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

DEPARTMENT: **Aviation**

AGENDA DATE: **June 8, 2010**

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

DISTRICT(S) AFFECTED: **All**

SUBJECT: This is a resolution authorizing the City Manager to sign a Temporary Land Use Lease by and between the City of El Paso and EAN Holdings, LLC for the following described property:

> A portion of Block 2, Tract 4A, Ascarate Grant, City of El Paso, El Paso County, Texas, containing approximately 100,000 square feet of land, and which is located behind Cargo Building 2, located at 6415 Convair Road, El Paso, El Paso County, Texas.

BACKGROUND / DISCUSSION:
Enterprise Holdings, Inc., formerly known as Enterprise Rent A Car Company is surrendering a Temporary Land Use Lease for 33,379 SF in order for its successor, EAN Holdings, LLC, to move to a more appropriate location with additional space for storage of rental vehicles. Their request for 100,000 SF of space is being accommodated in the area behind Cargo 2 located at 6415 Convair Road.

PRIOR COUNCIL ACTION:
No prior action on this item; however, this item related to the Temporary Land Use Lease surrender being requested by Enterprise Holdings, Inc., formerly known as Enterprise Rent A Car Company.

AMOUNT AND SOURCE OF FUNDING:
N/A - Revenue Generating

BOARD / COMMISSION ACTION:
N/A

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

DEPARTMENT HEAD: Monica Lombraña

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

Information copy to appropriate Deputy City Manager

RESOLUTION

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

THAT the City Manager is hereby authorized to sign a Temporary Land Use Lease by and between the City of El Paso and EAN Holdings, LLC for the following described property:

> A portion of Block 2, Tract 4A, Ascarate Grant, City of El Paso, El Paso County, Texas, containing approximately 100,000 square feet of land, and which is located behind Cargo Building 2, located at 6415 Convair Road, El Paso, El Paso County, Texas.

PASSED AND APPROVED THIS _____ DAY OF _____ 2010.

THE CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen
Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

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

Doc. No.: 55091
Doc. Name: Temp. Land Use Lease - EAN

TEMPORARY LAND USE LEASE

EL PASO INTERNATIONAL AIRPORT
EL PASO, TEXAS

JUNE 8, 2010
Effective Date

EAN HOLDINGS, LLC

Doc. No.: 55091
Doc. Name: Temp Land Use Lease-EAN

TABLE OF CONTENTS

ARTICLE I	**PREMISES AND PRIVILEGES**	1
Section 1.01	Description of Premises Demised	1
Section 1.02	Right to Construct	2
Section 1.03	Restrictions of Privileges, Uses and Rights	2
ARTICLE II	**OBLIGATIONS OF LESSEE**	2
Section 2.01	Net Lease	2
Section 2.02	Condition of Premises	2
Section 2.03	Compliance With Laws	3
Section 2.04	Lessor's Approval of Plans	6
Section 2.05	Utilities	6
Section 2.06	Trash, Garbage, etc.	6
Section 2.07	Permitted Uses	6
ARTICLE III	**TERM OF LEASEHOLD**	7
Section 3.01	Term	7
Section 3.02	Holding Over	7
Section 3.03	Recapture	7
Section 3.04	National Emergency	7
ARTICLE IV	**RENTALS**	7
Section 4.01	Ground Rental	7
Section 4.02	Commencement of Rental	7
Section 4.03	Time of Payment	8
Section 4.04	Unpaid Rent, Fees and Charges	8
Section 4.05	Place of Payment	8
ARTICLE V	**INSURANCE AND INDEMNIFICATION**	8
Section 5.01	Liability Insurance	8
Section 5.02	Authorized Insurance Companies	8
Section 5.03	Indemnification	9
ARTICLE VI	**EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER**	9
Section 6.01	Expiration	9
Section 6.02	Cancellation	9
Section 6.03	Repossessing and Reletting	10
Section 6.04	Assignment, Subleasing and Transfer	10
Section 6.05	Rights Upon Expiration	11
Section 6.06	Landlord's Lien	11

TABLE OF CONTENTS (Cont.)

