

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Aviation

**AGENDA DATE:** February 9, 2010

**CONTACT PERSON/PHONE:** Monica Lombraña, A.A.E. -780-4793

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

Resolution authorizing the City Manager to sign a Maintenance Facility and Land Lease for Auto Rental Concession by and between the City of El Paso (Lessor) and Simply Wheelz, LLC dba Advantage Rent A Car (Lessee) for a period to begin on February 9, 2010 and expire on June 30, 2010. There is an option for the Lessee to extend the agreement for a period of one year (1) year.

**BACKGROUND / DISCUSSION:**

Simply Wheelz, LLC dba Advantage Rent A Car recently entered into an Auto Rental Concession and Lease Agreement (concession agreement) with the City of El Paso. The Maintenance Facility and Land Lease Agreement will provide for vehicle maintenance facilities to support this concession agreement. The terms of the agreement and option coincide with the expiration and option date for the concession agreement.

Rental rates are:

3,400 S.F. - Building and Site Improvements	@ \$ 9.13/sf = \$31,042.00/year
64,695 S.F. - Land	@ \$ 0.54/sf = \$34,935.30/year
	<hr/> \$65,977.30/Total Annual Rent

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A - Revenue Generating

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



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

*Information copy to appropriate Deputy City Manager*

## RESOLUTION

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

THAT the City Manager is hereby authorized to sign a Maintenance Facility and Land Lease for Auto Rental Concession by and between the City of El Paso ("Lessor") and Simply Wheelz LLC dba Advantage Rent A Car ("Lessee") for the following described property:

A portion of Lot 4, Block 1-C, El Paso International Airport Tracts, City of El Paso, El Paso County, Texas, consisting of 64,695 square feet of land, including 3,400 square feet of building and site improvements; municipally known and numbered as 6535 DeHavilland, El Paso, Texas.

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_.

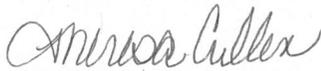
### THE CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

### ATTEST:

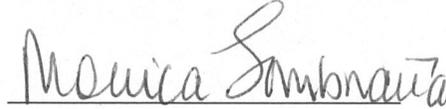
\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

### APPROVED AS TO FORM:



Theresa Cullen  
Deputy City Attorney

### APPROVED AS TO CONTENT:



Monica Lombrana, A. A. E.  
Director of Aviation

**MAINTENANCE FACILITY AND LAND LEASE  
FOR AUTO RENTAL CONCESSION**

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

**SIMPLY WHEELZ LLC dba ADVANTAGE RENT A CAR**  
**Lessee**

**February 9, 2010**  
**Effective Date**

## TABLE OF CONTENTS

		<u>Page</u>
<b>ARTICLE I</b>	<b>PREMISES AND PRIVILEGES</b> .....	1
<b>Section 1.01</b>	Description of Premises Demised.....	1
<b>Section 1.02</b>	Right to Construct.....	2
<b>Section 1.03</b>	Restrictions of Privileges, Uses and Rights.....	2
<b>Section 1.04</b>	Conditions of Granting Lease.....	2
<b>ARTICLE II</b>	<b>OBLIGATIONS OF LESSOR</b> .....	2
<b>Section 2.01</b>	Quiet Enjoyment.....	2
<b>Section 2.02</b>	Condition and Maintenance of Premises "As Is".....	2
<b>ARTICLE III</b>	<b>OBLIGATIONS OF LESSEE</b> .....	3
<b>Section 3.01</b>	Net Lease.....	3
<b>Section 3.02</b>	Condition of Premises.....	3
<b>Section 3.03</b>	Compliance With Laws.....	3
<b>Section 3.04</b>	Lessor's Approval of Plans.....	7
<b>Section 3.05</b>	Landscaping and Maintenance.....	7
<b>Section 3.06</b>	Utilities.....	7
<b>Section 3.07</b>	Trash, Garbage, Etc. ....	8
<b>ARTICLE IV</b>	<b>TERM OF LEASEHOLD</b> .....	8
<b>Section 4.01</b>	Term.....	8
<b>Section 4.02</b>	Option to Extend.....	8
<b>Section 4.03</b>	Holding Over.....	8
<b>Section 4.04</b>	National Emergency.....	8
<b>ARTICLE V</b>	<b>RENTALS</b> .....	9
<b>Section 5.01</b>	Rental.....	9
<b>Section 5.02</b>	Time of Payment.....	9
<b>Section 5.03</b>	Commencement of Rental.....	9
<b>Section 5.04</b>	Unpaid Rent, Fees and Charges.....	9
<b>Section 5.05</b>	Place of Payment.....	9
<b>ARTICLE VI</b>	<b>INSURANCE AND INDEMNIFICATION</b> .....	9
<b>Section 6.01</b>	Fire and Other Risks Insurance.....	9
<b>Section 6.02</b>	Liability Insurance.....	10
<b>Section 6.03</b>	Performance Bonds.....	10
<b>Section 6.04</b>	Authorized Insurance Companies.....	11
<b>Section 6.05</b>	Indemnification.....	11

**TABLE OF CONTENTS**

	<u>Page</u>
<b>ARTICLE VII</b>	<b>DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY</b> .....11
<b>Section 7.01</b>	Partial Damage.....11
<b>Section 7.02</b>	Extensive Damage .....12
<b>Section 7.03</b>	Complete Destruction .....12
<b>Section 7.04</b>	Limits of Lessor's Obligations Defined .....12
<b>Section 7.05</b>	Damage or Destruction of Leasehold Improvements and Trade Fixtures.....12
<b>ARTICLE VIII</b>	<b>CONDEMNATION</b> .....13
<b>Section 8.01</b>	Definitions.....13
<b>Section 8.02</b>	Notice of Condemnation .....14
<b>Section 8.03</b>	Rights of Parties During Condemnation Proceeding .....14
<b>Section 8.04</b>	Taking of Leasehold .....14
<b>Section 8.05</b>	Total Taking.....15
<b>Section 8.06</b>	Partial Taking.....15
<b>Section 8.07</b>	Obligations of Lessee Under Partial Taking.....15
<b>Section 8.08</b>	Taking of Temporary Use of Premises and Improvements .....15
<b>ARTICLE IX</b>	<b>EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER</b> .....16
<b>Section 9.01</b>	Expiration.....16
<b>Section 9.02</b>	Cancellation .....16
<b>Section 9.03</b>	Repossessing and Reletting.....17
<b>Section 9.04</b>	Assignment and Transfer .....17
<b>Section 9.05</b>	Subleasing.....17
<b>Section 9.06</b>	Rights Upon Expiration .....17
<b>Section 9.07</b>	Landlord's Lien.....17
<b>ARTICLE X</b>	<b>GENERAL PROVISIONS</b> .....18
<b>Section 10.01</b>	Continuity of Restrictions and Covenants .....18
<b>Section 10.02</b>	Right of Flight.....18
<b>Section 10.03</b>	Time is of the Essence .....19
<b>Section 10.04</b>	Notices .....19
<b>Section 10.05</b>	Attorney's Fees .....19
<b>Section 10.06</b>	Agreement Made in Texas .....19
<b>Section 10.07</b>	Nondiscrimination Covenant .....19
<b>Section 10.08</b>	Affirmative Action.....20
<b>Section 10.09</b>	Cumulative Rights and Remedies.....21
<b>Section 10.10</b>	Interpretation.....21
<b>Section 10.11</b>	Agreement Made in Writing .....21
<b>Section 10.12</b>	Paragraph Headings .....21
<b>Section 10.13</b>	Severability .....21
<b>Section 10.14</b>	Successors and Assigns.....21

**TABLE OF CONTENTS**

	<u>Page</u>
<b>ARTICLE X</b>	<b>GENERAL PROVISIONS (Continued)</b>
Section 10.15	Taxes and Other Charges .....21
Section 10.16	Force Majeure .....22
Section 10.17	Waiver of Warranty of Suitability .....22
Section 10.18	Survival of Certain Provisions .....22
Section 10.19	Restrictions and Reservations .....22
Section 10.20	Right of Entry .....22
Section 10.21	Subordination of Lease .....22
Section 10.22	Authorization To Enter Lease .....23
Section 10.23	Effective Date .....23
<b>LESSOR'S SIGNATURE &amp; ACKNOWLEDGMENT .....23</b>	
<b>LESSEE'S SIGNATURE &amp; ACKNOWLEDGEMENT .....24</b>	

**ATTACHMENTS**

**EXHIBIT A - Detailed Sketch of Plot to be Leased**

**EXHIBIT B - Declaration of Restrictions and Covenants Industrial Zones**

## MAINTENANCE FACILITY AND LAND LEASE FOR AUTO RENTAL CONCESSION

THIS MAINTENACE FACILITY AND LAND LEASE FOR AUTO RENTAL CONCESSION ("Lease") is made this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, between the CITY OF EL PASO ("Lessor") and SIMPLY WHEELZ LLC dba ADVANTAGE RENT A CAR ("Lessee").

