises that may be covered by Buildings, expressed as a percentage of the total site area.
- D. **“BUILDING SITE”** shall mean the entire Premises leased by Lessee and shown as “Premises” in **EXHIBIT “A”** of the Lease.
- E. **“CITY”** shall mean the City of El Paso, Texas, its duly elected Council, or any duly constituted agent/committee appointed through said Council to fulfill the obligations herein required.

- F. **“COVENANTS”** shall mean the lease restrictions and covenants expressed within this instrument, as attached and incorporated into the Lease.
- G. **“DIRECTOR OF AVIATION”** or **“DIRECTOR”** shall mean the Director of Aviation of the Airport.
- H. **“FAA”** shall mean the Federal Aviation Administration of the U. S. Government or any federal agencies succeeding to its jurisdiction.
- I. **“LESSEE”** shall mean Patriot Place, Ltd.
- J. **“LESSOR”** shall mean the City of El Paso.
- K. **“PERMITTED USES”** shall mean the uses, which may be engaged in upon the Premises.
- L. **“PREMISES”** the property as identified in Article I and more fully described in **EXHIBIT “A”** of the Lease.
- M. **“SETBACK”** shall mean the distance a building must be set back from the property line of the Premises.
- N. **“STREET”** shall mean any street, highway or other public thoroughfare recognized by the City.

ARTICLE II - PERMITTED USES AND PERFORMANCE STANDARDS

- A. **Permitted Uses.** No building, structure or land provided to Lessee pursuant to the Lease shall be used by Lessee for any purpose other than for a parking facility or for retail and/or restaurant uses. Retail uses may include office space and retail service establishments. All uses not expressly granted in this section or otherwise expressly permitted by the Lease are prohibited.
- B. **Performance Standards.** Subject to the limited exceptions arising related to the construction activities required for the improvements contemplated by the Lease and provided that such instances are the result of standard construction activities, the Premises shall not be used or occupied in any manner so as to create any dangerous, noxious, or otherwise objectionable conditions which may affect any other property, including, but not limited to:
 - (i) Fire, explosive or other hazardous noise, vibration or shock;
 - (ii) Smoke, dust, odor or other forms of air pollution;

- (iii) Heat;
- (iv) Glare;
- (v) Electrical or other disturbance; or
- (vi) Liquid or solid refuse wastes or other substances, conditions or elements in such a manner or in such an amount as to affect the surrounding area or adjoining properties.

- C. **Fire and Explosive Hazards.** No activity shall be undertaken involving fire or explosive hazard which shall endanger the property, improvements or employees of Lessor or any other property owner or lessee.
- D. **Noise.** No noise, other than from the operation of motor vehicles or aircraft, which is objectionable to a person of normal sensibilities shall be permitted within fifty (50) feet of the property line of the Premises.
- E. **Air Pollution.** No activity of any type shall be conducted or permitted on the Premises which violates any applicable federal, state, or local law, rule or regulation.
- F. **Dust Control.** All ground areas that will not be covered by structures shall be landscaped or surfaced with concrete, asphalt concrete, asphalt oil or other comparable dust free surfacing permitted by applicable City and State regulation and shall be maintained in good condition, free of weeds, dust, trash and other debris; and shall be properly drained and graded.
- G. **Heat or Glare.** Any operation producing intense glare or heat shall be performed within an enclosed or screened area in such manner that the glare or heat emitted will not be discernible from the property line of the Premises.
- H. **Electronic or Radio Interference.** No electrical, electronic, or radio emissions shall be produced on the Premises that may interfere, obstruct, or adversely affect the operation of air navigation aids or Airport communications.
- I. **Illumination/Exterior Lighting.**
- (i) **Exterior Lighting.** The design and location of exterior lighting shall comply in all respects to the applicable requirements of the City, the FAA or successor agencies, and any other governmental agencies having applicable jurisdiction with respect to height, type and placement of lighting standards as they may affect the safety of flight operations into, from and around the Airport.
 - (ii) **Interior Lighting.** The source of illumination of any kind within any Building on the Premises shall not be visible at the property line, except for normal installation of standard interior lighting fixtures within buildings.

