

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

DEPARTMENT: AIRPORT

AGENDA DATE: May 3, 2011

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña/780-4724

DISTRICT(S) AFFECTED: All

SUBJECT:

This is a Resolution authorizing the City Manager to sign Fuel Farm Lease ("Lease") by and between the City of El Paso ("Lessor") and Trajen Flight Support, LP dba Atlantic Aviation ("Lessee") for the following described property:

All of Lot 35 and the West one-half (1/2) of Lot 36, Block 4, El Paso International Airport Tracts, Unit 1, El Paso, El Paso County, Texas, consisting of approximately 24, 600 square feet, which is municipally known and numbered as 7631 Boeing Drive, El Paso, Texas.

BACKGROUND / DISCUSSION:

Fuel Site and Facility Lease dated June 1, 1998, covering the property described as the East 40 feet of Lot 33, and all of lot 34, Block 4, El Paso International Airport Tracts, Unit 1, and Lot 35, Block 4, El Paso International Airport Tracts, Unit 1, City of El Paso, El Paso County, Texas, and municipally known and numbered as 7623 and 7625 Boeing Drive, El Paso, Texas. Lessee now desires to construct a new Fuel Farm consisting of approximately 24,600 square feet. Lessee currently has a 30 year Fixed Base Operators Lease Agreement with the City of El Paso commencing September 1, 2003, located at 1751 Shuttle Columbia. Lessee also currently has a 30 year Fuel Farm Site Agreement commencing July 1, 2003, located at 251 George Perry Blvd.

PRIOR COUNCIL ACTION:

- Original Fuel Site and Facility Lease between City of El Paso and Oasis Aviation, Inc. approved June 1, 1998.
- Lessor's Approval of Assignment from Oasis Aviation, Inc. to Superior Aviation Fuel Enterprises, L.L.C., effective March 1, 1999.
- Lessor's Approval of Assignment from Superior Aviation Fuel Enterprises, L.L.C., to Trajen Flight Support, LP approved April 12, 2005.

AMOUNT AND SOURCE OF FUNDING:

N/A Revenue generating.

BOARD / COMMISSION ACTION: N/A

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

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

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 be authorized to sign a Fuel Farm Lease ("Lease") by and between the City of El Paso ("Lessor") and Trajen Flight Support, LP dba Atlantic Aviation ("Lessee") for the following described property:

All of Lot 35 and the West one-half (1/2) of Lot 36, Block 4, El Paso International Airport Tracts, Unit 1, El Paso, El Paso County, Texas, consisting of approximately 24,600 square feet, also municipally known and numbered as 7631 Boeing Drive, El Paso, Texas.

ADOPTED THIS ____ DAY OF _____, 2011.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

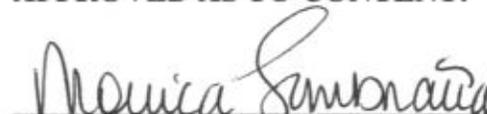
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



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

FUEL FARM LEASE

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

MAY 3, 2011

Effective Date

**TRAJEN FLIGHT SUPPORT, LP dba ATLANTIC AVIATION
LESSEE**

**FUEL FARM LEASE
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ATTACHMENTS

- EXHIBIT "A" - Detailed sketch of Plot to be leased.**
- EXHIBIT "B" - Rules, Regulations, and Land Use Requirements**

FUEL FARM LEASE

THIS FUEL FARM LEASE (“Lease”) is made this ____ day of _____, 2011, by and between the City of El Paso (the “Lessor”) and Trajen Flight Support, LP dba Atlantic Aviation, a Delaware Corporation (the “Lessee”).

WHEREAS, Lessor owns and operates El Paso International Airport, located in the County of El Paso, State of Texas (the “Airport”) said Airport being managed by the Director of Aviation (“Director”); and

WHEREAS, Lessee proposes to lease on a net basis from Lessor certain ground area and to avail itself of certain privileges, rights and uses pertaining thereto; and

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

WHEREAS, Lessee desires to construct certain facilities on the Airport for the conduct of permitted uses thereon, and

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

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

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 located in El Paso County, Texas:

All of Lot 35 and the West one-half (½) of Lot 36, Block 4, El Paso International Airport Tracts, Unit 1, El Paso, El Paso County, Texas, consisting of approximately 24,600 square feet as more fully described on **Exhibit “A”** attached hereto and incorporated herein for all purposes, which is municipally known and numbered as 7631 Boeing Drive, El Paso, Texas (the “Premises”).

1.02 Right of Ingress and Egress. Lessor hereby grants to Lessee and its officers, employees, agents, servants, and business invitees the rights of ingress to and egress from the Premises over and across the public roadways serving the Airport for Lessee, its agents and servants, patrons and invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now or may hereafter have application at the Airport.

1.03 Right to Construct. In addition to the general privileges, uses, rights, and interests attaching to the Premises hereinbefore described and without limiting the generality thereof, Lessee shall have the right to provide for the location, construction, erection, and as applicable, the removal of any Lessee-installed or owned improvements, in any lawful manner, upon or in the Premises, for the purpose of carrying out the activities provided for herein, subject, however, to the conditions herein set forth. Lessee agrees that it will, within six (6) months of execution of this Lease, begin construction and promptly complete construction of an above ground fuel farm facility. Lessee shall perform the site preparation for the Premises prior to construction of the Lessee-owned improvements. Site preparation is defined as mobilization, rough grading and compaction, water and sanitary service laterals, silt fencing and erosion control, and any other incidentals necessary for site preparation. Said Site preparation shall be done in accordance with the Rules, Regulations, and Land Use Requirements attached hereto as **Exhibit "B"**.

1.04 Restrictions of Privileges, Uses and Rights. Lessor hereby grants to Lessee the following general privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants hereinafter set forth and all of which shall be non-exclusive:

Lessee may use the Premises only for:

- A. the operation of a Bulk Aviation Fuel Farm Facility; the operation of a Bulk Aviation Fuel Farm Facility is defined as the sale, purchase, storage and dispensing of aircraft fuels, propellants, and lubricants of sufficient ratings, grades, quality, and quantity to meet reasonable demand.
- B. the operation of a maintenance facility for the maintenance of Lessee's ground service equipment used in conjunction with the operation of the Bulk Aviation Fuel Farm; and
- C. other related uses, as approved by the Director of Aviation.

As a material consideration for the leasehold interest and other rights and privileges granted hereunder, Lessee agrees that Lessee will, for the entire term of this Lease, maintain its status as a Lessee in a Fixed Base Operator ("FBO") Lease which is in full force and effect with Lessor. Should Lessee, at any time during the term of this Lease, fail to maintain an FBO Lease in full force and effect with Lessor, this Fuel Farm Lease, at Lessor's sole option, shall be null and void; provided, however, that any such FBO Lease shall contain the then-current FBO minimum standards applicable to comparable FBO leases being offered by Lessor.