### WITNESSETH:

**WHEREAS**, Lessor owns and operates El Paso International Airport, located in the County of El Paso, State of Texas ("Airport") which is under the management of the Director of Aviation ("Director"); and

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

**WHEREAS**, Lessee has indicated a willingness and ability to properly keep, maintain and improve the land and improvements in accordance with standards established by Lessor if granted a lease of sufficient term on said ground area and improvements;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein set forth, Lessor and Lessee agree and covenant as follows:

### ARTICLE I PREMISES AND PRIVILEGES

**Section 1.01 Description of Premises Demised.** Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property and improvements located in El Paso County, Texas:

A portion of Lot 4, Block 1-C, El Paso International Airport Tracts, Unit 6, City of El Paso, El Paso County, Texas, consisting of **64,695** square feet of land including **3,400** square feet of building and site improvements municipally known and numbered as 6535 De Havilland, El Paso, Texas and further described in Exhibit "A", attached hereto and incorporated herein ("Premises").

It is agreed and understood that the Premises includes, at the Effective Date of this Lease, a building containing approximately **3,400** square feet and associated parking area, canopy, fencing, underground storage tank, and landscaping ("Existing Improvements").

**Section 1.02 Right to Construct.** In addition to the general privileges, uses, rights, and

interest 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, 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 and the prior written approval of the Director.

**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 Industrial Zones”, attached hereto as Exhibit “B” and fully incorporated by reference (“Declarations”) and by this reference made a part hereof.

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

- A. That Lessee shall not make any use of the Premises not permitted under the terms of Section 3.01 (C) of the Declarations.
- B. That the right to use public Airport facilities in common with others authorized to do so 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, at and until the granting and delivery of this Lease, it is well seized of the Premises and has good title thereto, free and clear of all liens and encumbrances having priority over this Lease; 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 in the event it constructs, operates and/or maintains improvements on the Premises, such activities shall be done in accordance with the Declarations 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. By way of example and not in limitation of the foregoing, the execution of this Lease and approval of Lessee's plans by the Airport shall not preclude the requirement that Lessee obtain all other approvals necessary for development of Lessee's project such as, but not limited to, building permits and certificates of occupancy.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any 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 of 1990 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 the 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 including 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 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 all petroleum products, such as gasoline, kerosene, diesel fuel, and the like.
- (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; provided, further, that with respect to demolition of Existing Improvements, Lessee shall comply fully with all regulatory requirements, including, but not limited to, those governing asbestos abatement. **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 or any improvements thereon. 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 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 or any improvements thereon, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; 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 or on any improvements thereon.
- (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 Premises or in any improvements thereon, 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 3.03 in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

C. Fuel Storage Tanks.

- (1) Lessee acknowledges that the Premises presently contain one underground fuel storage tank. Lessor waives all warranties, expressed or implied, as to the conditions of such tank and Lessee agrees that it accepts sole responsibility for the condition of the tank and accepts it as is. In connection with the operation and maintenance of the tank and any storage, pumping and dispensing facilities, Lessee will comply with all governmental regulations, laws, rules and ordinances, all industry standards and insurance requirements, all at Lessee's sole cost, expense and risk. Prior to the end of the term of the Lease, Lessee will perform all necessary clean up and testing necessary to assure that the Premises are not contaminated with any fuel, gasoline, petroleum product or hazardous material. Lessee will also deliver copies of the testing report showing no contamination on the site to Lessor. Lessee agrees to indemnify and hold Lessor harmless against any and all cost, expense and liability arising from the maintenance or operation of any gasoline or other chemical storage, pumping and dispensing equipment on the Premises during the tenancy provided for under this Lease, including, without limitation, any leaks therefrom or contamination of the Premises or adjacent property therefrom.
- (2) Without limiting the foregoing, if Lessee, at any time during the term of this Lease, installs any underground fuel storage tanks on the Premises, Lessee warrants that it will file all the appropriate forms with the Texas Commission on Environmental Quality, or any successor agency, to show that Lessee is the owner of the tanks, and, as such, accepts total responsibility for the underground storage tanks.

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 Article IX 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.

#### D. Reporting.

- (1) At any time that Lessee submits any filing pertaining to its property, operations, or presence on 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 or the Texas Natural Resources Conservation Commission, 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 condition equal or better to that as of the effective date of the Lease.

**Section 3.04 Lessor's Approval of Plans.** Lessee may, in the future, alter or add to the improvements on the Premises, upon the prior written approval of Lessor. However, 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. It is specifically understood that El Paso International Airport is only one of numerous departments of the City and that, in addition to obtaining approval of the Director, Lessee shall be required to obtain the approval of other departments, such as Engineering or Development and Infrastructure Services.

**Section 3.05 Landscaping and Maintenance.** Lessee shall, at its sole cost and expense, landscape and maintain 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 Airport property. Lessee shall repair all damages to the 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 the improvements as necessary.

Upon written notice by Lessor to Lessee, Lessee shall be required to perform whatever maintenance Lessor reasonably deems necessary. If said maintenance is not undertaken by Lessee within ten (10) 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 fifteen percent (15%) for maintenance and administrative costs will be charged to Lessee. Failure to pay such charges within ten (10) days of written demand shall be an event of default.

**Section 3.06 Utilities.** Lessee shall pay for all costs or charges for utility services furnished to Lessee during the term of the Lease. 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; and Lessee shall pay for any and all service charges and hook-up fees incurred.

**Section 3.07 Trash, Garbage, Etc.** 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 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.

#### **ARTICLE IV TERM OF LEASEHOLD**

**Section 4.01 Term.** The term of this Lease shall commence on the Effective Date first noted on the title page of this Lease and shall continue until June 30, 2010 (“Initial Term”).

**Section 4.02 Option 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 one (1) additional term of one (1) year. Lessee may exercise this option 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 option, the Lease shall be extended for one (1) year on the same terms and conditions.

**Section 4.03 Holding Over.** It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rental of one and one-half (1½) times the current monthly rental, and 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 cancellation 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 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 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, the term of this Lease shall be extended by the amount of the period of such suspension.

#### **ARTICLE V RENTALS**

**Section 5.01 Rental.** For the purpose of computing the annual rental to be paid by Lessee to Lessor for the Premises (“Rental”), Lessor and Lessee agree that the Premises comprise **64,695** square feet of land including **3,400** square feet of building and site improvements. The Rental for the Premises will be calculated on the basis of **64,695** square feet of land at \$0.54 per square foot per annum, and **3,400** square feet of building at \$9.13 per square foot per annum. Therefore,

the annual rental shall be **\$65,977.30**.

**Section 5.02 Time of Payment.** The Rental shall be paid monthly in advance on or before the first day of each month in a sum equal to one-twelfth of the Rental. The monthly Rental amount due shall be **\$5,498.11** per month.

**Section 5.03 Commencement of Rental.** Payment of Rental by Lessee to Lessor shall commence on the Effective Date, which is noted on the title page of this Lease.

**Section 5.04 Unpaid Rent, Fees and Charges.** Any installment of rent, any fees, or other charges or monies accruing under any provisions of this Lease that are not received by the 10th day of the month in which payment is due, shall bear interest at the rate equal to the maximum allowed by law from the date when the same was due according to the terms of this Lease until paid by Lessee.

**Section 5.05 Place of Payment.** All payments provided herein shall be paid to Lessor at the following address:

Accounting Division  
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 improvements thereon shall be made by an appraiser selected by Lessee and reasonably acceptable to Lessor to determine the Full Insurable Value. The resulting determination shall be conclusive between the parties for the purpose of this Section. The expense of this appraisal shall be borne by Lessee. Should the appraiser Lessee selected be unsatisfactory to Lessor, or Lessee chooses not to select an appraiser, 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.

Said 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.

Said 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.

- C. In accordance with Article 7.19-1 of the Texas Insurance Code, if a Performance or Payment bond is in an amount in excess of ten percent (10%) of the surety's capital and surplus, the Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed ten percent (10%) of the reinsurer's capital and surplus.

