

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

DEPARTMENT: AIRPORT

AGENDA DATE: May 29, 2012

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E. 780-4793

DISTRICT(S) AFFECTED: All

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

This is a Resolution to allow that the City Manager be authorized to sign an Air Cargo Center Agreement by and between the City of El Paso ("Lessor") and DHL Express (USA), Inc. ("Lessee") for office and warehouse; loading dock and vehicular parking, and aircraft parking apron and ground service equipment parking at the Air Cargo Center located at 301 George Perry Blvd., Suite G, El Paso, Texas.

Lease term of this Agreement is for a period of five years with one five year Option at the same rental rate as the previous five year period effective June 1, 2012. Lease annual rental for: Office/warehouse is \$44,799.04/yr.; Vehicle parking is \$1,887.60/yr.; and Aircraft/Ground Service Equipment Parking is \$38,739.36/yr. for a total annual rental of \$85,426.000.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns? DHL Express (USA), Inc. ("DHL") has been an EPIA tenant since 2000 after signing the Air Cargo Center Agreement with the City of El Paso for space at the then new Air Cargo facility effective August 1, 2000 through October 31, 2005 with one five (5) year Option effective through October 31, 2010.

A First Amendment to the Lease extended the term of the Agreement through April 30, 2011, a Second Amendment to Lease extended the term through August 31, 2011. A Third Amendment to the Lease extending the existing Lease for additional time for the City and DHL to negotiate a new 5 year Air Cargo Lease was approved by Council on September 13, 2011.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Yes, DHL's Third Amendment of Air Cargo Center Agreement dated September 13, 2011.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

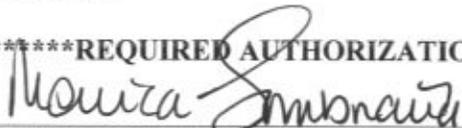
N/A Revenue generating.

BOARD / COMMISSION ACTION: N/A

Enter appropriate comments or 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 an Air Cargo Center Agreement by and between the City of El Paso ("Lessor") and DHL Express (USA), Inc. ("Lessee") for office and warehouse space; loading dock and vehicle parking space, and aircraft parking apron and ground service equipment parking apron at the Air Cargo Center located at 301 George Perry Blvd., Suite G, El Paso, Texas.

Dated this ____ day of May 2012.

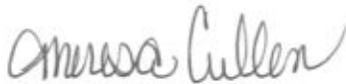
CITY OF EL PASO

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

AIR CARGO CENTER AGREEMENT
301 George Perry Blvd., Suite G

El Paso International Airport
El Paso, Texas

DHL EXPRESS (USA), INC.

June 1, 2012
Effective Date

**AIR CARGO CENTER AGREEMENT
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ATTACHMENTS:

- EXHIBIT "A" - Detailed sketch of Ramp, GSE, and Building Area
- EXHIBIT "B" - Detailed sketch of Vehicle Parking Area

EL PASO INTERNATIONAL AIRPORT

AIR CARGO CENTER AGREEMENT

THIS AGREEMENT, ("Agreement"), entered into this ___ day of _____ 2012, between the **CITY OF EL PASO, TEXAS** ("Lessor") and **DHL EXPRESS (USA), INC.**, a corporation organized and existing under the laws of the State of Ohio ("Lessee").

WITNESSETH:

WHEREAS, the Municipal Airports Act of the State of Texas (Chapter 22 of the Texas Transportation Code) authorizes municipal airports, as governmental entities, to establish the terms and fix the charges, rentals, or fees for the privileges or services. The charges, rentals, and fees must be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the local government;

WHEREAS, Lessor owns and operates the El Paso International Airport as depicted in the Airport Layout Plan updated December 2005 ("Airport") located in the County of El Paso, Texas;

WHEREAS, Lessor has constructed an Air Cargo Center and facilities located on the Airport and has space and facilities available for lease, and Lessee desires to lease space in the Air Cargo Center;

WHEREAS, Lessee has indicated a willingness and ability to properly operate, keep and maintain the portion of the Air Cargo Center that it leases in accordance with the standards established by Lessor; and

WHEREAS, in furtherance of its authority, Lessor further desires to lease to Lessee certain facilities located at said Airport in accordance with the terms, covenants, and conditions set forth in this Agreement;

NOW THEREFORE, for and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties agree as follows:

ARTICLE I
PREMISES AND PRIVILEGES

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

- A. That certain office and warehouse space containing **6,292** square feet, more or less, as shown on Exhibit "A" attached hereto and incorporated herein by reference, and also known as Air Cargo Center, 301 George Perry Blvd., Suite G, for Lessee's exclusive use;

- B. The exclusive use of the loading dock and **2,600** square feet, more or less, of vehicle parking space directly in front of the Air Cargo Center as shown on Exhibit "A";
- C. The exclusive use of **53,360** square feet, more or less, of the aircraft parking apron and ground service equipment parking apron directly behind said Air Cargo Center as shown on Exhibit "A"; and
- D. The use of a portion of the vehicle parking area, and the roadway, located in front of and adjacent to the Air Cargo Center, such portion to be commensurate with Lessee's share of warehouse and office space as to that leased to the tenants that share common use of this vehicle parking area, as shown on Exhibit "B" attached hereto and incorporated herein by reference;

all of which will hereinafter be referred to as the "Premises" or "Leased Premises".