The use of the Premises as provided herein above shall be subject to compliance with **Exhibit "B"**, as well as compliance with all the terms and conditions of this Lease. All uses of the Premises not specifically permitted herein are expressly prohibited.

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

- A. That no functional alteration of the Premises shown on Exhibit "A" or change in the uses of such premises, except as reflected in Section 1.04 hereinabove, shall be made without the prior written consent of Lessor;
- B. That the right to use said public Airport facilities in common with others authorized to use such facilities shall be exercised subject to and in accordance with the laws of the United States of America and the State of Texas, and with all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law; and
- C. That Lessee will utilize only the roadways, taxi lanes, or other direction, path, route, or form of travel the Director may designate, from time to time, for Lessee's transportation or delivery of fuel or services on or about the Airport.

ARTICLE II OBLIGATIONS OF LESSOR

2.01 Operation as Public Airport. Lessor covenants and agrees that during the term hereof, including any extensions thereto, it will operate and maintain the Airport as a public airport consistent with and pursuant to the Sponsor's Assurances given by Lessor to the United States Government under the Federal Airport Act, as amended.

2.02 Construction, Maintenance and Utilities. 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

3.01 Net Lease. This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth in this Lease. Lessee shall:

- A. Keep and maintain the Premises and improvements located thereon in a good state of repair at all times;
- B. Pay all taxes and governmental charges of any kind whatsoever that may be assessed against Lessee or Lessor in accordance with Section 3.12, of this Lease.

- C. Pay all casualty, bond, and liability insurance premiums required in accordance with this Lease; and
- D. Cover all ground area with concrete, asphalt or other comparable code compliant dust-free surfacing, and shall fence the area with fence material approved by the Director.

3.02 Condition of Premises. Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon subject to Lessee's right to construct limited improvements under the terms of this Lease. 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.

3.03 Compliance With Laws. Lessee, at Lessee's expense, agrees that it will construct, operate and maintain improvements on the Premises in accordance with **Exhibit "B"**, and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made 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, as amended, and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of 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, but not limited to, the ambient air, ground water, surface water, and land use, including sub-strata land.

- (2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and gasoline, oil, jet fuel, lubricants and all other petroleum products.
- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

- (1) Except for the specific uses allowed in accordance with this lease and all applicable laws, rules and regulations of the appropriate governmental agencies, 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. **Without limiting the generality of any other indemnity clauses contained in this Lease, Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon.** This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises 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 results in any contamination of the Premises or any improvements thereon or any surrounding property, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon or any surrounding property 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 available 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 in any agreement 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 contains no fuel storage tanks. Lessee, during the term of this Lease plans to install, operate, and maintain above-ground fuel storage tanks on the Premises. In connection with the operation and maintenance of such 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 remove all tanks, pumping and dispensing facilities and will perform all necessary clean up, testing and backfilling necessary to assure that the Premises are not contaminated beyond the Environmental Protection Agency (EPA) and the Texas Commission on Environmental Quality (TCEQ), or any successor agency's acceptable limits with any fuel, gasoline, petroleum product or hazardous material. Lessee will, without limiting the generality of the foregoing, test the ground under the tanks, once they are removed, and will deliver copies of the testing report showing no contamination beyond EPA and TCEQ acceptable limits on the site to Lessor. **Without limiting the generality of any other indemnity clauses contained in this Lease, Lessee agrees to indemnify and hold Lessor harmless against any and all cost, expense and liability arising from the location, maintenance or operation of any gasoline, jet fuel, or other chemical or petroleum product storage, pumping and dispensing equipment on the Premises 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 fuel storage tanks on the Premises, Lessee warrants that it will file all the appropriate forms with the TCEQ, or any successor agency, to show that Lessee is the owner of said tanks and, as such, accepts responsibility for the fuel 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.

Lessee's failure or the failure of its agents, employees, contractors, invitees, or sublessees 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 herein, 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.** At any time that Lessee submits any filing pertaining to its property, operations, or presence of the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the Federal Aviation Administration (FAA), the EPA or the TCEQ, Lessee shall provide duplicate copies of the filing(s) and all related documents to Lessor.

3.04 Maintenance. Lessee shall, at its sole cost and expense, maintain the Premises and the buildings, improvements and appurtenances thereto, in a presentable condition consistent with good business practice. Lessee shall repair all damages to said Premises; shall maintain and repair all equipment thereon, including any drainage installations, paving, curbs, islands, buildings and improvements.

Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform whatever maintenance Lessor deems necessary. If said maintenance is not undertaken by Lessee within 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 ten percent (10%) overhead, shall be borne by Lessee.

Lessee agrees not to paint, erect, or in any manner install any advertising on the exterior of the improvements or anywhere on the Premises, with the exception that Lessee may erect a sign displaying its name and business in accordance with Section 3.08 herein.

3.05 Utilities. Lessee shall assume and pay for all costs or charges for utility services furnished to Lessee during the term hereof; provided, however, that Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; subject to approval by all appropriate City of El Paso departments, and Lessee shall pay for any and all service charges incurred therefor.

3.06 Trash, Garbage, and Other Refuse. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Premises and the Airport, of all trash, garbage and other refuse caused as a result of the operation of its facility and activities. 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, is not permitted.

3.07 Permitted Uses. Lessee covenants and agrees that in no event will it enter into any business activity on the Airport other than those specified in Section 1.04.

3.08 Signage. The following regulations shall apply to all signs displayed for observation from outside any improvements on the Premises whether displayed on, near or within a building:

- A. Permitted Sign. Signs on Premises shall be limited to those identifying the uses conducted on the site and to those necessary for directional purposes. The content, size, design and location of all signs shall require the written approval of the Director prior to installation. Said written approval shall be at Director's sole discretion. Outdoor advertising, billboards or flashing lighting are not permitted.
- B. Lighting and Construction. All signs shall comply with all current or future building codes of the City of El Paso and with all current or future rules and regulations of the FAA and its successor agencies. Lessee is solely responsible for obtaining all applicable permits and licenses.
- C. Approval of Plans. Approval of any and all improvements, plans, signs, or documents by the Director does not constitute approval of the City or any other local, state, or federal agency. It is specifically understood that the Aviation Department is only one City department and that, in addition to obtaining approval of Director, Lessee shall be required to obtain approvals and permits as required by the El Paso City Code as amended.