**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 acceptable to Lessor. Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the effective date of this Lease. Each such policy shall contain:

- A. A statement of the coverage provided by the policy;
- B. A statement certifying the Lessor to be listed as an additional insured in the policy;

- C. A statement of the period during which the policy is in effect;
- D. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. 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.

**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 Partial Damage.**

If all or a portion of the Premises are partially damaged by fire, explosion, the elements, the public enemy, or other casualty, but the Premises are not rendered untenable, the same will be repaired with due diligence by the parties as described in 0. If the damage is caused by the act or omission of Lessee, its sublessees, agents, invitees, contractors, representatives, subcontractors, suppliers, or employees, Lessor may repair and reconstruct the Premises and Lessee shall be responsible for reimbursing Lessor for the cost and expenses incurred in such repair.

### **Section 7.02 Extensive Damage.**

If the damage by causes referred to in Section 7.01 shall be so extensive as to render all or a portion of the Premises untenable, but capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by Lessor at its own cost and expense, subject to the limitations of 0. The Rental and other applicable fees and charges payable herein, pro-rata to the area so damaged, shall abate from the time of such damage until such time as the Premises are fully restored and certified by Lessor as ready for occupancy; provided, however, that if said damage is caused by the act or omission of Lessee, its sublessees, agents, invitees, contractors, representatives, subcontractors, suppliers or employees, the Rentals and other applicable fees and charges will not abate. In such event, Lessor may repair and reconstruct the Premises and Lessee shall be responsible for reimbursing Lessor for the cost and expenses incurred in such repair.

**Section 7.03 Complete Destruction.**

In the event all or a portion of the Premises are completely destroyed by fire, explosion, the elements, the public enemy or other casualty or so damaged that they are untenable and cannot be replaced for more than thirty (30) days, Lessor shall be under no obligation to repair, replace and reconstruct said Premises, and the Rental and other fees and charges payable hereunder, pro-rata to the area so damaged, shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the Premises are fully restored. If, within twelve (12) months after the time of such damage or destruction, the Premises shall not have been repaired or reconstructed, Lessee may terminate this Agreement in its entirety or only as to that portion of the Premises completely destroyed as of the date of such damage or destruction.

Notwithstanding the foregoing, if the Premises, or a portion thereof, are completely destroyed as a result of the act or omission of Lessee, its sublessees, agents, invitees, contractors, representatives, subcontractors, suppliers or employees, Rental and all other fees and charges due herein shall not abate and Lessor may, in its discretion, require Lessee to repair and reconstruct the Premises within twelve (12) months of such destruction and pay the costs therefor; or Lessor may repair and reconstruct the Premises and Lessee shall be responsible for reimbursing Lessor for the costs and expenses incurred in such repair.

**Section 7.04 Limits of Lessor's Obligations Defined.**

It is understood that, in the application of the foregoing Sections 7.01, 7.02, and 7.03, Lessor's obligations shall be limited to repair or reconstruction of the Premises. Redecoration and replacement of any leasehold improvements, trade fixtures, and personal property shall be the responsibility of Lessee, at its sole expense, and any such redecoration and refurbishing/re-equipping shall be of equivalent quality to that originally installed hereunder and shall be subject to written approval of the Director.

**Section 7.05 Damage or Destruction of Leasehold Improvements and Trade Fixtures.**

Provided that Lessor has repaired or rebuilt the Premises under Sections 7.01, 7.02, or 7.03 as applicable (and subject to the limitations described in 0 above), should the leasehold improvements, trade fixtures, and personal property provided by Lessee or by Lessor on behalf of Lessee or any part of them be destroyed or damaged, they shall in all instances be repaired or replaced by Lessee, whether or not said damage or destruction is covered by insurance. If Lessee fails to repair or replace such damaged leasehold improvements and trade fixtures subject to a schedule agreed upon between the parties, and provided further that this Agreement has not been terminated, Lessor may make such repairs or replacements and recover from Lessee the cost and expense of such repair or replacement, plus ten percent (10%) thereof for administrative costs.

**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 any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Premises including the Existing Improvements (but not including 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 Existing Improvements on the Premises; and

- B. The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all sums awarded for the Leasehold estate. Lessor shall receive all sums awarded for the Premises and the Existing Improvements.

**Section 8.07 Obligations of Lessee Under Partial Taking.** Promptly after any such partial taking, Lessor, at its expense, shall repair, alter, modify or reconstruct the Existing 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 one (1) year of the term or any renewal or extension thereof, Lessor shall be relieved of the responsibility to so repair or reconstruct the Existing Improvements on Premises as aforesaid by notifying Lessee if its intention to that effect; provided, however, that all sums awarded for Lessee owned improvements and the Leasehold estate shall be disbursed to Lessee.

**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 therefrom, 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 EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER**

**Section 9.01 Expiration.** This Lease shall expire at the end of the term or any extension thereof.

**Section 9.02 Cancellation.** Subject to the provisions of Article VIII above, 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 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 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 9.03 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 lawful 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 9.04 Assignment and Transfer.** Lessee shall not assign or transfer this Lease. Any person or entity to which this Lease is assigned to pursuant to the Bankruptcy Code, II 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 9.05 Subleasing.** Lessee shall not have the right to sublease all or any part of the Premises.

**Section 9.06 Rights Upon Expiration.** At the expiration of this Lease, the Premises shall be returned to Lessor in the same condition as existed upon Lessee's occupancy; reasonable wear and tear accepted.

**Section 9.07 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 or its successor agency, 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 to 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 X GENERAL PROVISIONS

**Section 10.01 Continuity of Restrictions and Covenants.** This Lease is subject to the terms, covenants and conditions contained in the Declarations. Lessor reserves the right to revise the restrictions and covenants set for in said Declarations, by giving Lessee ten (10) days notice prior to such revision, provided, however, that such revisions will not, in Lessor's opinion, cause a substantial reduction in the value of Lessee's leasehold interest, or require a substantial expenditure by Lessee to comply with such revisions. Lessor's right to revise the restrictions and covenants contained in the Declarations 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 10.02 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.

Lessor 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.

Lessor 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 the Premises which would constitute an airport hazard.

**Section 10.03 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 10.04 Notices.** All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, or by FedEx overnight delivery, addressed to the proper party at the following addresses:

<b>LESSOR:</b>	City Clerk City of El Paso 2 Civic Center Plaza El Paso, Texas 79999	Director of Aviation El Paso International Airport 6701 Convair Road El Paso, Texas 79925-1091
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<b>LESSEE:</b>	Simply Wheelz LLC dba Advantage Rent A Car 225 Brae Boulevard Park Ridge, New Jersey 07656
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Any notice so given shall be deemed properly delivered, given, served, or received on the

date shown for delivery or rejection on the return receipt. 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 Section.

**Section 10.05 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 10.06 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 10.07 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 Agreement for the purpose for which DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, 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 the 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, 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 the Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

**Section 10.08 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 City of El Paso, to insure that no person shall, on the grounds of race, creed, color, age, sex, disability, 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) 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) to the same effect.

**Section 10.09 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 10.10 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.

Lessor and Lessee agree that this Lease has been freely negotiated by both parties and that any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusion. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that party having drafted this Lease or any portion thereof.

**Section 10.11 Agreement Made in Writing.** This Lease contains all of the agreements and conditions made 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 10.12 Paragraph Headings.** The Table of Contents of this Lease 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, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

**Section 10.13 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 will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

**Section 10.14 Successors and Assigns.** All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

**Section 10.15 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 10.16 Force Majeure.** No party to this Agreement is responsible to the other party for nonperformance or delay in performance of the terms and conditions herein due to acts of God, acts of government, wars, riots, strikes, accidents in transportation, fuel or materials shortages, or other causes beyond the control of the parties.

**Section 10.17 Waiver of Warranty of Suitability.** Lessor disclaims any warranty of suitability that may arise by operation of law. Lessee leases the Premises as is and Lessor does not warrant that there are no latent defects that are vital to Lessee's use of the Premises for their intended commercial purpose.

**Section 10.18 Survival of Certain Provisions.** All provisions of this Lease, which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Sections 3.03 and 6.05.

**Section 10.19 Restrictions and Reservations.** This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations 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.