Section 1.02 Right of Ingress and Egress. Lessor hereby grants to Lessee 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.

Section 1.03 Right to Construct. In addition to the general privileges, uses, rights, and interests attaching to the Premises herein described and without limiting the generality thereof, Lessee shall have the right to provide for the location, construction, erection, maintenance, and removal of improvements, in any lawful manner, upon or in the Premises, for the purpose of carrying out any of the activities provided for herein, subject, however, to the conditions herein generally or particularly set forth, including but not limited to Section 3.03.

Section 1.04 Restrictions of Privileges, Uses and Rights. Lessee covenants and agrees that it shall use the Premises for Air Cargo Operations only. "Air Cargo Operations" is defined as the business of warehousing and transporting goods, cargo, and mail, which arrive or depart by air, and the maintenance, servicing, repair and operation of aircraft owned (or leased) and operated by Lessee or any third-party air carrier with which Lessee contracts for the transportation of Lessee's cargo and/or freight to and from the Airport ("Lessee's Air Carriers") solely as incidental to the efficient and safe operation of Lessee's business. Any agreement between Lessee and Lessee's Air Carriers for the transportation of Lessee's cargo to and from the Airport shall be subject to the same conditions, obligations and terms as set forth herein, and Lessee's Air Carriers must have the appropriate agreement with Lessor to operate at the Airport. .

Lessee shall not offer, or permit to be offered, retail services, sales or repairs of any type from the Premises, other than the conduct of Lessee's Air Cargo Operations. Fuel sales are specifically prohibited. In connection with the exercise of its rights under this Agreement, Lessee:

- A. Shall not do, or permit to be done, anything at or about the Airport or the Premises that may interfere with the effectiveness or accessibility of the water system, drainage and sewage system, fire protection system, security system, fire

hydrants and hoses, electrical system, natural gas, or other Airport systems installed or located on or within the Premises or the Airport.

- B. Shall not do, or permit to be done, any act or thing upon the Airport or the Premises that will invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.
- C. Shall not dispose of, or permit any employee, agent, contractor, or other person to dispose of, any waste material taken from, or products used with respect to, its aircraft or operations into the sanitary or storm sewers at the Airport or any other location on the Airport (whether liquid or solid), including but not limited to Hazardous Materials, unless such waste material or products first be properly treated by equipment installed with the prior written approval of Lessor and all other administrative bodies having appropriate jurisdiction or may remain untreated if wastewater guidelines limitations of the El Paso Water Utilities/Public Service Board are not exceeded.
- D. Shall not keep or store hazardous articles and materials including, without limitation, flammable liquids and solids, corrosive liquids, compressed gasses, and magnetized or radioactive materials on the Airport except when all of the following conditions are met: (1) in accordance with standards established by the National Board of Fire Underwriters, any such liquids having a flash point of less than one hundred degrees (100⁰) Fahrenheit shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories; (2) said material shall be under the control and care of designated Lessee personnel; (3) said material shall be packaged and handled in compliance with applicable U. S. Department of Transportation, Environmental Protection Agency, or other such applicable regulations for transport and pretransport of hazardous articles and materials; and (4) said materials shall be stored in special storage areas designated by the Director while on the Airport. "Director" shall mean the Director of Aviation of the El Paso International Airport or other authorized representative of Lessor.
- E. Shall not install fuel storage tanks or pumping facilities for use in fueling any aircraft at the Airport without prior written approval of Lessor, said approval to be at Lessor's sole discretion.
- F. Shall not maintain or operate on the Premises or elsewhere at the Airport a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling or dispensing food or beverages to the public or to its employees or passengers; nor shall Lessee in any manner otherwise provide for the sale or dispensing of food and beverages at the Airport except that Lessee may provide vending machines solely for the sale of hot and cold beverages, food, and confections to Lessee's employees in areas not accessible to the general public.
- G. Agrees that the rights and privileges granted Lessee under this Agreement with respect to the performance of ground services and activities in connection with its Air Cargo Operations at the Airport, including services performed by Lessee in connection with Lessee's cargo which is transported by Lessee's Air Carriers to