3.09 Authorization to Enter Restricted Area. Lessee understands that all of its agents, employees, servants, subtenants, invitees or independent contractors must be authorized by the Lessor to enter restricted areas as defined in Title 14 of the El Paso City Code as amended. Lessee agrees that no person authorized to enter a restricted area by virtue of this Lease may permit any other person who is not otherwise authorized to enter a restricted area unless such person is, at all times while in the restricted area, in the company of an authorized person.

3.10 Security. Lessee is familiar with the restrictions imposed by 49 CFR 1540 as amended and agrees to assume responsibility for compliance with said regulations as they relate to security procedures on the Premises.

3.11 Penalties Assessed by Federal Agencies. Lessee understands and agrees that in the event any federal agency assesses a civil penalty against Lessor or the Airport for any violation, including but not limited to any security violation, as a result of or related to any act or failure to act on the part of Lessee, its agents, employees or independent contractors, Lessee shall reimburse Lessor in the amount of the civil penalty assessed. Failure to reimburse Lessor within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.

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

Lessee in good faith may contest any tax or governmental charge, provided that 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 Lessor, such action will not adversely affect any right or interest of Lessor.

3.13 Governmental Filings. In the event that Lessee submits any filing or response pertaining to its property, operations or presence at the Airport with any governmental entity (other than the Internal Revenue Service), by way of example and not in limitation the FAA, the EPA or the TCE or any successor agencies, Lessee shall provide duplicate copies to Lessor of such filing(s) or response(s) made at the time same are made.

ARTICLE IV TERM OF LEASEHOLD

4.01 Term. The Initial Term of this Lease shall be for a period of thirty (30) years commencing on the third day of May 2011.

4.02 Options To Extend. In the event that Lessee is not in default of any terms of this Lease, Lessee shall have the option to extend this Lease for two (2) additional terms of five (5) years each. Lessee may exercise the first five (5) year option ("First Option Period") by notifying Lessor in writing at least one hundred eighty (180) days prior to the expiration of the Initial Term. In the event Lessee exercises its first option, the Lease shall be extended for five (5) years on the same terms and conditions, except that Ground Rentals shall be adjusted as noted below.

In the event that Lessee is not in default of any terms of this Lease, Lessee may exercise the second five (5) year option ("Second Option Period") by notifying Lessor in writing at least one hundred eighty (180) days prior to the expiration of the First Option Period. In the event Lessee exercises its second option, the Lease shall be extended for an additional five (5) years on the same terms and conditions, except that Ground Rentals for this Second Option Period shall be readjusted as noted below.

Lessee's options to extend the Lease shall terminate if Lessee fails to notify Lessor in writing one hundred eighty (180) days before the expiration of the Initial Term or any relevant option period. Time is of the essence with regard to the one hundred eighty (180) day notice requirement.

If the First Option is exercised, per the Agreement, to extend the Lease at the end of the Initial Term, the ground rental will be adjusted in accordance with Article V, Section 5.03. If the Second Option is exercised, the ground rental will be adjusted in accordance with Article V, Section 5.03.

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, subject to the terms and conditions of this Lease, at a rental of one and one-half times the then-current monthly rental. Lessee shall be liable to Lessor for all loss or

damage on account of any holding over against Lessor's will after the expiration or 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, 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.

ARTICLE V FEES AND RENTALS

5.01 Ground Rental. For the purpose of computing rental payments due, Lessor and Lessee agree that the Premises comprise 24,600 square feet of land. The annual Ground Rental for the Premises will be calculated on the basis of \$0.2439 per square foot per annum for the land. Therefore, the annual Ground Rental for the first five (5) years of the Initial Term shall be \$6,000.00.

5.02 Commencement of Rental. Payment of Ground Rental by Lessee to Lessor as aforesaid shall commence on the Effective Date of this Lease, which is first noted on the title page of this Lease.

5.03 Readjustment of Ground Rental. For the purpose of computing adjustments to rental payments, Lessor and Lessee agree as follows:

- A. Ground Rentals shall be adjusted at the fifth, tenth, fifteenth and twenty-fifth anniversary of the Effective Date during the Initial Term and at the commencement of each option period properly exercised by Lessee. Lessor and Lessee agree that percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U) shall govern the Ground Rental readjustment for these anniversary dates and at the commencement of each option period properly exercised by Lessee. The parties further agree that for the purposes of computing such percentage increase during the Initial Term, the Base Year CPI-U shall be established as that rate in place ninety (90) calendar days prior to the Effective Date of this Lease. Ground Rentals shall be adjusted pursuant to the percentage increase in the CPI-U from the Base Year CPI-U to the rate in place ninety (90) days prior to the applicable date of readjustment (i.e. the fifth (5th) anniversary date of the Effective Date). The Ground Rental readjustment shall be that amount equal to the percentage increase of the Consumer Price Index for all Urban Consumers from the Base Year CPI-U to that CPI-U in effect ninety (90) calendar days prior to the fifth, tenth, fifteenth and twenty-fifth anniversary of the Effective Date or any option period properly exercised by Lessee.

All readjustments shall be effective as of the fifth, tenth, fifteenth, and twenty-fifth anniversary date or commencement of option period, without regard to the date the actual adjustment is made; provided, however, that in no event shall the readjusted Ground Rental be less than the rate in place immediately prior to such readjustment nor more than fifteen percent (15%) more than the rent established at the beginning of the immediately preceding five-year period.

- B.** Within ninety (90) days prior to the twentieth (20th) lease anniversary, the Ground Rental shall be adjusted to a rate equal to eight percent (8%) of the then fair market value of the Premises, disregarding the value of any Lessee-owned improvements located on the Premises. In no event however, shall this adjusted Ground Rent for the twentieth anniversary be less than the Ground Rent established at the beginning of the immediately preceding five (5) year period. The readjustment of Ground Rent shall become effective as of the twentieth anniversary date, regardless of the date the actual adjustment is made.

The fair market value of the Premises shall be determined by an appraisal of the Premises; however, if mutually agreeable to Lessor and Lessee, the Director and Lessee may agree upon the fair market value of the Premises established by a recent appraisal of similar property located in the surrounding area which was performed within twelve (12) months of the lease anniversary date in question.

In the event Lessor and Lessee do not so mutually agree, the Lessor shall select a qualified appraiser ("First Appraiser") to establish the fair market value of the Premises, disregarding the value of any Lessee-owned improvements located on the Premises. Lessor shall notify Lessee of such selection and, if Lessee is not satisfied with the selection of the First Appraiser, Lessee, within fifteen (15) days after receipt of said notice, shall notify Lessor of Lessee's selection of a qualified second appraiser ("Second Appraiser"). If Lessee does not so select a Second Appraiser, the First Appraiser shall proceed to establish the fair market value of the Premises. If the Second Appraiser is so selected and Lessor is satisfied with such selection, the Second Appraiser shall proceed to determine the fair market value of the Premises.