Lessor reserves for itself and any authorized agent to, at any reasonable time and without notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all Environmental Laws and; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**Section 10.20 Right of Entry.** Lessor reserves for itself and any authorized agent to, at any reasonable time and without notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all the Environmental Laws and for the purpose of showing the Premises; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**Section 10.21 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 substantially to destroy the commercial value of the Premises, Lessee may cancel this Lease in its entirety.

**Section 10.22 Authorization To Enter Lease.** If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

**Section 10.23 Effective Date.** Regardless of the date signed, this Lease shall be effective as of the Effective Date as noted on the title page of this Lease.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

LESSOR: CITY OF EL PASO:

\_\_\_\_\_  
Joyce A. Wilson  
City Manager



ATTEST:

*Robert M. Hurwitz*

Name: Robert M. Hurwitz  
Assistant Secretary

LESSEE:  
SIMPLY WHEELZ LLC  
Dba Advantage Rent A Car

*Simon Ellis*

Printed Name: Simon Ellis  
Title: Vice President

*me*



**ACKNOWLEDGEMENT**

THE STATE OF NEW JERSEY )  
COUNTY OF BERGEN )

This instrument was acknowledged before me on this 20 day of January, 2010 by Simon Ellis as Vice President of Simply Wheelz LLC dba Advantage Rent A Car (Lessee).

*Linda Dravin*  
Notary Public, State of

My Commission Expires:

LINDA DRAVIN  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES JAN. 24, 2014

PROPERTY DESCRIPTION  
64,695 SQUARE FEET OR  
1.485 ACRES

Being a portion of Lot 4, Block 1C, El Paso International Airport Tracts Unit 6 Replat, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING FOR REFERENCE at a City Monument at the centerline intersection of Allegheny Drive and De Havilland Drive;

THENCE, along the centerline of said De Havilland Drive, North 01°01'53" West, a distance of 96.24 feet to a point;

THENCE, leaving said centerline, North 89°30'27" East, a distance of 30.00 feet to a point in the east right-of-way line of said De Havilland Drive and POINT OF BEGINNING for the herein described Tract;

THENCE, along said east right-of-way line, North 01°01'53" West, a distance of 276.30 feet to a point for corner;

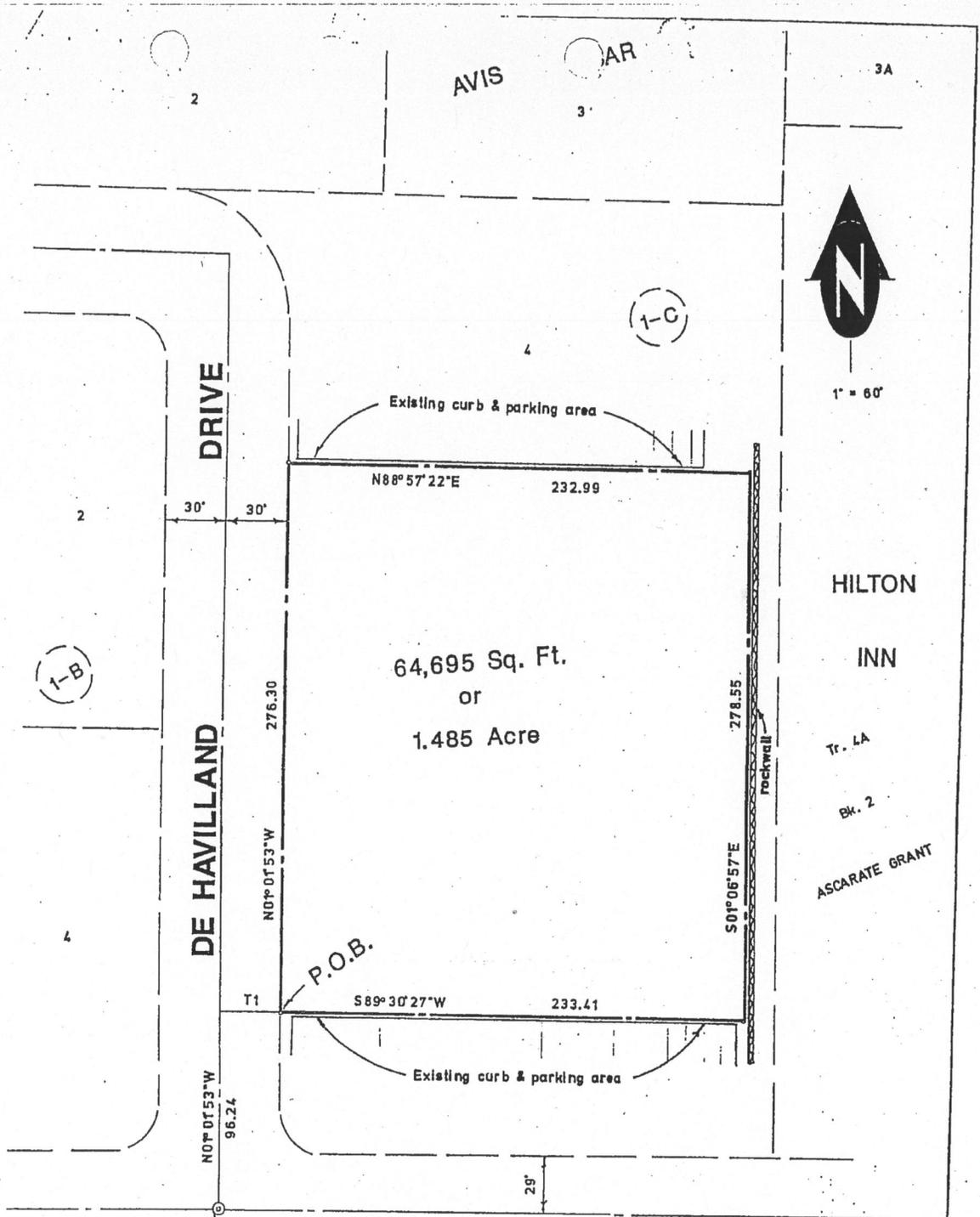
THENCE, leaving said right-of-way line, North 88°57'22" East, a distance of 232.99 feet to a point for corner;

THENCE, South 01°06'57" East, a distance of 278.55 feet to a point for corner;

THENCE, South 89°30'27" West, a distance of 233.41 feet to the POINT OF BEGINNING and containing 64,695 square feet or 1.485 acres of land.

PREPARED BY:  
Faught & Associates Inc.  
El Paso, Texas  
June 22, 1989  
Job No.: 5010-52S





1" = 60'

1-B

1-C

**EXHIBIT**  
**A**

NO.	BEARING	DISTANCE
T1	N89°30'27"E	30.00

**Faught & Associates Inc.** 433 Executive Blvd.  
CONSULTING ENGINEERS EL PASO, TEXAS 79902  
(915) 542-4900

PORTION OF LOT 4, BLOCK 1-C, EL PASO  
INTERNATIONAL AIRPORT TRACTS UNIT 6, REPLAT,  
CITY OF EL PASO,  
EL PASO COUNTY, TEXAS.

DRAWN BY: JC	DATE: 6-22-89	JOB NO. 5010-525
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# **EXHIBIT “B”**

## **DECLARATION OF RESTRICTIONS AND COVENANTS INDUSTRIAL ZONES**

Blocks 1-A, 1-B, 1-C, 2-A, 2-B, 2-C, 3, 5, 7, 8, 9, 10, 11,  
12, 13, 14, 15, 16, 17 and 18

El Paso International Airport  
El Paso, Texas

**DECLARATION OF RESTRICTIONS AND COVENANTS  
INDUSTRIAL ZONES  
TABLE OF CONTENTS**

		<u>Page</u>
<b>ARTICLE 1</b>	<b>PROPERTY .....</b>	<b>1</b>
<b>ARTICLE 2</b>	<b>DEFINITIONS .....</b>	<b>2</b>
2.01	Airport Board .....	2
2.02	Building .....	2
2.03	Building Coverage .....	2
2.04	Building Site .....	2
2.05	City .....	2
2.06	Declarant .....	2
2.07	Director of Aviation .....	2
2.08	FAA .....	2
2.09	Front Lot Line .....	2
2.10	Improvements .....	2
2.11	Industrial Park Commercial Support .....	3
2.12	Lot .....	3
2.13	Rear Lot Line .....	3
2.14	Setback .....	3
2.15	Street .....	3
2.16	Tenant .....	3
<b>ARTICLE 3</b>	<b>PERMITTED USES AND PERFORMANCE STANDARDS .....</b>	<b>3</b>
3.01	Permitted Uses .....	3
3.02	Prohibited Uses .....	5
3.03	Approval of Uses .....	5
3.04	Performance Standards .....	6
<b>ARTICLE 4</b>	<b>REGULATION OF IMPROVEMENTS .....</b>	<b>8</b>
4.01	Minimum Setback Lines .....	8
4.02	Excavation .....	9
4.03	Landscaping .....	9
4.04	Signs .....	10
4.05	Parking Areas .....	11
4.06	Storage and Vehicle Loading Area .....	11
4.07	Building Heights .....	11
4.08	Building Coverage .....	11
4.09	Building Regulations .....	12
4.10	Type of Construction .....	12
4.11	Pipes .....	13