and from the Airport, may be exercised by Lessee only for and on behalf of Lessee for regularly scheduled or unscheduled service. Lessee may, subject to the prior written approval of the Director, and, where applicable, perform ground services for other air cargo operators conducting Air Cargo Operations at the Air Cargo Center provided said air cargo operators are signatories to an Air Cargo Use Agreement or Airline Operating Agreement and an Air Cargo Center Agreement with Lessor. Should Lessee utilize ground services or other cargo related services from another air cargo operator, including without limitation Lessee's Air Carriers, Lessee represents that Lessee will be completely responsible for the other air cargo operator's actions or omissions, provided that, if such operators are not providing exclusive service for Lessee, then Lessee shall be responsible for those actions or omissions that were in furtherance of Lessee's interests. It is understood and agreed that Lessor reserves the right to charge a fee or commission associated with controlling access to restricted areas, and to collect reasonable fees or commissions for ground transportation, ground support services for other Air Cargo operator(s), and other services or facilities provided by or for Lessee in competition with concessionaires and operators operating under an agreement with Lessor.

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

- A. No functional alteration of the Premises shown on Exhibit "A" or functional change in the uses of the Premises shall be made without the specific written consent of Lessor; said consent to be at Lessor's sole discretion.
- B. The right to use public Airport facilities in common with others authorized to do so shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated under their authority with reference to aviation and air navigation; and all applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.
- C. Lessee will utilize only the roadways, taxiways, or other direction, path, route, or form of travel Lessor may designate, from time to time, for Lessee's operation and movement on or about the Airport.

ARTICLE II **OBLIGATIONS OF LESSOR**

Section 2.01 Quiet Enjoyment. Lessor agrees that upon Lessee's paying rent and performing all of the covenants, conditions, and agreements herein set forth, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises hereby demised for the term of this Agreement.

Section 2.02 Lessor's Right of Entry. Lessor reserves the right to enter into and upon the Premises at all times for the purpose of inspecting the condition thereof, or to perform maintenance or repairs as may be necessary in accordance with the provisions of the Agreement,

or for the purpose of exhibiting the same to prospective tenants, purchasers or others. The exercise of this right to enter the Premises shall not be deemed an eviction or disturbance of Lessee's use or possession, provided that Lessor shall exercise its best efforts not to interfere with Lessee's normal operations on the Premises.

Section 2.03 Condition and Maintenance of Premises. Lessor shall bear responsibility for the repair and maintenance of the Structural Elements of the Air Cargo Center, except for any damage caused by the act or omission of the Lessee, or any agent, employee, invitee, contractor, servant, or sublessee of Lessee, for which damage Lessee shall be responsible. "Structural Elements" shall mean the roof, foundation, load bearing columns and walls, exterior walls, exterior paint, common vehicle parking areas, and the aircraft parking apron.

ARTICLE III **OBLIGATIONS OF LESSEE**

Section 3.01 Net Agreement. This Agreement in every sense shall be without cost to Lessor for the development, maintenance and improvement of the Premises. It shall be the sole responsibility of Lessee to keep, maintain, repair and operate the entirety of the Premises and all improvements and facilities placed thereon at Lessee's sole cost and expense. Notwithstanding the foregoing, Lessee's obligation for the development, maintenance or improvement of the Premises shall not apply to the Structural Elements as described in Section 2.03 above.

Section 3.02 Condition and Maintenance of Premises. **LESSEE ACCEPTS THE PREMISES IN "AS IS" CONDITION.** Except as otherwise provided for in Sections 2.03 or 3.01 hereinabove, Lessor has no responsibility as to the condition of the Premises and shall not be responsible for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition. Lessee shall be solely responsible for repairs and maintenance of the Premises except the Structural Elements described in Section 2.03 above, and shall not cause any damage or impairment to any part of the Structural Elements.

Section 3.03 Internal Improvements.

- A. **General.** Lessee may make internal improvements, additions and alterations to the Premises with the prior written approval of the Director. Lessee guarantees that all construction work performed by contractors hired by Lessee shall be done in accordance with applicable building codes, laws and regulations and in a good, workmanlike manner, and all materials used by Lessee's contractors shall be of an appropriate grade and quality for the use for which they are employed. All plans for improvements, alterations or renovations to the Premises, either for the construction of additional facilities or alterations to existing facilities, shall be prepared, submitted and approved as outlined in this Article, and shall be subject to the same restrictions as provided herein. Lessee, at its sole expense, must obtain appropriate approval from the Airport, all local, state, and federal agencies, as required, for the completion of any and all improvements. Lessee acknowledges that approval of any and all improvements plans or documents by the Director does not constitute approval by any other local, state, or federal

agency. All improvements, furniture, fixtures, and equipment used in the Premises shall be of high quality, safe, fire-resistant, and attractive in appearance.

It is agreed that the Director reserves the right to reject any plans and specifications.