If Lessor is not satisfied with the selection of the Second Appraiser and Lessor and Lessee cannot mutually agree on the selection of one appraiser, then both the First Appraiser and the Second Appraiser will proceed to independently determine the fair market value of the Premises. If the fair market value determined in the two appraisals differs by less than five percent (5%), then the fair market value of the Premises shall be established by the averaging of the two appraisals. If the fair market value determined by the two appraisals differs by five percent (5%) or more and the Lessor and Lessee cannot mutually agree as to a fair market value, the First Appraiser and the Second Appraiser shall mutually select a third qualified appraiser to determine the fair market value of the Premises. In such event, the fair market value shall be established by averaging the two appraisals

that are the closest in fair market value determinations.

In any case, the fees and expenses of any appraisals shall be borne equally by the Lessor and Lessee and the Ground Rent established by the determination of the fair market value shall be effective as of the anniversary date for which the adjustment of the Ground Rent is being determined. Furthermore, any appraiser designated to serve in accordance with the provisions of this Lease shall be an unbiased and disinterested party and shall be qualified to appraise real estate of the type covered by this Lease situated in El Paso County, Texas, and shall have been actively engaged in the appraisal of real estate similar to the Premises and located in El Paso County, Texas for a period of not less than five (5) consecutive years immediately preceding his appointment.

5.04 Time of Payment. All rentals due hereunder shall be paid in twelve (12) equal monthly installments. Said monthly rental payments shall be paid in advance on or before the first day of each and every month during the term or any extension of this Lease

5.05 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 twentieth (20th) day of the month in which payment is due, shall bear interest at the rate equal to the maximum allowed by law the from the date when the same was due according to the terms of this Lease and shall accrue until actually paid by Lessee.

5.06 FBO Lease. Nothing herein shall be construed to relieve Lessee of its obligations to pay certain rentals and fees under the FBO lease.

5.07 Place of Payment. All payments required by Lessee herein shall be paid to Lessor at the following address:

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

ARTICLE VI INSURANCE AND INDEMNIFICATION

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 (hereinafter called "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 acceptable to Lessor to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser Lessee selected be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee.

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 Lessee with the Lessor as an additional insured, comprehensive general liability insurance in amounts as reasonably set from time to time by Lessor, but not less than Ten Million Dollars (\$10,000,000.00) for bodily injury to one person for each occurrence, Twenty Million Dollars (\$20,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Million Dollars (\$1,000,000.00) 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.

In addition, Lessee, at its sole cost and expense shall, throughout the term of this Lease, provide and keep in force with Lessor as an additional insured, comprehensive pollution liability insurance in amounts as reasonably set from time to time by Lessor, but not less than Three Million Dollars (\$3,000,000).

6.03 Performance and Payment 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.

- B. Prior to the date of commencement of 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 amount of excess of ten percent (10%) of the surety's

capital and surplus, 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 10% of the reinsurer's capital and surplus.

- D. In lieu of the payment and performance bonds described in paragraphs A, B, and C, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable Letter of Credit in an amount equal to the full amount of the construction contract awarded. Such Letter of Credit shall be issued by a national banking association with offices in El Paso, El Paso County, Texas, shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvements contemplated by the construction contract.

6.04 Authorized Insurance Companies. All such policies of insurance and payment bonds shall be written by insurance and surety companies authorized to do business in the State of Texas and shall be written by companies with an AMBest Rating of A-VII or better. Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the Effective Date of this Lease. Each such insurance certificate shall contain:

- A. A statement of the coverage provided by the policy;
- B. A statement certifying Lessor is 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.

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

7.01 Obligations of Lessee. During the term hereof, except as provided in Section 7.02 below, should the improvements upon the Premises be damaged or destroyed, in whole or in part, by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessee, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessee as aforesaid and in accordance with the following terms and conditions:

- A. Prior to commencing such work, Lessee shall deliver to Lessor a set of the preliminary construction plans and specifications in accordance with the terms and provisions of the Rules, Regulations and Land Use Requirements then in effect. In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto.
- B. Upon approval of the preliminary plans and specifications, as herein provided, Lessee shall prepare or cause to be prepared final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies including but not limited to other City departments for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.
- C. Prior to commencing construction, Lessor may require Lessee to cause to be made, executed, and delivered to Lessor a payment bond and performance bond to insure the proper completion and payments required of any construction per this Article.
- D. Upon compliance with the foregoing, and after settlement shall have been made with the insurance company or companies and said proceeds of such insurance

policy or policies shall have been paid to Lessee, Lessee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.

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

7.03 Cancellation of Lease. Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty during the last year of this Lease or any option period of this Lease, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessor, unless Lessor has elected to have the Premises returned to it clear of all improvements in accordance with Article X, Section 10.06 hereinbelow, in which case Lessee shall be entitled to such insurance proceeds. All rents payable under this Lease shall be prorated and paid to the date of such termination. The receipt of insurance proceeds by Lessor will relieve Lessee from any responsibility to restore the Premises to their former condition, except as provided in Section 11.14 of this Lease.

ARTICLE VIII CONDEMNATION

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 on the Date of Taking.
- 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.

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.

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.

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.

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, as unencumbered by Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

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

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

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

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 ENCUMBRANCES

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

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

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

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

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;

- C. If the default cannot be cured within one hundred twenty (120) days, to commence performance within such one –hundred twenty (120) day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.

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

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

10.01 Expiration. This Lease shall expire at the end of the term or any extension thereof.

10.02 Cancellation. Subject to the provisions of Article IX 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, which shall be events of default hereunder, 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.

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

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

10.04 Assignment and Transfer. Lessee may assign or transfer this Lease subject to the provisions of Section 1.04 and subject to the prior written approval of Lessor; provided, however, that Lessor's approval shall not be required in the event of an assignment of this Lease by Lessee to the first leasehold Mortgagee.

Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, 11 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.

10.05 Subleasing. No Subleasing of the Premises is permitted.

10.06 Rights Upon Expiration. Upon the expiration, termination or cessation of this Lease for any reason ("expiration"), Lessee, at its own cost and expense, shall be responsible for the removal of all improvements from the Premises. In furtherance of the same, and within six (6) months prior to the expiration of this Lease, Lessee shall cause to be made, executed, and delivered to Lessor an instrument to guarantee the removal of all improvements from the Premises. Such instrument may be in the form of a performance bond, letter of credit or such other instrument that is mutually acceptable to Lessee and the Director and shall be in place until removal of all improvements.