- J. Signs.** The number, size, design, and location of all signs displayed for observation from outside a Building whether displayed on, near, or within a Building shall be subject to prior written approval by the Director. Further, all such signs shall comply with the applicable sign ordinances and building codes of the City of El Paso and with all rules and regulations of the FAA, or any successor agencies. Signs on the Premises shall be limited to those identifying the uses conducted on the Premises and to those necessary for directional purposes. Notwithstanding anything to the contrary contained herein, the Director will not withhold its approval of signs that, when applicable, are consistent with the prototype design of a National or Regional tenant. A "National Tenant" is a tenant with at least seventy-five (75) stores throughout the country. A "Regional Tenant" is a tenant with at least thirty (30) stores throughout the region; provided, however, that no outdoor advertising, billboards or flashing lighting shall be permitted.
- K. Refuse or Trash.** No refuse or trash shall be kept, stored or allowed to accumulate on the Premises, except as expressly permitted by the Lease.
- L. Storage.** All storage of every type, except of automobiles, shall be within approved Buildings or enclosures. Storage shall be expressly prohibited outside of approved Buildings or enclosures, including but not limited to the storage of parts, service equipment or similar items.
- M. Sewage Disposal Systems.** No cesspool, septic tank or other sewage disposal system or device shall be installed, maintained or used upon the Premises without the written approval of the Lessor.

ARTICLE III - DEVELOPMENT OF SITE-REQUIRED IMPROVEMENTS

- A. Off Street Parking.** All provisions for vehicle parking for employees and visitors of Lessee shall be placed on the Premises. No parking whatsoever shall be permitted on a Street.

Such off street parking facilities shall be provided in accordance with all applicable City, state and federal laws, rules and regulations, and shall be entirely sufficient for the parking of all vehicles necessary for the conduct of the permitted uses of the Premises. Such off-street parking facilities shall comply with all applicable City, state and federal laws, including, but not limited to, the American with Disabilities Act. Each parking space shall be designated by white lines painted upon the paved surface.

- B. Vehicle Loading.** All provisions for the loading and maneuvering of vehicles incidental to the operation of the permitted uses on the Premises shall be placed solely on the Premises and shall also comply with all applicable City, state and federal laws, rules and regulations. Vehicle loading on a Street shall not be permitted.

C. **Setbacks.** All Buildings shall be set back a minimum of twenty-five (25) feet from the lot line(s) facing a Street. At least twenty percent (20%) of the required minimum front setback area and side setback areas facing a Street shall be landscaped and planted. Side setbacks (not facing a Street) shall be a minimum of fifteen (15) feet. Rear setbacks shall be a minimum of ten (10) feet from the lot line(s) or utility easement line, provided such construction does not interfere with utility services.

D. **Landscaping.** A reasonable amount of landscaping, including the planting of ground-covers, shrubs and trees, shall be required, such landscaping to be in accordance with standards established by the City's Department of Aviation unless the requirements of the City of El Paso, through its planning and zoning requirements or otherwise, shall be more restrictive, in which case the more restrictive requirements shall apply

The first phase of such landscaping, as approved, shall be installed within a period not to exceed one hundred eighty (180) days after the notice of completion has been filed on the initial improvements.

Setback areas shall be landscaped to the minimum extent outlined in Paragraph C, above. In addition, paving or landscaping is to be compatible with treatment for this area on other lots on the same Block.

All trees shall be limited to a height of thirty-five (35) feet above the curb line.

E. **Building Heights.** All building heights shall conform to FAA rules and regulations and shall require prior written approval of the Director. The term "building height" shall include any Building equipment, structures or other extrusions from the roof.

F. **Building Coverage.** All Buildings and structures, or portions thereof, excluding paving and landscaping, placed on the Premises shall not cover more than fifty percent (50%) of the premises.