Upon completion of any construction project, Lessee shall provide the Director with one (1) complete set of As-Built drawings in reproducible form as specified by the Director. Lessee agrees that, upon the request of the Director, Lessee will inspect the Premises jointly with the Director to verify the As-Built drawings.

- B. Construction Without Approval. If any portion of the Air Cargo Center, Leasehold Improvements, or Trade Fixtures are altered, erected, placed or maintained upon any portion of the Premises other than in accordance with plans and specifications approved by the Director, such alterations, erection and maintenance shall be deemed to have been undertaken without approval required herein. This restriction shall be applicable to aesthetic matters as well as architectural plans.

In the event of such alteration, erection, placement, or maintenance without approval, Lessee will be considered in default of this Agreement and Lessor may terminate this Agreement in accordance with the provisions set forth in Article X.

- C. Title to Improvements. All Leasehold Improvements made to the Premises by Lessee, shall be and remain the property of Lessee until the termination of this Agreement whether by expiration of the term, cancellation, forfeiture or otherwise. Upon the termination of this Agreement, whether by expiration, cancellation, or otherwise, title to such Leasehold Improvements shall vest in accordance with Paragraph D of this Section 3.03.
- D. Permanent Improvements. Subject to written approval of Lessor, all permanent improvements, if any, made by Lessee to the Air Cargo Center, of which the Premises are a part, shall become the property of Lessor upon the expiration, cancellation or early termination of this Agreement. All other improvements and fixtures of a non-permanent nature and all trade fixtures, machinery and equipment made or installed by Lessee may be removed from the Premises at any time by Lessee, subject to Lessor's lawful exercise of its landlord's lien, and to the extent that it does not cause structural or cosmetic damage to the Premises or any other portion of Lessor's Air Cargo Center and facilities.

Section 3.04 Payment and Performance Bonds. Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction, the identified contract amount which exceeds Fifty Thousand and no/100 Dollars (\$50,000.00), 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 completely perform the work.

- B. Prior to the date of commencement of construction, the identified contract amount which exceeds Fifty Thousand and no/100 Dollars (\$50,000), 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 ten percent (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.

Section 3.05 Compliance With Laws. Lessee, at Lessee's expense, agrees that in the event it constructs, operates and/or maintains improvements on the Premises, such activities shall be done in accordance with the Declarations and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon. By way of example and not in limitation of the foregoing, the execution of this Lease and approval of Lessee's plans by the Airport shall not preclude the requirement that Lessee obtain all other approvals necessary for

development of Lessee's project such as, but not limited to, building permits and certificates of occupancy.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990 and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

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

A. Definitions.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
- (2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like.
- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

- (1) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its agents, employees, contractors, invitees, or a third party in violation of any Environmental Law; provided, further, that with respect to

demolition of Existing Improvements, Lessee shall comply fully with all regulatory requirements, including, but not limited to, those governing asbestos abatement. **Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon.** This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises.

The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Agreement.

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Lessee results in any contamination of the Premises or any improvements thereon, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.

- (3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties, which is related to environmental contamination.
- (4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (5) Lessee shall insert the provisions of this Section 3.03 in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.
- (6) Nothing in Section 3.03 will make Lessee liable or responsible for, and lessee shall have no obligations related to any hazardous materials which (i) existed on, under or about the Premises prior Lessee's occupation under this Agreement or any previous lease Agreement with Lessor for the Premises, (ii) which migrate to the Premises from off-site, or (iii) are introduced to the Premises during Lessor or its employees, agents or contractors, or any other person or entity except to the extent cased by lessee or its employees, agents, contractors or Air carriers.

C. Reporting.

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

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

Section 3.06 Maintenance. Except as set forth otherwise in this Agreement, 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 and equal in appearance and character to other similar improvements on said Airport. In addition, Lessee shall promptly repair all damage to the Premises or the Airport caused by its employees, patrons or its operation thereon. Lessee shall also be responsible for the upkeep and cleanliness of the Premises. Lessee shall maintain and repair of all equipment thereon, including, but not limited to, any heating and cooling equipment or any buildings and improvements. Lessee agrees not to paint the exterior of the improvements without the prior written consent of Lessor; said consent to be at Lessor's sole discretion. Lessor shall also be the sole judge of the quality and content of any painting submitted by Lessee for consideration.

Lessee shall be required to perform whatever maintenance Lessor reasonably deems necessary. If said maintenance is not undertaken by Lessee within thirty (30) days after receipt of written notice, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which plus twenty percent (20%) shall be borne by Lessee. Lessee shall remit payment within thirty (30) days after receipt of invoice.