The removal of all improvements, including the submittal of an environmental assessment and any required remediation of the Premises, as described below, shall be completed within one hundred eighty (180) days from the expiration of this Lease.

No later than thirty (30) days after the complete removal of improvements, Lessee, at its own cost and expense, shall submit to the Lessor a written copy of a current environmental site assessment of the Premises. The environmental assessment must be acceptable to Lessor; and if, in the sole opinion of Lessor, the Premises shall require environmental remediation, Lessee shall perform any work as is necessary to cause the Premises to be in compliance with applicable Environmental Laws or to return the Premises into a (like new) condition equal or better to that as of the Effective Date of the Lease.

Any occupancy by Lessee for the purposes of removing the improvements, completing the environmental assessment and any required remediation of the Premises shall be subject to the rental due hereunder and provided further that Lessee shall continue to be bound by the terms and conditions of this Lease. Lessee and Lessor agree that this continued tenancy will not be continued as an extension or renewal of the lease term for other than the aforementioned one hundred eighty (180) days.

If Lessee fails to provide the environmental assessment and any required remediation of the Premises, Lessor may provide at Lessee's expense.

10.07 Landlord's Lien. It is expressly agreed that in the event of default in the payment of rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and with the rules and regulations of 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 which 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 and 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. Notwithstanding anything herein to the contrary, Lessor's landlord's lien shall be subordinate to any purchase money security interests granted by Lessee to its first lienhold bona fide lender for the purchase of fuel tanks and related equipment required for their operation.

ARTICLE XI GENERAL PROVISIONS

11.01 Rules, Regulations and Land Use Requirements. This Lease is subject to the terms, covenants and conditions contained in the Rules, Regulations and Land Use Requirements attached hereto as Exhibit "B" and as they may be amended by Lessor from time to time. Lessor reserves the right to revise the standards set forth in Exhibit "B"; provided, however, that such revisions will not, in Lessor's opinion, cause a substantial reduction in the value of Lessee's leasehold interest. Lessor's right to revise the restrictions and covenants contained in Exhibit "B" includes, but is not limited to, the right to revise said document because of the development of new concepts or improved construction and architectural techniques.

11.02 Right of Flight. Lessor 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.

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

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

LESSOR:	City Clerk	and	Director of Aviation
	City of El Paso		El Paso International Airport
	2 Civic Center Plaza		6701 Convair Road
	El Paso, Texas 79999		El Paso, Texas 79925-1091

LESSEE: Trajen Flight Support, LP dba Atlantic Aviation
1751 Shuttle Columbia Drive
El Paso, Texas 79925

and Atlantic Aviation Services
6504 International Parkway, Ste 2400
Plano, TX 75093
Attn: Todd Smith

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.

11.05 Attorney's Fees. If Lessor brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, Lessor shall be entitled to recover reasonable attorney's fees.

11.06 Lease 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.

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

- A. That in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for the purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the DOT, 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, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- D. That Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- E. Economic Nondiscrimination. 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.

11.08 Affirmative Action. Lessee assures that no person shall, on the grounds of race, creed, color, sex, age, disability, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered 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 DOT by local governments for Airport use, or otherwise applicable to persons leasing premises from Lessor. 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 assistance from their suborganizations (sublessees) to the same effect.

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

11.10 Interpretation. Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

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

11.11 Lease 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.

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

11.13 Severability. If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there 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.

11.14 Survival of Certain Provisions. All provisions of this Lease which expressly or impliedly contemplate or require performance after the expiration or termination of this Lease for the benefit of Lessor hereunder shall survive such expiration or termination of this Lease, including without limitation, the indemnification provisions of Sections 3.03 and 6.05.

11.15 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.

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

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 the all Environmental Law and 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.

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

11.18 Warranty of Suitability. LESSOR DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY OTHERWISE HAVE ARISEN BY OPERATION OF LAW. LESSOR DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS IN THE FACILITIES THAT ARE VITAL TO LESSEE'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE NOR THAT THESE ESSENTIAL FACILITIES WILL REMAIN IN A SUITABLE CONDITION. LESSEE LEASES THE PREMISES "AS IS", WHETHER SUITABLE OR NOT, AND WAIVES THE IMPLIED WARRANTY OF SUITABILITY.

11.19 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, that each and every person signing on behalf of Lessee is authorized to do so and that the Lease is fully binding upon Lessee in accordance with its terms. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

11.20 Independence of Lease. It is understood and agreed that nothing herein contained is intended or should be construed as in any way creating or establishing a partnership relationship between the parties hereto, or as constituting Lessee as the agent, representative or employee of Lessor for any purpose or in any manner whatsoever. Lessee is to be, and shall remain, an independent contractor with respect to all services performed hereunder.

11.21 Effective Date. Regardless of the date signed, this Lease shall be effective as of the date first noted on the Title Page.

]SIGNATURES BEGIN ON THE FOLLOWING PAGE]

ATTEST:

LESSEE: TRAJEN FLIGHT SUPPORT,
LP dba ATLANTIC AVIATION

Printed Name: _____

[Signature]
Printed Name: *Timothy Bannon*
Title: *Regional Director*

ACKNOWLEDGMENT

STATE OF *Oklahoma*,

COUNTY OF *Oklahoma*

This instrument was acknowledged before me on this *25th* day of *March*, 2011 by *Timothy Bannon* as *Regional Director* of Trajen Flight Support, LP dba Atlantic Aviation (Lessee).

[Signature]
Notary Public, State of *Oklahoma*

My Commission Expires:
March 17, 2015



RECEIVED
MAR 09 2009
BY: _____

EXHIBIT

Property Description: All of Lot 35 and a portion of Lot 36, Block 4, EL PASO INTERNATIONAL AIRPORT TRACTS, UNIT 1, an addition to the City of El Paso, El Paso County, Texas.

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is all of Lot 35 and the westerly 1/2 of Lot 36, Block 4, EL PASO INTERNATIONAL AIRPORT TRACTS, UNIT 1, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Book 18, Page 30, Plat Records of El Paso County, Texas, and is more particularly described by metes and bound as follows:

BEGINNING at the City Monument found at the centerline intersection of Hawkins Boulevard and Centurion Drive, said city monument bears South 08° 49' 54" East a distance of 305.00 feet from a city monument found at the end of Hawkins Boulevard; THENCE South 08° 49' 54" East a distance of 847.83 feet to a point lying on the monumented centerline intersection of Hawkins Boulevard and Boeing Drive; THENCE South 81° 10' 06" West, along the monumented centerline of Boeing Drive, a distance of 3734.43 feet to a point; THENCE North 08° 49' 54" West a distance of 70.00 feet to a point on the northerly right-of-way line of Boeing Drive and the TRUE POINT OF BEGINNING of this description;

THENCE South 81° 10' 06" West, along the northerly right-of-way line of Boeing Drive, a distance of 150.00 feet to a point;

THENCE North 08° 49' 54" West, a distance of 164.00 feet to a point;

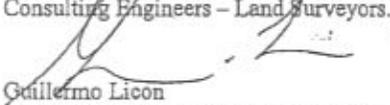
THENCE North 81° 10' 06" East, a distance of 150.00 feet to a point;

THENCE, South 08° 49' 54" East, a distance of 164.00 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 0.565 acres (24,600 sq. ft.) of land more or less.