**DECLARATION OF RESTRICTIONS AND COVENANTS  
INDUSTRIAL ZONES  
TABLE OF CONTENTS - Page Two**

<b>ARTICLE 5</b>	<b>SUBMISSION OF PLANS FOR IMPROVEMENTS .....</b>	<b>13</b>
5.01	Submission of Plans .....	13
5.02	Form and Content of Plans .....	14
5.03	Codes and Regulations .....	14
5.04	Review of Plans .....	15
5.05	Basis for Approval by the Declarant .....	15
5.06	Failure to Approve .....	15
5.07	Commitment to Construct .....	15
5.08	Construction within Time Schedule Specified .....	16
5.09	Landscaping Plans .....	16
5.10	Plans for Alteration in Improvements .....	16
5.11	Pipes .....	16
<b>ARTICLE 6</b>	<b>ENFORCEMENT .....</b>	<b>17</b>
6.01	Construction without Approval .....	17
6.02	Abatement and Removal .....	17
6.03	Suit .....	17
6.04	Attorney's Fees .....	17
6.05	Right of Entry and Inspection .....	17
6.06	Failure to Enforce a Restriction .....	18
<b>ARTICLE 7</b>	<b>MISCELLANEOUS PROVISION .....</b>	<b>18</b>
7.01	Acceptance by all Tenants .....	18
7.02	Assignment of Declarant's Right an Duties .....	18
7.03	Housekeeping .....	18
7.04	Maintenance of Landscaping .....	18
7.05	Sidewalks Prohibited .....	19
7.06	Use Permits .....	19

**DECLARATION OF RESTRICTIONS AND COVENANTS  
INDUSTRIAL ZONES**

**Blocks 1-A, 1-B, 1-C, 2-A, 2-B, 2-C, 3, 5, 7, 8, 9, 10, 11,  
12, 13, 14, 15, 16, 17 and 18**

**El Paso International Airport  
El Paso, Texas**

**THIS DECLARATION** made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ by the City of El Paso, a political subdivision of the State of Texas, hereinafter referred to as the "Declarant",

**WHEREAS**, Declarant is the owner of El Paso International Airport, located in the City of El Paso, State of Texas, hereinafter referred to as the "Airport", and,

**WHEREAS**, Declarant has established a general overall Development Plan for the development of said Airport and has included in said overall Development Plan certain property for the establishment of a desirable industrial environment for certain manufacturing, business, or industrial uses, and,

**WHEREAS**, Declarant desires to subject the development of said property to certain conditions, restrictions, and covenants in order to ensure the development of a desirable environment for said activities, and to ensure that said development will be compatible with adjacent land uses on the Airport by performance, appearance, and general operating characteristics.

**NOW, THEREFORE**, Declarant hereby declares that the property more particularly described hereinafter is and shall be held and conveyed subject to the conditions, restrictions and covenants hereinafter set forth, each and all of which are for the benefit of each Tenant of any portion of said property and each and all of which shall inure to and pass with each and every Lot on said property, and each and all of which shall apply to and bind the respective successors in interest of said property and any portion thereof, as follows:

**ARTICLE 1 - PROPERTY**

The real property subject to this Declaration is situated on the El Paso International Airport, and is more particularly described as follows: El Paso International Airport Tracts, Blocks 1-A, 1-B, 2-A, 2-B, 2-C, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18.

## ARTICLE 2 - DEFINITIONS

The words and phrases defined in this Article shall have the following meanings when used elsewhere in this Declaration:

- 2.01 AIRPORT BOARD: An advisory board appointed by the Mayor and City Council for the purpose of advising them with respect to Airport matters.
- 2.02 BUILDING: The main portion of any building located on a Lot and all projections or extensions therefrom, including garages, outside platforms and docks, carports, canopies, and porches. Ground cover shall not be included.
- 2.03 BUILDING COVERAGE: The surface area of a Building Site that may be covered by Buildings, expressed as a percentage of the total site area.
- 2.04 BUILDING SITE: The entire Lot or Lots (if contiguous) leased by one Tenant.
- 2.05 CITY: The City of El Paso, Texas, its duly elected Council, or any duly constituted agent or committee representing said Council to fulfill the obligations herein required.
- 2.06 DECLARANT: The City of El Paso, a political subdivision of the State of Texas.
- 2.07 DIRECTOR OF AVIATION: Director of the Department of Aviation for the City of El Paso.
- 2.08 FAA: The Federal Aviation Administration of the U. S. Government or any federal agencies succeeding to its jurisdiction.
- 2.09 FRONT LOT LINE: The property line that faces a Street. On corner Lots or Lots fronting on two parallel Streets, the Front Lot Line shall mean the property lines facing each Street, one of which shall be designated by the City as the principal Street.
- 2.10 IMPROVEMENTS: Improvements shall mean but shall not be limited to Buildings, bridges, overpasses, retaining walls, ditches, culverts, lighting supports, earth fills, earth excavations, paving, ground cover, sidewalks, fences, screening walls, signs, and landscaping, constructed, installed, or placed on, under, or above any Lot by or on account of a Tenant.

- 2.11 INDUSTRIAL PARK COMMERCIAL SUPPORT: The retail sale of goods and services on a limited basis primarily to the employees of the Tenants in the Industrial Zones as specifically provided herein.
- 2.12 LOT: One of the numbered parcels on the map entitled "El Paso International Airport Tracts" as filed with the County Clerk, County of El Paso, Texas.
- 2.13 REAR LOT LINE: The property line generally parallel to the Front Lot Line and contiguous to another Lot. On corner Lots, the Rear Lot Line shall be parallel to the Front Lot Line facing the principal Street; on Lots fronting on two parallel Streets, there shall be no Rear Lot Line.
- 2.14 SETBACK: The distance a Building must be set back from the property line of a Lot.
- 2.15 STREET: Any street, highway, or other thoroughfare shown on the map entitled "El Paso International Airport Tracts," as filed with the County Clerk, County of El Paso, Texas.
- 2.16 TENANT: Any person, firm, or corporation leasing or subleasing one or more Lots or space in a Building on a Lot.

### **ARTICLE 3 - PERMITTED USES AND PERFORMANCE STANDARDS**

- 3.01 PERMITTED USES: No Building, structure, or land shall be used for any purpose other than the following, or any combination thereof, and such uses shall satisfy the standards set forth in this Declaration:
- A. Block 3:
1. Administrative, professional, or government offices.
  2. Scientific or research laboratories, including incidental pilot plants in connection therewith.
- B. Block 1-A; Block 1-B; Block 1-C, Lots 1, 2, 3, and 3A; Block 2-A; Block 2-B; Block 2-C, Lots 1 through 10; and Block 5, Lots 1 through 10:
1. Administrative, professional, or government offices.
  2. Scientific or research laboratories, including incidental pilot plants in connection therewith.

3. Wholesaling.
4. Warehousing.
5. Distribution of products and merchandise, but excluding retail sales of consumer goods such as are usually sold to the general public.
6. Processing and compounding of materials.
7. Fabricating and assembling of products.
8. Servicing, maintenance, and storage for car/truck rental and leasing fleet.
9. Accessory uses directly related to the principal use on the Building Site, including but not limited to:
  - a. Facilities for furnishing meals and selling refreshments and personal convenience items solely to employees of the Tenants of a Lot and the guests and management thereof; provided that such facilities shall be located completely within a Building on said Building Site, with no external evidence thereof, including any signs relating thereto.
  - b. Motor Pools, including service station facilities used for services of on-premises motor pools, but excluding public sales or service.
  - c. Business signs for identification in accordance with provisions of Article 4, Paragraph 4.04.
  - d. Outdoor storage facilities as an auxiliary or accessory use when screened from abutting public thoroughfares and other properties by masonry so erected as to screen completely stored materials and vehicles from view at any point at the property line.