Section 3.07 Utilities. Lessee shall pay for all costs or charges for utility services furnished to Lessee and to the exclusive use Premises during the term hereof. 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 departments of the City of El Paso including, at a minimum, the Director, and Lessee shall pay for any and all service charges incurred thereof. If Lessor pays any utilities on Lessee's behalf, Lessee, upon receipt of a statement therefore, shall reimburse Lessor for Lessee's pro rata share thereof plus ten percent (10%) for administrative overhead. Said share shall be calculated on a pro rata basis utilizing the square footage of each tenant's occupancy divided by the total square footage of the Air Cargo Center.

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

Section 3.09 Permitted Uses. Lessee covenants and agrees that in no event will it enter into any business activity on the Airport other than those specified in Section 1.05.

Section 3.10 Signage. The following regulations shall apply to all signs displayed for observation from outside a building whether displayed on, near or within a building:

- A. Permitted Signs. Signs on Premises shall be limited to those identifying Lessee and to those necessary for directional purposes. The size, design and location of all signs shall require the written approval of the Director prior to installation, said written approval shall be at the Director's sole discretion. Outdoor advertising, billboards, neon, or flashing lighting shall not be 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 Federal Aviation Administration and its successor agencies. Lessee is solely responsible for obtaining all necessary permits and licenses.

Section 3.11 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 Department of Aviation is only one of numerous departments of the City and that, in addition to obtaining approval of the Director, Lessee shall be required to obtain the approval of other departments as well.

Section 3.12 Fencing and Exterior Storage. Lessee may store stock, materials, and supplies on the Premises; however, all stock, materials, and supplies that are stored outside must be completely screened from view. The placement and design of any exterior screening, fencing and storage on the Premises shall be in accordance with plans and specifications prescribed by the Director and shall be uniform throughout the entire Air Cargo Center, ramp, and associated areas.

Section 3.13 Authorization to Enter Restricted Area. Lessee understands that all of its agents, employees, servants or independent contractors must be authorized by Lessor to enter restricted areas as defined in Title 14 of the El Paso City Code as amended. Lessee understands that no person authorized to enter a restricted area by virtue of this Agreement may permit any 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.

Section 3.14 Security. Lessee is familiar with the restrictions imposed on Lessor by 49 CFR Part 1540 as amended and agrees to assume responsibility for compliance with said regulation as it relates to access and identification procedures on the Premises. To accomplish this compliance, Lessee agrees to develop a security plan and will submit same to the Transportation Security Administration's (TSA) security office for approval.

Section 3.15 Penalties Assessed by Federal Government. Lessee understands and agrees that in the event any federal agency assesses a civil penalty against Lessor for any violation of a federal rule or regulation as a result of any act on part of Lessee, its agents, servants, employees, invitees, or independent contractors, Lessee will, upon invoice, promptly reimburse Lessor in the amount of the civil penalty assessed. Failure to reimburse Lessor within thirty (30) days of receipt of written notice shall be an event of default hereunder.

ARTICLE IV
TERM OF LEASEHOLD

Section 4.01 Term. The term of this Agreement shall begin upon the identified Effective Date for a period of five (5) years.

Section 4.02 Option to Extend. So long as Lessee is not, at such time, in default of any terms or conditions of this Agreement, Lessee shall have the option to extend this Agreement for an additional term of five (5) years. Lessee may exercise the five (5) year option ("Option Period") by notifying Lessor in writing of Lessee's election at least one hundred and twenty (120) days prior to the expiration of the initial term. In the event the election is so exercised, the Agreement shall be extended for five (5) years on the same terms and conditions. The annual rental for this five (5) year period shall be the same as the previous five (5) year period as set forth in Article V.

Section 4.03 Holding Over. It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Agreement shall operate and be construed as a tenancy from month to month at a rental of one and one-half (1.5) times the then current monthly rental, and Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Agreement, 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 Agreement 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 Agreement, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

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

ARTICLE V
RENTALS

Section 5.01 Rental. For the purpose of computing the rental payments, Lessor and Lessee agree that the Premises comprise the following:

6,292	Sq. ft. of Office and Warehouse Space at	\$7.12/sq.ft./annum = \$44,799.04/yr.
2,600	Sq. ft. of Vehicle Parking Space at	\$0.726/sq.ft./annum = \$1,887.60/yr.
53,360	Sq. ft. of Aircraft Parking and Apron and Ground Service Equipment Parking Apron at	\$0.726/sq. ft./annum= \$38,739.36/yr.

Therefore, the initial annual rental shall be **\$85,426.00** per year for the period beginning upon the identified Effective Date.

Lessee agrees that Lessor may, as a convenience to Lessee, provide the U.S. Customs and Border Protection with an office in the Air Cargo Center. The above referenced Annual Rentals for

office and warehouse space contain a surcharge of \$0.15 per square foot per annum as consideration for rental of this area in the Air Cargo Center to the U.S. Customs and Border Protection, from which Lessee may receive inspection services.