A PLAT (EXHIBIT) OF EVEN DATE ACCOMPANIES THIS METES AND BOUND DESCRIPTION.

SLI ENGINEERING, INC.
Consulting Engineers - Land Surveyors.


Guillermo Licon
Registered Professional Land Surveyor
Texas License No. 2998

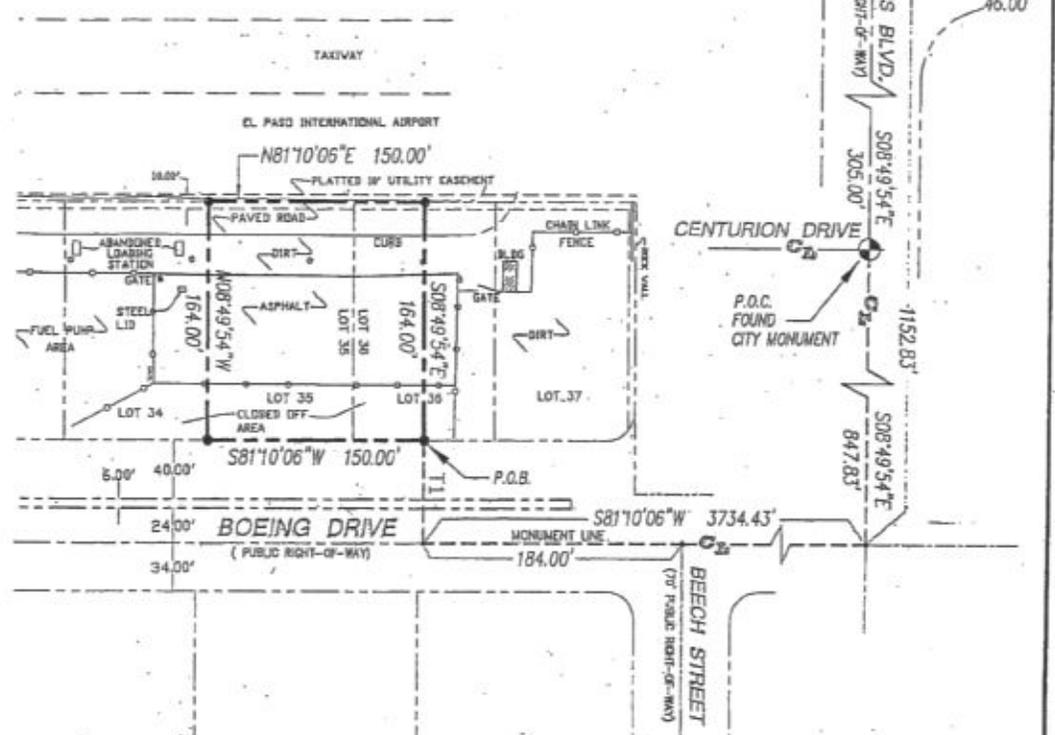
January 14, 2009
Job # 06-08-2751

M&B/1525



RECEIVED
 MAR 09 2009
 BY:
 SCALE: 1"=100'

LEGEND
 ☆ LIGHT POLE
 * ABANDONED LIGHT POLE
 ○ CHAIN LINK FENCE



ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY-PANEL NUMBER 480214-0035 B, DATED OCTOBER 15, 1982 THIS PROPERTY LIES IN FLOOD ZONE C.

ZONE C: AREAS OF MINIMAL FLOODING.

DUE TO INHERENT INACCURACIES OF FEMA OR FLOOD INSURANCE RATE MAPS THIS SURVEYOR DOES NOT CERTIFY TO THE ACCURACY OF LOCATIONS BASED ON SUCH MAPS. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

NOTE:
 ALL INFORMATION SHOWN HEREON WITH RESPECT TO UNDERGROUND CONDITIONS WAS DETERMINED BY DATA COLLECTED THROUGH SURVEY CREW OBSERVATION AND OTHER INFORMATION TAKEN FROM EXISTING PLANS AND MAPS OF RECORD. NO UNDERGROUND UTILITIES EXISTING OR ABANDONED WERE EXPOSED OR LOCATED.

UNLESS SPECIFICALLY ACCEPTED BY SLJ ENGINEERING, INC. IN WRITING, SLJ ENGINEERING, INC. MAKES NO CLAIM, EXPRESSED OR IMPLIED, AS TO THE UNDERGROUND SITE CONDITIONS.

LINE TABLE		
TANGENT	LENGTH	BEARING
T1	70.00'	N08°49'54"W

- NOTES:**
1. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS EXHIBIT.
 2. BASIS OF BEARING: PLAT OF EL PASO INTERNATIONAL AIRPORT TRACTS, UNIT ONE, RECORDED IN BOOK 18, PG. 30.
 5. NO BUILDINGS EXIST ON THE PROPERTY

Copyright 2009 SLJ Engineering, Inc.

This map and survey are being provided solely for the use of EPIA and no license has been created, expressed or implied, to copy the surveys and/or map(s) except as necessary in conjunction with the original transaction. This transaction shall be effective within six (6) months from the date hereon January 15, 2009.

EXHIBIT

SLJ ENGINEERING, INC.
 CIVIL ENGINEERS
 LAND SURVEYORS
 LAND PLANNERS
 6600 WESTWIND DRIVE
 EL PASO, TEXAS 79912
 915-584-4457

ALL OF LOT 35 & WEST 1/2 OF LOT 36
 BLOCK 4
 EL PASO INTERNATIONAL AIRPORT TRACTS
 UNIT 1
 CITY OF EL PASO,
 EL PASO COUNTY, TEXAS

JOB #: 06-08-2751 DR. BY: BW
 SCALE: 1"=100' F.B. #: "Book"
 DATE: 01/15/2009 DWG:

PLAT REFERENCE
 BOOK 18 PAGE 30

EXHIBIT "B"

RULES, REGULATIONS AND LAND USE REQUIREMENTS

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

RULES, REGULATIONS AND LAND USE REQUIREMENTS

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RULES, REGULATIONS AND LAND USE REQUIREMENTS

The City of El Paso hereby declares that the property more particularly described hereinafter is and shall be held and conveyed subject to the rules, regulations and requirements hereinafter set forth.