G. **Type of Construction.** All Buildings shall be framed with reinforced concrete or masonry, structural steel, structural aluminum, or wood. Siding shall be masonry, glass or enameled steel. Concrete or masonry units shall be kept neatly painted, if used. Pre-fabricated metal buildings are specifically prohibited. All Buildings shall conform to applicable laws, ordinances and building codes of the City.

H. **Pipes.** No water pipe, sewer pipe or drainage pipe (other than those within structures) shall be installed or maintained upon the Premises above the surface of the ground, except hoses and moveable pipes used for irrigation or similar purposes, as approved by the Director.

ARTICLE IV - PREPARATION AND SUBMISSION OF PLANS FOR IMPROVEMENT

- A. **General.** All plans for improvements shall be prepared by registered engineers and architects, shall be of contemporary design, and shall require prior written approval by the Director or its authorized agent before any construction can take place.

Upon the execution of a lease for building site, the Director and the Lessee shall jointly determine a reasonable period of time in which final plans and specifications shall be submitted, such period to be set forth in writing.

The following plans shall be required for submission to the Director within the time period determined:

- (1) A plot plan at a scale not smaller than one (1) inch being equal to one hundred (100) feet showing the relationship of the proposed improvements to the Leased Premises and to the improvements on adjacent lots, utilities and access thereto, curbs, walks, driveways, parking areas, etc.
- (2) Floor plans at a scale not smaller than one-sixteenth (1/16) inch being equal to one (1) foot.
- (3) Ground cover plans, including landscaping.
- (4) A true architectural rendering of the proposed buildings, including the proposed exterior color scheme, style, materials, and design and placement of signs.
- (5) Any other plans, specifications, or design features which the City or its authorized agent may deem necessary and request.

- B. **Form and Content of Plans.** The City may promulgate rules governing the form and content of plans to be submitted for its approval and may issue statements of its policy with respect to approval or disapproval of architectural styles, details, or other matters pertaining to the plans.

Such rules and statements of policy may be amended or revoked by the City at any time; and no inclusion in, omission from, or amendment of any such rule or statement shall be deemed to bind the City to its approval or to waive the exercise of the City's discretion as to any such matter.

- C. **Codes and Regulations.** All improvements shall be planned and constructed in accordance with rules and regulations prescribed by the City or its authorized agent; with the laws and ordinances of the City of El Paso; with applicable building codes, and in compliance with the rules and regulations of the Federal Aviation Administration (FAA) or any successor agencies, where applicable.

Prior to the start of construction, FAA Form 7460 with an Air Emissions Inventory must be completed and submitted to the FAA through El Paso International Airport. FAA approval is required prior to the start of construction.

D. Approval of Plans. Approval of plans and specifications shall be at the sole discretion of the Director, such approval not to be arbitrarily or unreasonably withheld. Approval of said plans and specifications may be withheld because of, but not limited to the following:

- (1) Failure to comply with any of these Declarations.
- (2) Failure to include such information as may be reasonably requested.
- (3) Reasonable objection to the design and appearance of the proposed structures.
- (4) Failure to conform with existing structures upon other parcels.
- (5) The disapproval of the location, grading plan, color scheme, finish, design, proportions, style or architecture, height, or appropriateness of the proposed structure or because of any other matter which, in the judgment of the City, would render the proposed structure inharmonious with the general plan for improvement of the Airport and surrounding property.

E. Commitment to Construct. Upon approval by the Director of plans for construction of any structure, a copy of the approved plans shall be deposited for permanent record with the Director and a copy of such plans bearing the written approval of the Director shall be returned to the Lessee.

Approval of these plans by the Director shall constitute a commitment on the part of the Lessee to erect and maintain the improvements as proposed and approved and within a reasonable time period, such period to be determined jointly by the Director and the Lessee and to be set forth in writing.