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

Section 5.03 Security Deposit. Prior to the commencement of this Lease, Lessee shall tender to Lessor an irrevocable letter of credit, or other surety acceptable to the Director ("Security Deposit") in an amount equal to three (3) months of Ground Rental to guarantee the faithful performance of Lessee of its obligations under this Lease and the payment of all Ground Rental due hereunder. Lessee shall be obligated to maintain such Security Deposit in effect until the expiration of eighteen (18) consecutive months from the Effective Date of this Lease during which Lessee commits no Event of Default under Section 11.02 of this Lease. Such Security Deposit shall be in such form as shall be acceptable to Lessor in its reasonable discretion. Lessor's rights under this Section shall be in addition to all other rights and remedies provided to Lessor under this Agreement.

Section 5.04 Unpaid Rent, Fees and Charges. Any installment of rent, any fees, or other charges or monies accruing under any provisions of this Lease that are not received by the 30th day of the month in which payment is due, shall bear interest at the rate equal to the maximum allowed by law from the date when the same was due according to the terms of this Lease until paid by Lessee.

Section 5.05 Time of Payment. All rental 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 Agreement.

Section 5.06 Place of Payment. All payments provided herein shall be paid to Lessor at the following address:

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

ARTICLE VI **DAMAGE OR DESTRUCTION OF PREMISES**

Section 6.01 Damage or Destruction. If the Premises or any portions thereof, or structures of which such space may be a part, be damaged by fire or other casualty not caused by Lessee, Director shall notify Lessee within sixty (60) days whether the space shall be repaired. If the space is to be repaired, it shall be repaired with due diligence by Lessor, and the rental allocable to the Premises rendered untenable shall be abated for the period from the occurrence of the damage to the completion of the repairs, provided that Lessor will exert its best effort to provide

Lessee with temporary substitute space, if available, at such rent as deemed necessary and reasonable by City, until such time as the repairs are completed.

If Director shall fail to notify Lessee of its decision to repair any untenantable Premises within sixty (60) days after the destruction, Lessor will be deemed to have elected to terminate this Agreement as to the space damaged and destroyed, and the Agreement shall automatically terminate as to such space as of the date of the damage or destruction.

Section 6.02 Damage Caused by Lessee. Notwithstanding the provisions of this Article 6, in the event that due to the negligence or willful act or omission of Lessee, its employees, its agents, or licensees, Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the repair or replacement of said Premises. To the extent that the costs of repair or replacement shall exceed the amount of any insurance proceeds payable to Lessor by reason of such damage or destruction, Lessee shall pay the amount of such additional costs to Lessor.

ARTICLE VII **INSURANCE AND INDEMNIFICATION**

Section 7.01 Liability Insurance. Lessee, at its sole cost and expense shall, throughout the term of this Agreement, provide and keep in force for the benefit of Lessee with Lessor and its officers, directors, agents, and employees as an additional insured, comprehensive general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, Two Million Dollars (\$2,000,000.00) for bodily injuries to more than one person arising out of each occurrence and Five Hundred Thousand Dollars (\$500,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

Section 7.02 Fire and Extended Coverage Insurance. Lessor agrees that, at all times throughout the term of this Agreement, it will keep the Air Cargo Center insured under a Texas Standard Policy of Fire and Extended Coverage Insurance, for an amount equivalent to ninety percent (90%) of the replacement cost, such replacement cost to be redetermined every three (3) years. Upon receipt of a statement therefor, Lessee shall reimburse Lessor for Lessee's pro rata share thereof. Said share shall be calculated on a pro rata basis utilizing the square footage of each tenant's occupancy divided by the total square footage of the Air Cargo Center.

If the operations conducted by Lessee, or anyone holding under Lessee, on the Premises should require the payment of a greater premium for fire and extended coverage insurance than would customarily be payable for the conduct of the air cargo activities permitted hereunder, then the amount of such additional premium cost shall also be reimbursed by Lessee to Lessor upon invoice.

Section 7.03 Indemnification. **WITHOUT LIMITING THE GENERALITY OF ANY OTHER INDEMNITY CONTAINED IN THIS AGREEMENT, LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR AND ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS,**

DAMAGES, COSTS, LIABILITIES 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 ACTIVITIES ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF LESSEE OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, 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 RECEIPT OF WRITTEN NOTICE FROM LESSOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LESSOR.

ARTICLE VIII
CONDEMNATION

Section 8.01 Definition. The following definitions apply in construing the provisions of this Agreement 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.
- 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; or
 - 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 Agreement.