ARTICLE I

PROPERTY

The real property and improvements subject to these rules, regulations and land use requirements is situated on the El Paso International Airport and is more particularly described as:

All of Lot 35 and the West one-half (½) of Lot 36, Block 4, El Paso International Airport Tracts, Unit 1, El Paso, El Paso County, Texas, consisting of approximately 24,600 square feet as more fully described on Exhibit "A" attached hereto and incorporated herein for all purposes, which is municipally known and numbered as 7631 Boeing Drive, El Paso, Texas (the Premises").

ARTICLE II

DEFINITIONS

Wherever used in this document, the following terms shall have the following meanings:

A. "BUILDING" shall include both the main portion of such building or structure and all projections or extensions therefrom, including garages, outside platforms and docks, carports, canopies and porches. Ground cover shall not be included.

B. "BUILDING SITE" shall mean the entire lot or lots (if contiguous) leased by one Lessee and as shown as "Leased Premises" in Exhibit A of the Lease to which these Rules, Regulations and Requirements are attached.

C. "CITY" shall mean the City of El Paso, Texas, its duly elected Council, or any duly constituted agent/committee appointed through said Council to fulfill the obligations herein required.

D. "DIRECTOR OF AVIATION" or "DIRECTOR" shall mean that Director of Aviation of The El Paso International Airport.

E. "FRONT LOT LINE" shall mean the property line where a lot abuts a street.

F. "LESSEE" shall mean the party designated as Lessee in the Lease to which this document is attached as Exhibit D.

G. "PROPERTY LINE" shall mean those boundaries of the Leased Premises as set out in Exhibit A of the Lease to which this document is attached.

H. "REAR LOT LINE" shall mean the property line which does not abut a street, and which usually is opposite the "Front Lot Line".

I. "SETBACK" shall mean the distance a building must be set back from the property line of the parcel.

J. "STREET" shall mean 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.

ARTICLE III

PERFORMANCE STANDARDS

No land or structure shall be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable conditions which may affect any other property, including, but not limited to:

Fire, explosive or other hazard;
Noise, vibration, or shock;

Smoke, dust, odor or other forms of air pollution;
Heat or glare;
Electrical or other disturbance;
Liquid or solid refuse or wastes;
Other substance, condition, or element in such manner or in such amount as to affect the surrounding area or adjoining premises.

A. Fire and Explosive Hazards. No activity shall be undertaken involving fire or explosive hazard which shall endanger the property, improvements, or employees of any other property owner or Lessee.

B. Noise. No noise, other than from the operation of motor vehicles or aircraft, which is objectionable to a person of normal sensibilities shall be permitted within fifty (50) feet of the property line.

C. Air Pollution. No activity of any type shall be conducted or permitted on the Leased Premises which violates any applicable federal, state or local law, rule or regulation.

D. Dust Control. All ground areas not covered by structures shall be landscaped or surfaced with concrete, asphaltic concrete, asphalt oil 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.

E. 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.

F. Illumination.

1. Exterior Lighting. The design and location of exterior lighting shall comply in all respects to the requirements of the City, the Federal Aviation Administration 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.

2. Interior Lighting. The source of illumination of any kind within any building on the site shall not be visible at the property line except for normal installation of standard interior lighting fixtures within buildings.

G. Signs. The number, size, design, and location of all signs displayed for observation from outside a building whether displayed on, near, or within a building shall be subject to prior written approval by the Director of Aviation. All signs shall comply with any applicable sign ordinances and building codes of the City of El Paso and with all rules and regulations of the Federal Aviation Administration and its successor. Signs on the Leased Premises shall be limited to those identifying the uses conducted on the site and to those necessary for directional purposes. Outdoor advertising, billboards or flashing lighting shall not be permitted.

H. Refuse or Trash. No refuse or trash shall be kept, stored or allowed to accumulate on any building site except in accordance with Article II, Section 2.06 of the Lease to which this document is attached.

I. Storage. All storage of every type, except of autos or aircraft, shall be within buildings or enclosures formed by a tight, painted board fence or rock walls. Storage of aircraft parts, service equipment or similar items shall be expressly prohibited outside buildings or such enclosures. Storage of motor vehicles, other than aircraft, is not permitted; provided, however, that motor vehicle parking for reasonable periods of time in designated areas for such, is permitted.

J. Sewage Disposal Systems. No cesspool, septic tank or other sewage disposal system or device shall be installed, maintained or used upon any parcel without the approval of the El Paso City-County Health District.

ARTICLE IV

DEVELOPMENT OF SITE

A. Offstreet Parking. All provisions for automobile parking for employees and visitors of the Lessee shall be placed on the lot(s) leased. No parking whatsoever shall be permitted on the streets.

All parking areas shall be in rear setback areas and shall be paved to provide dust-free, all-weather surfaces.

Offstreet parking facilities shall be provided generally in accordance with the City of El Paso Offstreet Parking Ordinance No. 1653 and any amendments or successor ordinances thereto and shall be sufficient for the parking of all automobiles necessary to the conduct of the business.

Each parking space shall be designated by white lines painted upon the paved surface.

B. Vehicle Loading. All provisions for the loading and maneuvering of vehicles incidental to the operation of the business shall be placed on lot(s) leased; onstreet vehicle loading shall not be permitted.

C. Setbacks. All buildings shall be set back a minimum of twenty-five (25) feet from the front lot line and twenty-five (25) feet from the rear lot line. Side setbacks shall be a minimum of fifteen (15) feet.

One hundred percent (100%) of the required rear setback area shall be landscaped and planted, unless covered by paving.

D. Landscaping. A reasonable amount of landscaping, including the planting of ground-covers, shrubs and trees, shall be required, such landscaping to be in accordance with standards established by the Airport.

In addition, paving or landscaping shall extend from the property line to the curb, such paving or landscaping to be compatible with treatment for this area on other lots in the same Block. All trees shall be limited to a height of thirty-five (35) feet above the curb line. The required landscaping shall be installed within 180 days of the effective date of the Lease to which this document is attached.

E. Building Heights. All building heights shall conform to FAA rules and regulations. The term building height shall include any building equipment, extrusions, etc.

F. Site Coverage. All buildings and structures, or portions thereof, placed on the lot(s) shall not cover more than fifty percent (50%) of the total lot area.

G. Type of Construction. All buildings shall be framed with reinforced concrete or masonry, structural steel or structural aluminum. Siding shall be masonry, glass, or enameled steel. Concrete or masonry units shall be kept neatly painted, if used.