F. Construction Within Time Specified. Any approved construction shall be prosecuted diligently in accordance with the approved plans and specifications and shall be completed within the time period specified. Failure to complete such work in the time specified shall cause such approval to be automatically withdrawn unless the Director grants written extension of such approval. After such automatic withdrawal of approval, the Lessee will be considered in default of its Lease for the Leased Premises and the City may terminate such Lease in accordance with the provisions set forth in that document.

G. Landscaping Plans. Trees, shrubs, fences, hedges or other landscaping shall not be planted, placed, or maintained upon the Leased Premises until a complete plan thereof has been submitted to and approved by the Director in a manner similar to that required for architectural plans. All plans for landscape improvements shall be prepared by registered or approved landscape architects. Approval shall be by the Director, City or its representative consultants.

H. Plans for Alterations and Improvements. All plans for alterations to the Leased Premises, either for the construction of additional facilities or alterations to existing Buildings or other structures, shall be prepared, submitted, and approved as outlined in

Paragraph A through G, above, and shall be subject to the same restrictions as herein provided. This paragraph shall apply only to exterior or structural changes; alterations to the interior of buildings shall not be considered unless they affect the performance standards set forth in Article II.

- I. **Construction Without Approval.** If any structure shall be altered, erected, placed, or maintained on the Leased Premises, other than in accordance with plans and specifications approved by the Director, such alterations, erections, and maintenance shall be deemed to have been undertaken without the approval required herein. This restriction shall be applicable to landscaping plans as well as architectural plans.

In the event of such construction without approval, the Lessee will be considered in default of the Lease for the Leased Premises and the City may terminate the Lease in accordance with the provisions set forth in that instrument.

- J. **Fee for Examination of Plans and Specifications.** The City may charge and collect a fee for the examination of any plans and specifications submitted for approval pursuant to this Article. Such fee shall be payable at the time such plans and specifications are submitted.

The amount of such fee shall not exceed the actual cost to the City of making such examination, including the cost of any architect's or engineer's fees incurred in connection therewith.

- K. **Right of Entry and Inspection.** Any authorized agent of the city, at any reasonable time and without notice, may enter upon and inspect the Leased Premises for the purpose of ascertaining whether the maintenance of such parcel and the maintenance, construction, or alteration of structures thereon are in compliance with the provisions hereof; and neither the City nor such authorized agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

ARTICLE V - GENERAL PROVISIONS

- A. **Maintenance of Premises.** Lessee shall, at its sole cost and expense, provide for the maintenance of the Premises and the Buildings, improvements and appurtenances thereto, in a presentable condition consistent with good business practice and equal in appearance and character to other similar improvements on the Airport.
- B. **Housekeeping.** If accumulations of weeds, or rubbish are permitted to remain on the Premises more than thirty (30) days after a request in writing from Lessor to have them removed, the Lessor or its authorized agent may enter upon the Premises for the purpose of removing same by whatever means it deems necessary. Such entry shall not be deemed a trespass and the Lessor shall not be subject to any liability therefore. The cost

of such work plus ten percent (10%) administration fee shall be borne by the Lessee and shall be paid to the Lessor within thirty (30) days from the date Lessee is provided notice of such costs.

- C. **Maintenance of Landscaping.** If landscaping areas are not maintained in accordance with the standards prescribed under this Lease and these Covenants, and the condition is not corrected within thirty (30) days after written notice from the Lessor, the Director or authorized agent shall have the right to enter on the Premises and plant or replant such areas without being deemed guilty of trespass and without incurring any liability. The costs, plus ten percent (10%) administration fee therefore, as determined by the Lessor, shall be paid by the Lessee to the Lessor within thirty (30) days from Lessee's receipt of notice of such costs.

- D. **Use Permits.** Such use and occupancy permits as may be required by the Building Code of the City shall be maintained in force at all time by Lessee, at its sole cost.

- E. **Failure to Enforce a Restriction.** The Lessor may fail to enforce any restriction herein specified, but in no event should such failure be deemed a waiver of that particular restriction or of these Covenants or the right to enforce any restriction at a later date.

[END OF COVENANTS]