C. Block 2-C, Lots 6 through 9; Blocks 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17:

1. All uses permitted in Paragraphs 3.01(A) and (B) of this Article.

2. Certain commercial uses which will perform a necessary and desirable service for all tenants in the Light Industrial Zone of the Airport, including but not limited to:
  - a. Banking institutions;
  - b. Engineering, reproduction, and art supply firms;
  - c. Reproduction facilities; and any other use which, in the judgment of the City, will contribute to the effective operation of all industrial tenants, their employees, and invitees. Such uses shall be governed by all performance, architectural, and building standards as herein set forth, and shall in all ways be compatible with the intent of the plans for development of land uses on the Airport.

D. Block 1-C, Lot 4:

1. Hotels, including restaurants and gift shops incidental to the primary use.
2. All uses permitted in Paragraph 3.01(A) of this Article.

E. Block 18: Automobile parking for the public and Airport employees.

3.02 PROHIBITED USES: The following uses shall not be permitted on a Lot at any time: residential; fast food and takeout restaurants; retail commercial except as otherwise specified; trailer courts; labor camps; junkyards; mining and quarrying; lumber or building materials yards; dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or refuse; fat rendering; stockyards or slaughtering of animals; smelting of iron, tin, zinc, or other ores; and large animal raising.

3.03 APPROVAL OF USES: Certain industrial uses may neither be specifically prohibited nor specifically permitted. In these cases, approval in writing of the use must be obtained from the Declarant or its authorized agent prior to approval of plans and specifications for construction of the facility. Plans and specifications must be submitted to the Declarant by way of the Director of Aviation over the signature of the Tenant or the Tenant's authorized representative. The Declarant or its authorized agent shall then have thirty (30) working days from receipt of the plans and specifications to approve or

disapprove them. If, after thirty (30) working days, the Declarant or its authorized agent has not approved or disapproved said plans, it shall be conclusively presumed that the Declarant has disapproved said use.

3.04 PERFORMANCE STANDARDS: No Lots shall be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable conditions that may affect any other Lots, including but not limited to:

- Hazardous activities
- Vibration or shock
- Noise
- Smoke, dust, odor, or other forms of air pollution
- Heat or glare
- Electronic or radio interference
- Illumination
- Liquid or solid refuse or waste
- Other substance, condition, or element in such amount  
as to affect the surrounding area or adjoining premises

- A. Hazardous Activities: No activity shall be conducted on any Lot that may be or may become hazardous to public health and safety, that shall increase the fire insurance rating for adjoining or adjacent Lots, or that shall be illegal.
- B. Vibration or Shock: No vibration or shock perceptible to a person of normal sensibilities shall be permitted within fifty (50) feet of the property line.
- C. Noise. No noise objectionable to a person of normal sensibilities shall be permitted within fifty (50) feet of the property line.
- D. Air Pollution: Except for the operation of motor vehicles to, from, and on a Lot as incidental to the use thereof, the following requirements shall apply:
  - 1. Any use producing smoke, gas, dust, odor, fumes, aerosols, particulates, products of combustion, or any other atmospheric pollutant shall be conducted within a completely enclosed building.
  - 2. Any use producing atmospheric emissions shall comply with the standards of the U. S. Environmental Protection Agency, the Texas Air Control Board, any local environmental regulatory body, or any successor organizations performing similar functions, as such

regulations exist at the date of the lease to which this Declaration is attached, or which may be enacted during the term of such lease.

3. The emission of odors which are detectable at any point beyond the property line of any plant will not be permitted.
- E. Dust Control: All ground areas not covered by structures shall be landscaped or surfaced with concrete, asphaltic concrete, or other comparable dust-free surfacing; shall be maintained in good condition, free of weeds, dust, trash, and other debris; and shall be properly drained and graded. Such development shall be accomplished before issuance of a certificate of occupancy.
- F. 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.
- G. Electronic or Radio Interference: No electrical, electronic, or radio emissions shall be produced that will interfere, obstruct, or adversely affect the operation of air navigation aids and Airport communications.
- H. Illumination:
1. The source of illumination of any kind on a Lot shall not be visible at the property line except for normal installation of standard interior lighting fixtures within Buildings.
  2. The maximum height of any lighting standard shall be limited to thirty (30) feet above curb level.
  3. The intensity of illumination shall be limited to 10 foot candles or 0.1 lumens per square foot for open areas or surfaces visible at the property line.
  4. The design and location of exterior lighting shall comply in all respects to the requirements of the FAA or any successor agencies and 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.

- I. Refuse and Trash: No refuse or trash shall be kept, stored, or allowed to accumulate on any Lot.
- J. Sewage Disposal Systems: No cesspool, septic tank, or other sewage disposal system or device shall be installed, maintained, or used on any Lot without the approval of the City.

#### **ARTICLE 4 - REGULATION OF IMPROVEMENTS**

4.01 MINIMUM SETBACK LINES. No structure of any kind and no part thereof shall be placed on any Lot closer to a property line than hereby described.

- A. Front Setbacks: Setbacks from Front Lot Lines shall be a minimum of twenty-five (25) feet from the Street; the area between the Street(s) and the Front Setback Line shall be landscaped. If visitor parking is provided in the front Setback area, all Buildings shall be set back a minimum of eighty (80) feet from the Lot line. If the Tenant's Lot or Lots front on more than one Street, the front Setbacks shall be from all Lot lines facing a Street.

The front Setback area(s) shall be landscaped and planted in accordance with the Airport Landscaping Standards except for areas used for parking lots, driveways, or sidewalks. In no event shall less than twenty percent (20%) of the required minimum front Setback area(s) facing a Street be landscaped and planted. If no parking area is provided in the front Setback area(s), the entire front Setback area(s) shall be landscaped.

- B. Side Setbacks: Side Setbacks shall be a minimum of twenty (20) feet, and up to a maximum of fifty percent (50%) of the required minimum Setback shall be landscaped and planted at the discretion of the Declarant or its authorized agent. If a single Tenant uses two or more Lots with a common boundary line between them, the side Setback restrictions may be waived by the Declarant or its authorized agent for the term of the shortest lease.
- C. Rear Setbacks: Rear Setbacks shall be twenty (20) feet from the Lot line or utility easement line, except that Buildings on Lots abutting railroad spurs may have loading docks extending to the Rear Lot Line, provided such construction does not interfere with utility services.

D. Exclusions from Setback Requirements: The following structures or Improvements are excluded from the Setback requirements:

1. Roof overhang.
2. Steps and walks.
3. Paving and associated curbing, except that parking areas will not be permitted within ten (10) feet of Street property lines.
4. Fences.
5. Landscaping.
6. Planters, none over four (4) feet in height.
7. Railroad spur tracks, switches, and bumpers.
8. Approved signs identifying the Tenant or Subtenant.

#### 4.02 EXCAVATION:

A. General: No excavation shall be made by a Tenant unless the excavation is directly related to the construction of an Improvement. When construction is complete, all disturbed ground shall be filled or graded and shall be landscaped in accordance with and conform to the Airport Landscaping Standards.

B. Cut and Fill: The Declarant or any authorized agent thereof may at any time make such cuts and fills on any Lot or other part of said Lot and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the Streets in or adjacent to any Lot and to drain surface waters therefrom; provided that after the principal structure on a Lot shall have been completed in accordance with approved plans, the rights of the Declarant under this Paragraph 4.02 shall terminate with respect to such Lot, except that the Declarant shall thereafter have the right to maintain existing Streets and drainage structures.

4.03 LANDSCAPING: Every Lot on which a Building shall have been placed shall have landscaping according to plans prepared in accordance with the standards established in this Paragraph 4.03 and any amendments or successor standards thereto, including standards used by the Airport Architectural Review Committee.

The first phase of such landscaping, as approved, shall have been completed within ninety (90) days from the date the certificate of occupancy has been filed, with a copy sent to the Director of Aviation, on the initial Building.

Setback areas shall be landscaped to the minimum extent outlined in Paragraph 4.01(A) and (B). In addition, paving or landscaping shall extend from the property line to the curb, such paving and landscaping 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.

Desert planting, defined as native desert plants set in a ground cover of boulders, pebbles, and/or sand, shall not comprise more than twenty percent (20%) of any given setback area planting program. This limitation may be waived by Declarant or its authorized representative upon submittal of detailed landscape plans indicating a greater coverage by desert planting.

Tenants are encouraged to expand landscape development plans to include such elements as pools, fountains, sculpture, rock arrangements, sheltered outdoor seating areas, all subject to design approval by the Declarant or its authorized agent prior to installation.