- 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 from 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 Agreement. The notice is considered to have been received when a party to this Agreement receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the taking.
- G. "Award" means compensation paid for the taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. "Date of taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

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

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

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

Section 8.04 Taking of Leasehold. Upon a total taking, Lessee's obligation to pay rent and other charges hereunder together with Lessee's interest in the leasehold shall terminate on the Date of Taking. Upon a substantial taking, 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 Agreement shall remain in full force and effect covering the balance of the Premises not so taken, except that the rent payable hereunder shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

Section 8.05 Total Taking. All of Lessee's obligations under the Agreement 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 the Lessee-owned improvements, but subject to the Agreement, shall be disbursed to Lessor.

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

- A. To the cost of restoring the improvements on the Premises; 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 Agreement.

Section 8.07 Obligations of Lessee Under Partial Taking. Promptly after any such partial taking, Lessee, at its expense and in accordance with any awards disbursed in accordance with Section 706, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a partial taking in the last year of the initial term or any renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect.

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

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

ARTICLE IX
ENCUMBRANCES

Section 9.01 Encumbrance. As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiary under a deed of trust. Lessee may encumber its leasehold estate and its interest in the improvements constructed 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 Agreement so long as such Mortgage is in effect.

Section 9.02 Mortgagee's Rights. Upon receipt of a notice or demand in accordance with Section 8.01 above, Mortgagee shall have sixty (60) 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 sixty (60) days, to commence performance within such sixty (60) 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.

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

ARTICLE X
EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

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

Section 10.02 Cancellation. Subject to the provisions of Article IX above, this Agreement shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises;
- E. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

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

Failure of Lessor to declare this Agreement 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 Agreement by reason of any subsequent violation of the terms of this Agreement.

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

Section 10.03 Repossessing and Reletting. In the event of default by Lessee hereunder which shall remain uncured after the required notices have been given pursuant to this Agreement, 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 Agreement by notice or without canceling this Agreement, 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 Agreement, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

Section 10.04 Assignment and Transfer. Lessee is not permitted to assign this Agreement without first obtaining Lessor's written consent; said consent shall be at Lessor's sole discretion. The foregoing notwithstanding, any person or entity to which this Agreement is assigned to, 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 Agreement on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

Section 10.05 Subleasing. Lessee may be permitted to sublease all or any part of the Premises with the prior written approval of the Director or his designee.

Section 10.06 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 Agreement and if any Mortgagee does not exercise its rights under this Agreement, 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 Agreement term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first the necessary proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Agreement, with the balance, if any, to be paid to Lessee.

ARTICLE XI
GENERAL PROVISIONS

Section 11.01 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 El Paso International Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations.

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

Section 11.02 Time is of the Essence. Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

Section 11.03 Notices. All notices provided to be given under this Agreement 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
City of El Paso
2 Civic Center Plaza El Paso, Texas 79999

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

LESSEE: DHL EXPRESS (USA), INC.
1210 South Pine Island Road
Plantation, Florida 33324
Attention: Suite 100 Legal Department

COPY TO: DHL EXPRESS (USA), INC.
1210 South Pine Island Road
Plantation, Florida 33324
Attention: Suite 200 Real Estate Department

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

Section 11.04 Attorney's Fees. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

Section 11.05 Agreement Made in Texas. The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts in El Paso County, Texas.

Section 11.06 Non-Discrimination 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 Premises for the purpose for which DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation and as said Regulations may be amended.
- B. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.
- C. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- D. That Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- E. Economic Discrimination. To the extent that, under this Agreement, 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 Agreement and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Agreement had never been made or issued.

Section 11.07 Affirmative Action. Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from the City of El Paso, to insure that no person shall, on the grounds of race, 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 this Subpart. Lessee assures that it will require that its covered sub-organizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublessees) to the same effect.

Section 11.08 Cumulative Rights and Remedies. All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

Section 11.09 Interpretation. Words of gender used in this Agreement 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.

Section 11.10 Agreement Made in Writing. This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

Section 11.11 Paragraph Headings. The Table of Contents of this Agreement and the captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

Section 11.12 Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement 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 Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 11.13 Successors and Assigns. All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

Section 11.14 Taxes and Other Charges. Lessee shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully 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 Agreement including any extensions or option periods granted thereto. 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.

Section 11.15 Waiver of Warranty of Suitability. LESSOR DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. LESSEE LEASES THE PREMISES AS-IS AND LESSOR DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO LESSEE'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE.

Section 11.16 Survival of Certain Provisions. All Provisions of this Agreement which expressly or impliedly contemplate or require performance after the expiration or termination of this Agreement hereunder shall survive such expiration or termination of this Agreement, including without limitation, Sections 3.05 and 6.03.

Section 11.17 Authorization to Enter Agreement. If Lessee signs this Agreement as a corporation, each of the persons executing this Agreement 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 Agreement, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

Section 11.18 Effective Date. Regardless of the date signed, this Agreement shall be effective as of the date first noted on the title page.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

ATTEST:

Sherry L. Castle
Name: SHERRY L. CASTLE

LESSEE: DHL EXPRESS (USA), INC.