All structures for the storage of gasoline, jet fuel, or other petroleum products shall be of a state of the art design and construction and shall conform to applicable laws, ordinances and regulations of the Environmental Protection Agency and the Texas Natural Resources Conservation Commission. All buildings, structures, and improvements shall conform to applicable laws, ordinances and building codes of the City of El Paso.

H. Fencing. Construction of fencing between buildings of all Lessees on all lots shall be required. The placement and design of such construction shall be in accordance with plans and specifications approved by the City, or its authorized agent, for the surrounding area and shall be uniform throughout the area.

ARTICLE V

PREPARATION AND SUBMISSION OF PLANS FOR IMPROVEMENTS

A. General. All plans for improvements or repairs shall be prepared by registered engineers and architects, shall require the prior written approval by Director of Aviation before any construction may begin. Such approval shall not eliminate Lessee's obligation to obtain the approval of the other City Departments, and other local, state and federal agencies.

B. Initial Plans. Lessee shall prepare and submit to the City and the Director of Aviation, Initial Plans for any proposed improvements consisting of the following:

1. A plot plan at a scale not smaller than 1 inch equals one hundred feet showing the relationship of the proposed improvements to the Leased Premises and to the improvements on adjacent lots, utilities and access thereto, curbs, walks, driveways, parking areas, etc.

2. Preliminary schematic plans for the improvements showing typical, general layouts for all guest room areas, public spaces, back-of-house areas, and lounge and banquet areas.

3. Ground cover plans, including landscaping.

4. A true architectural rendering of the proposed Buildings, including the elevations, the proposed exterior color scheme, style, materials and design and placement of signs; and

5. Any other plans, specifications, or design features which the Director may deem necessary and request.

C. Codes and Regulations. All improvements shall be planned and constructed in accordance with the laws and ordinances of the City, as amended, applicable building codes as amended, all applicable State and Federal laws as amended, and all rules and regulations of the Federal Aviation Administration or any successor agencies; as amended.

D. Approval of Initial Plans. The Director shall review the Initial Plans and, in his discretion, within thirty (30) days after submission either approve the Initial Plans, or (ii) advise Lessee in writing and with reasonable specificity the reason(s) for non-approval. In the latter event, Lessee, by their appropriate representative shall proceed with due diligence and good faith to meet and resolve outstanding issues so that the Initial Plans (as they may be revised) are approved. If such approval is not obtained within one hundred and twenty (120) days following the original submission date, Lessee may, at its option, terminate this Lease upon ten (10) days' written notice to Lessor, without further liability hereunder.

E. Approval of Plans. Following approval of the Initial Plans, Lessee shall prepare and submit to the Director specifications for the construction of the improvements, and any subsequent alterations, renovations, additions, and improvements thereto, all in sufficient detail to allow the Director to determine that the proposed construction will comply with the requirements of paragraph C above and otherwise comply with the provisions of the Lease to which this document is attached. If the Director determines that the plans and specifications do not so comply, they shall advise Lessee in writing, specifying in reasonable detail the areas of noncompliance, within thirty (30) days of the date said plans and specifications were submitted for approval. Approval of any and all improvements plans or documents by the Director does not constitute approval of the City

or any other local, state, or federal agency. 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 Director, Lessee shall be required to obtain the approval of other departments as well, such as Engineering, Public Works or Building Services.

F. Commitment to Construct. Upon approval by the Director of plans for construction of any structure, a copy of the approved plans shall be deposited for permanent record with the Airport. Upon completion of Construction a copy of as-built plans and specifications shall be deposited for permanent record with the Airport.

Approval of these plans by the Director shall constitute a commitment on the part of the Lessee to obtain all required permits and licenses and, to erect and maintain the improvements as proposed and approved, and to do so within the time period set forth in the Lease to which this document is attached.

G. Construction Within Time Specified. Any approved construction shall be prosecuted diligently by Lessee in accordance with the approved plans and specifications and shall be completed within the time specified. Failure to complete such work in the time specified shall be considered a default and the City may terminate the Lease to which this document is attached.

H. Plans for Alteration in Improvements. All plans for alterations to the Leased Premises, either for the construction of additional facilities or alterations to existing buildings, including repairs, shall be prepared, submitted and approved as outlined in paragraph E above, and shall be subject to the same restrictions as herein provided.

I. Construction Without Approval. If any structure shall be altered, erected, placed or maintained upon the Leased Premises other than in accordance with plans and

specifications approved by the Director and the City, such alterations, erection and maintenance shall be deemed to have been undertaken without approval required herein. This restriction shall be applicable to landscaping plans and signage plans as well as architectural plans.

In the event of such construction without approval, the Lessee will be considered in default of the Lease to which this document is attached and the City may terminate said Lease in accordance with the provisions set forth in the Lease.

J. Fee for Examination of Plans and Specifications. The City may charge and collect a reasonable fee, as determined every five years by the City or its authorized agent, for architectural review and other reviews of plans submitted for approval. Such plan 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 City or its authorized agent, shall be paid before further review.

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

K. Right of Entry and Inspection. Any authorized agent of the City may, at any reasonable time and without notice, enter upon and inspect the Leased Premises for the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with the provisions hereof or for any other lawful reason; City shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

ARTICLE VI

GENERAL PROVISIONS

A. Cutting and Filling. The City or its authorized agent thereof may at any time make such cuts and fills upon any part of Leased Premises 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.

B. Housekeeping. If accumulations of weeds, rubbish, or items of equipment or supplies are permitted to remain on the Leased Premises more than ten (10) days after a request in writing from the City to have them removed, the City or its authorized agent may enter upon any Leased Premises for the purpose of removing same by whatever means it deems necessary. Such entry shall not be deemed a trespass and the City shall not be subject to any liability therefor. The cost of such work shall be borne by the Lessee and shall be paid to the City ten (10) days from the date Lessee is provided notice of such costs.

C. Maintenance of Landscaping. If landscaped areas are not maintained in accordance with the standards prescribed by the Lessor and the condition is not corrected within ten (10) days after written notice from the City, the City or its authorized agent shall have the right to enter on the Leased Premises and plant or replant such areas without being deemed guilty of trespass and without incurring any liability. The costs therefore, as determined by the City, shall be paid by the Lessee to the City within ten (10) days from Lessee's receipt of notice of such costs.

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

E. Failure to Enforce a Restriction. The City or Airport may fail to enforce any restriction herein specified, but in no event should this be deemed a waiver of these Restrictions and Covenants or the right to enforce any restriction at a later date.

Julie Paige: SWAL Fuel Storage Rules
7/16/98 jc