**4.04 SIGNS:** The following regulations shall apply to all signs displayed for observation from outside a building whether displayed on, near, or within a building:

- A. **Permitted Signs:** Signs on the Airport shall be limited to those identifying the uses conducted on the site, to those necessary for directional purposes, and to those required to advertise the rental of the specific property on which the sign is displayed. The size, design, and location of all signs shall require the written approval of the Director of Aviation or its authorized agent prior to installation. Outdoor advertising, billboards, or flashing lighting shall not be permitted.
  
- B. **Area and Location:** One sign may be permitted in the front of each leasehold and one sign may be attached to the side of the building which faces a public street, both to state only the name, products, and services of the tenant. The sign in the front of the leasehold shall not exceed one square foot area for each lineal foot of lot frontage and shall not extend more than 35 feet in height above the ground. An approved product or company symbol or device may be used in addition to each sign and, or the front setback line, may extend up to any point on the building. Any

such symbol or device shall be considered a sign for the purposes of this Article and shall require the written approval of the City prior to installation.

- C. Construction: All signs shall comply with all building codes of the City of El Paso and with all rules and regulations of the Federal Aviation Administration or any successor agencies.

- 4.05 PARKING AREAS: Adequate off street parking shall be provided to accommodate the parking requirements of a business within the limits of the Lot. Parking for employees, visitors, and business vehicular traffic shall be provided on the Lot and designated by white lines painted on the paved surface. All parking must comply with applicable City parking ordinances.

Parking shall not be permitted on the public Streets and between the Street pavement and property line. If visitor parking is provided in the front Setback area, all Buildings shall be set back a minimum of eighty (80) feet from the Lot line. If visitor parking is permitted in the front Setback area(s), such parking shall be screened from the Street(s) by approved trees or shrubbery specified in the Airport Landscaping Standards or such other screening as may be approved by the Declarant or its authorized agent.

- 4.06 STORAGE AND VEHICLE LOADING AREA: All outside storage and refuse areas shall be constructed and contained to eliminate odors, insects, dust, visual nuisances, and other similar nuisances.

No materials, supplies, or equipment, including company-owned or company-operated trucks, shall be stored in any area on a Lot except inside a closed Building or behind a barrier completely screening such areas from view of adjoining Lots and/or public Streets.

All provisions for the loading and maneuvering of vehicles incidental to the operation of the business shall be placed on the Lot(s) leased and shall not encroach into Setback areas except the side setback area; on street vehicle loading shall not be permitted. Vehicle loading shall be permitted only at the rear of Buildings, or on a side, except that such loading performed at a side shall be completely screened from view of adjoining Lots and/or public Streets.

- 4.07 BUILDING HEIGHTS: Building heights shall be limited to the height requirements established in Federal Aviation Regulations Part 77 or successor regulations for the Airport but shall not exceed a maximum of thirty-five (35) feet above the curb line, including any building equipment, penthouse, extrusions, etc.

4.08 BUILDING COVERAGE:

- A. Block 3: All Buildings and structures, or portions thereof, placed on the Lot(s) shall not cover more than forty percent (40%) of a Building Site.
- B. Block 1-A, Block 1-B; Block 1-C; Block 2-A; Block 2-B; Block 2-C; Blocks 5, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16: All Buildings and structures, or portions thereof, placed on the Lot(s) shall not cover more than fifty percent (50%) of a Building Site.

4.09 BUILDING REGULATIONS:

- A. General: Any Building, Improvement, or structure on a Lot shall conform to the following general conditions of construction practice.
- B. City Zoning Code: The City of El Paso Zoning Code, as amended, shall apply except that in the event of a conflict between the City Zoning Code and the standards in this Declaration, the more stringent requirement shall apply.
- C. FAA Regulations: All construction must comply with applicable codes and ordinances and the rules and regulations of the FAA or any successor agencies, where applicable.
- D. Final Approval by Declarant: Final approval of the compatibility of any Improvement with the overall architectural character of the Industrial Zones shall remain with the Declarant. Construction shall not commence before the Declarant or its authorized agent has granted final approval.

4.10 TYPE OF CONSTRUCTION:

- A. Building Materials: All buildings shall be framed with reinforced concrete or masonry, structural steel, structural aluminum, or wood that has been satisfactorily treated to resist fire, rot, and insects. Approved siding shall be masonry, concrete or glass. Porcelain, enameled steel, anodized aluminum or treated wood may be used upon approval by the Director of Aviation based upon the favorable recommendation of the Airport Architectural review Committee. Concrete, masonry, and treated wood siding shall be kept neatly painted, if used. State-of-the-art changes in types of construction may be permitted from time to time only upon the express condition that any such change be consistent with the intent of

this Declaration and that any such change receives written approval of at least three members of the Airport Architectural Review Committee. Pre-fabricated metal buildings are specifically prohibited.

- B. Roof Screening: All heating and cooling towers, equipment, etc., placed on the roofs of Buildings shall be screened or enclosed from view so that they are architecturally compatible with the main portion of the Building.
- C. Accessory Buildings, Enclosures, and Fences: Accessory Buildings, enclosures, and fences shall enhance the design of and be of the same quality of materials as the Buildings they serve.
- D. Building Codes and Ordinances: All Buildings shall conform to all local building codes and ordinances.
- E. Approval by Director of Aviation: The type of building construction proposed shall be subject to the written approval of the Director of Aviation as authorized agent of Declarant and the decision of Director of Aviation shall be based on the recommendations of the Airport Architectural Review Committee and appealable to the City Council through the Airport Board.

4.11 PIPES: No water pipe, gas pipe, sewer pipe, or drainage pipe (other than those within structures) shall be installed or maintained on any Lot above the surface of the ground, except hoses and movable pipes used for irrigation or similar purposes.

## **ARTICLE 5 - SUBMISSION OF PLANS FOR IMPROVEMENTS**

5.01 SUBMISSION OF PLANS: All plans for Improvements shall be prepared by registered engineers, architects, and landscape architects; shall be of contemporary design; and shall require prior written approval by the Declarant or its authorized agent before any construction may begin.

Prior to the execution of a lease for a Building Site, the Declarant and the Tenant shall jointly determine a reasonable time schedule in which final plans and specifications shall be submitted and construction of facilities shall be completed. Such time schedule shall be incorporated in the lease.

The following plans shall be required for submission to the Declarant within the time schedule determined:

A. Topographic, Grading, Drainage, Utility, and Plot Plans:

1. Topographic, grading, drainage, and utility plans showing one (1) foot contour intervals and spot elevations referenced to the Airport datum.

2. A plot plan at a scale not smaller than one (1) inch equals one hundred (100) feet showing the relationship of the proposed Improvements to the Lot(s) demised and to the Improvements on adjacent Lots, utilities, and access thereto, curbs, walks, driveways, parking areas, etc.

B. Floor Plans: Floor plans at a scale not smaller than one-sixteenth (1/16) inch equals one (1) foot.

C. Ground Cover Plans: Ground cover plans, including landscaping, in accordance with the Airport Landscaping Standards.

D. Renderings: A true architectural rendering of the proposed Buildings, including the proposed exterior color scheme, style, materials, and design and placement of signs.

E. Materials and Color Samples: Samples, no smaller than one (1) foot square, of all materials and/or paint or other coating colors to be used on the exterior of all Improvements that are visible from any point on any Lot line. The Declarant reserves the right to approve all said materials and/or colors and further reserves the right to suggest alternative materials and/or colors that, in the sole opinion of the Declarant, shall be determined to be more compatible with the Declarant's objectives for the overall aesthetic character and quality of Improvements on the Airport.

F. Other Plans: Any other plans, specifications, or design features that the Declarant or its authorized agent may deem necessary and request.

5.02 FORM AND CONTENT OF PLANS: The Declarant or its authorized agent may promulgate rules governing the form and content of plans to be submitted for its approval and may issue statements of policy with respect to approval or disapproval of architectural styles, details, or other matters pertaining to the plans.

Such rules and such statements of policy may be amended or revoked by the Declarant at any time, and no inclusion in, omission from, or amendment of any

such rule shall be deemed to bind the Declarant to its approval or to waive the exercise of the Declarant's discretion as to any such matter.