Marvin I. Langer
Name: Marvin I. Langer
Title: Executive Vice President

ACKNOWLEDGMENT

THE STATE OF Ohio)

COUNTY OF Delaware)

This instrument was acknowledged before me on this 24th day of April, 2012
by Marvin I. Langer, as Executive Vice President of DHL EXPRESS (USA),
INC. (Lessee).

Janie M. Boykin
Notary Public, State of Ohio

My Commission Expires:
1-19-2016



Janie M. Boykin
Notary Public, State of Ohio
My Commission Expires 01-19-2016



Exclusive Use

**DHL Express
Cargo 3**

G

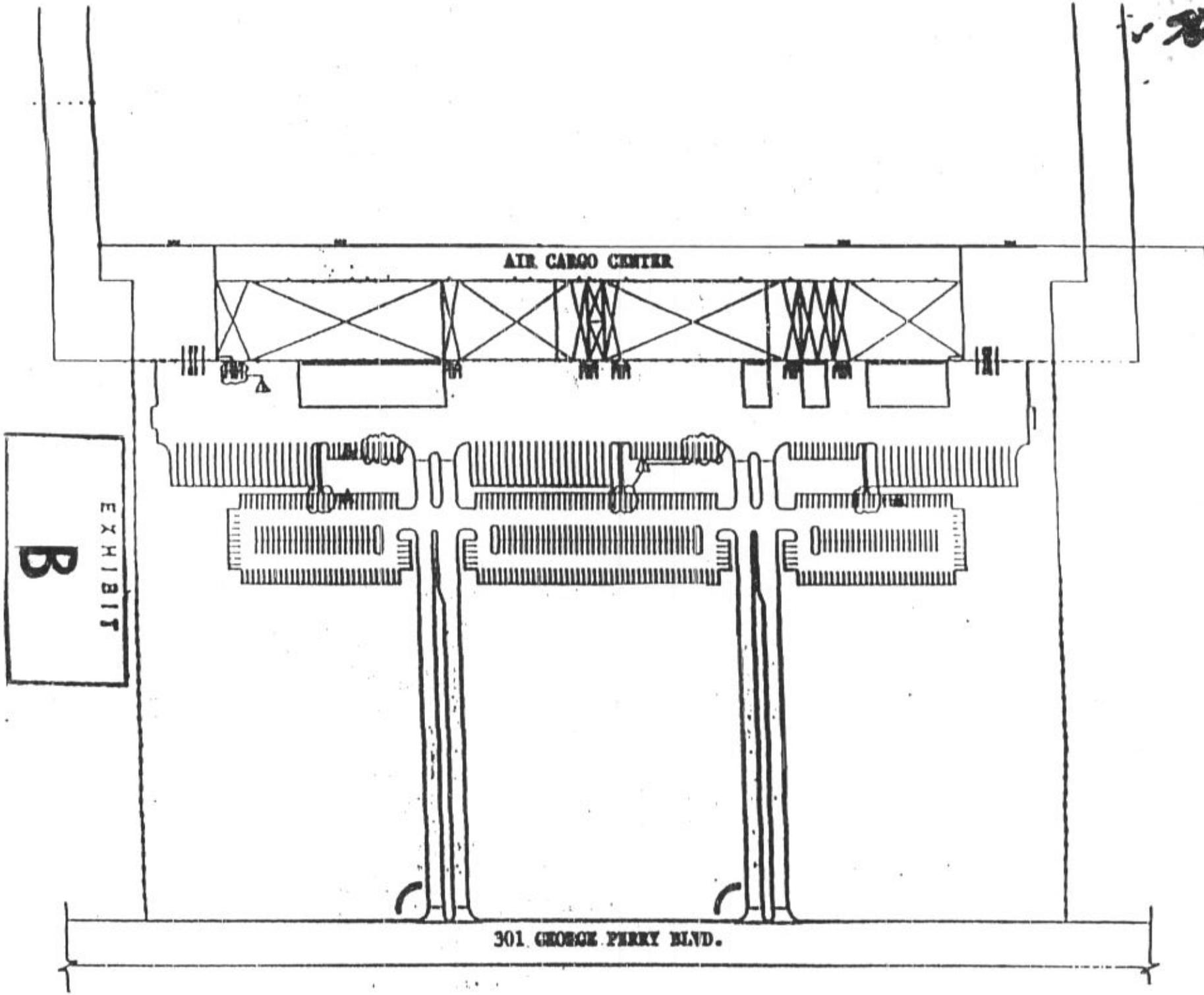
El Paso International Airport - Exhibit A

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DHL Express

Air Cargo Facility 3 - George Perry Blvd., Suite G

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AIR CARGO CENTER

EXHIBIT
B

301 GEORGE PERRY BLVD.