- 5.03 CODES AND REGULATIONS: All Improvements shall be planned and constructed in accordance with the rules and regulations established by the Declarant or its authorized agent, the laws and ordinances of the City, applicable building codes, and the rules and regulations of the FAA or any successor agencies, where applicable.
- 5.04 REVIEW OF PLANS: Plans and specifications for proposed Improvements submitted to the Declarant for approval by its authorized agent shall be reviewed by the Airport Architectural Review Committee.

The Airport Architectural Review Committee shall submit in writing to the Director of Aviation, as authorized agent of the Declarant, the Committee's recommendation with respect to the plans and specifications of the proposed Improvements within thirty (30) working days of the original date of submission to the Declarant. The Director of Aviation, shall within ten (10) days of receipt by him of the recommendations of the committee, approve or disapprove the plans and specifications. Any party dissatisfied with a decision of the Director of Aviation based on the recommendation of the Airport Architectural Review Committee shall have the right to appeal such decision to the City Council through the Airport Board. The Airport Architectural Review Committee shall also be responsible for inspecting and continuous monitoring of construction, signs, installation of landscaping and review of the as-built plans.

- 5.05 BASIS FOR APPROVAL BY THE DECLARANT: Approval by the Declarant or its authorized agent shall be based on the adequacy of site dimensions and on the general conformity of the plans and specifications to the intent of this Declaration and to the appearance and design of neighboring properties. The Declarant shall not arbitrarily, without written explanation, withhold approval of properly submitted plans and specifications.

Approval of any plans or specifications for use on any one Lot shall not be deemed a waiver of the discretionary right of the Declarant to disapprove the same plans or specifications if such plans or specifications are subsequently submitted for approval for use on any other Lot or Lots.

- 5.06 FAILURE TO APPROVE: If the Declarant fails to approve or disapprove plans and specifications within forty (40) working days after the same have been submitted, it shall be conclusively presumed that the Declarant has disapproved said plans and specifications.

- 5.07 COMMITMENT TO CONSTRUCT: Upon approval by the Declarant of plans for construction of any structure, a copy of the approved plans shall be deposited for permanent record with the Declarant and a copy of such plans bearing the written approval of the Declarant shall be returned to the Tenant of the Lot(s) on which such structure is or will be placed.

Approval of these plans by the Declarant shall constitute a commitment on the part of the Tenant to erect and maintain the Improvements as proposed and approved within the time schedule established in Paragraph 5.01.

- 5.08 CONSTRUCTION WITHIN TIME SCHEDULE SPECIFIED: Any approved construction shall be prosecuted diligently in accordance with the approved plans and specifications and shall be completed within the specified time schedule. Failure to complete such work in the specified time schedule shall cause such approval to be automatically withdrawn unless the Declarant or its authorized agent grants written extension of such approval.

After such automatic withdrawal of approval, the Tenant will be considered in default of its lease for such Lot(s), and the Declarant may terminate such lease in accordance with the provisions of that document.

- 5.09 LANDSCAPING PLANS: Trees, shrubs, fences, hedges, or other landscaping shall not be planted, placed, or maintained on any Lot until a complete plan thereof has been submitted to and approved by the Declarant or its authorized agent in writing. The landscaping plans shall be prepared in accordance with the Airport Landscaping Standards and shall be submitted at the same time as the other plans and specifications for proposed Improvements. The plans shall be reviewed by the Airport Architectural Review Committee in the same manner and time period as those required for architectural plans under Paragraph 5.04.

All plans for landscaping Improvements shall be prepared by registered or approved landscape architects. Final approval shall be by the Declarant or its authorized agent.

- 5.10 PLANS FOR ALTERATIONS IN IMPROVEMENTS: All plans for alterations to the leased Lot(s), either for the construction of additional facilities or alterations to existing Buildings, shall be prepared, submitted, and approved as outlined in Paragraphs 5.01 through 5.09 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 in Article 3.

- 5.11 FEES: The Declarant may charge and collect a reasonable fee, as determined every five years by the Declarant or its authorized agent, for architectural review and other reviews of plans submitted for approval. Such plans could relate to initial development or alterations to existing development. The fee shall be payable at the same time such plans are submitted. If initial plans or any subsequent plans are disapproved, an additional review fee, as determined by the Declarant or its authorized agent, shall be paid before further review.

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

## **ARTICLE 6 - ENFORCEMENT**

- 6.01 CONSTRUCTION WITHOUT APPROVAL: If any structure shall be erected, placed, altered, or maintained on any Lot other than in accordance with plans and specifications approved by the Declarant or its authorized agent, such erections, alterations, and maintenance shall be deemed to have been undertaken without the approval required herein. This restriction shall be applicable to landscaping and signage plans as well as to architectural plans.

In the event of such construction without approval, the Tenant will be considered in default of the lease for such Lot, and the Declarant may terminate the lease in accordance with the provisions set forth in that document.

- 6.02 ABATEMENT AND REMOVAL: If the Declarant determines that this Declaration is being violated by any Tenant on a Lot or Lots, the Declarant shall have the right after giving notice as required by the lease to enter the Lot(s) of such Tenant to determine the exact cause, effect a cure, and abate or remove the violation from the Lot(s). All the expenses incurred in this action shall be payable by the Tenant or subtenant of the facility in which the violation occurred.
- 6.03 SUIT: The Declarant or the Tenants of facilities affected by a violation shall have the right to file suit against violators of this Declaration, to prevent a violation, effect a cure, abate or remove a violation, or recover damages for said violation.
- 6.04 ATTORNEY'S FEES: In any legal proceeding for the enforcement of this Declaration or prevention of a violation of this Declaration or any part hereof, the party against whom judgment is rendered shall bear the reasonable expense of attorneys' fees of the prevailing party in the amount to be specified by the Court.

- 6.05 RIGHT OF ENTRY AND INSPECTION: Any authorized agent of the Declarant, at any reasonable time and without notice, may enter on and inspect any Lot to ascertain whether the maintenance of such Lot, Improvements under construction, or alteration of structures thereon are in compliance with the provisions hereof. Neither the Declarant nor such authorized agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.
- 6.06 FAILURE TO ENFORCE A RESTRICTION: The Declarant may fail to enforce any restriction herein specified on any Tenant on a Lot or Lots, but in no event should this be deemed a waiver of this Declaration or the right to enforce any restriction at a later date.

## **ARTICLE 7 - MISCELLANEOUS PROVISIONS**

- 7.01 ACCEPTANCE BY ALL TENANTS: Every person, firm, or corporation who shall hereafter acquire any right, title, or interest in any Lot(s) or Buildings or portions thereof shall have consented and agreed to every covenant and restriction herein contained or implied even though this Declaration may not have been made reference to or part of the documents received as a part of leasing a Lot or Building or any portion thereof.
- 7.02 ASSIGNMENT OF DECLARANT'S RIGHT AND DUTIES: The Declarant has certain rights, powers, and reservations as herein established by this Declaration and may assign to any person, firm, or corporation these rights, powers, and duties evidencing its consent in writing to accept such an assignment and assume such duties. The person, firm or corporation having accepted the rights of the Declarant shall also be bound to the obligations in this Declaration.
- 7.03 HOUSEKEEPING: If accumulations of weeds, rubbish, or items of equipment or supplies are permitted to remain on a Lot more than ten (10) days after a request in writing from the Declarant or its authorized agent to have them removed, the Declarant or its authorized agent may enter on any Lot to remove same by whatever means it deems necessary. Such entry shall not be deemed a trespass, and the Declarant shall not be subject to any liability therefor. The cost of such work plus 10% shall be borne by the Tenant.

- 7.04 MAINTENANCE OF LANDSCAPING: The Declarant shall be the sole judge of the quality of maintenance of the landscaping. If landscaping areas are not maintained in accordance with the standards in the lease and those in this Declaration and the condition is not corrected within ten (10) days after written notice from the Declarant or its authorized agent, the Declarant or its authorized agent shall have the right to enter on any of the Lot(s) leased and plant or replant such areas, without being deemed guilty of trespass. The costs therefor, as determined by the Declarant, shall be paid by the Tenant.
- 7.05 SIDEWALKS PROHIBITED: The construction of sidewalks is prohibited except (1) between onsite parking areas and the Buildings they serve, (2) between Buildings involved in a single industrial activity for single Tenant, and (3) along the east side of Airport Road. Any sidewalks to be constructed in said areas shall be depicted on the plot plans and shall be subject to approval by the Declarant.
- 7.06 USE PERMITS. Such use and occupancy permits as may be required by the Building Code of the City of El Paso shall be maintained in force at all times by each tenant.