ARTICLE VII	**GENERAL PROVISIONS**	11
Section 7.01	Building and Equipment Heights	11
Section 7.02	Right of Flight	11
Section 7.03	Time is of the Essence	12
Section 7.04	Notices	12
Section 7.05	Attorney's Fees	12
Section 7.06	Agreement Made in Texas	12
Section 7.07	Nondiscrimination Covenant	12
Section 7.08	Affirmative Action	13
Section 7.09	Cumulative Rights and Remedies	14
Section 7.10	Interpretation	14
Section 7.11	Agreement Made in Writing	14
Section 7.12	Paragraph Headings	14
Section 7.13	Severability	14
Section 7.14	Successors and Assigns	14
Section 7.15	Taxes and Other Charges	14
Section 7.16	Waiver of Warranty of Suitability	15
Section 7.17	Survival of Certain Provisions	15
Section 7.18	Restrictions and Reservations	15
Section 7.19	Subordination of Lease	15
Section 7.20	Authorization to Enter Lease	15
Section 7.21	Force Majeure	16
Section 7.22	Performance Standards	16
Section 7.23	Hazardous Activities	16
Section 7.24	Effective Date	16

LESSOR'S SIGNATURES & ACKNOWLEDGMENT 17
LESSEE'S SIGNATURES & ACKNOWLEDGMENT 18

EXHIBIT A - Detailed Aerial of the Premises.

TEMPORARY LAND USE LEASE

THIS Temporary Land Use Lease ("Lease") is made and entered into by and between the **CITY OF EL PASO** ("Lessor") and **EAN HOLDINGS, LLC** ("Lessee").

WITNESSETH:

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

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

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

WHEREAS, Lessee has indicated a willingness and ability to properly keep and maintain said parcel of land in accordance with standards established by Lessor if granted a lease on referenced parcel;

WHEREAS, Enterprise Leasing Company-West, Inc. has a current Temporary Land Use Lease on another parcel of Airport property, and Enterprise Leasing Company – West, Inc. transferred its assets to Lessee and would like to terminate that lease in order to relocate its use to the parcel of land describe below;

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

ARTICLE I
PREMISES AND PRIVILEGES

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

> A portion of Block 2, Tract 4A, Ascarate Grant, City of El Paso, El Paso County, Texas, containing approximately 100,000 square feet of land, and which is located behind Cargo Building 2, located at 6415 Convair Road, El Paso, El Paso County, Texas.

The said property is further described on **EXHIBIT "A"**, which is attached hereto and incorporated herein by reference and hereinafter referred to as the "Premises". Lessee shall also be granted the non-exclusive right of ingress and egress to the Premises from Convair Road by way of the vehicle parking areas in front of, behind and to the south of the building at 6401-6435 Convair Road. Lessor agrees to paint the boundaries of the Premises for the purposes of utilizing the Premises as a parking lot for rental cars.

Section 1.02 **Right to Construct**. Lessee shall not construct any permanent or temporary structures on the Premises, without the prior written approval of the Director.

Section 1.03 **Restrictions of Privileges, Uses and Rights**. The rights and privileges granted Lessee hereunder are subject and expressly limited to the terms and conditions of this Lease.

ARTICLE II
OBLIGATIONS OF LESSEE

Section 2.01 **Net Lease**. This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth elsewhere in this Lease Agreement. 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 the Lessee or the Lessor, with respect to the Premises or any improvements thereon, during the term of this Lease, including any extensions or option periods granted thereto;

C. Pay all casualty, bond, and liability insurance premiums required in accordance with Article V hereinbelow; and

D. Maintain all ground area with asphalt or other comparable code compliant dust-free surfacing.

Section 2.02 **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.

Section 2.03 **Compliance With Laws**. Lessee, at Lessee's expense, agrees that it will construct, operate and maintain improvements on the Premises 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 of 1990 and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

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

A. Definitions.

(1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.

(2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like.

(3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

(1) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. **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 which activity or operation or discharge occurs on or subsequent to the effective date of this Lease. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.**

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

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

(3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.

(4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.

(5) Lessee shall insert the provisions of this Section 2.03 in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

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

Lessee's failure or the failure of its agents, employees, contractors, invitees or the failure of a third party to comply with any of the requirements and obligations of this Section shall constitute a material default of this Lease and shall permit Lessor to pursue the remedies as set forth in Section 6.02 hereinbelow, in addition to all other rights and remedies provided by law or otherwise provided in the Lease, to which Lessor may resort cumulatively, or in the alternative.

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, the Environmental Protection Agency or the Texas Commission on Environmental Quality, Lessee shall provide duplicate copies of the filing(s) made along with any related documents to Lessor.

(2) Upon expiration, termination or cessation of this Lease for any reason, Lessee shall provide current environmental inspection and inventory report on the Premises acceptable to Lessor, and if, in the opinion of Lessor, the Premises shall require environmental remediation, Lessee shall perform same to return the Premises into a (like new) condition equal or better to that as of the effective date of the Lease.

Section 2.04 **Lessor's Approval of Plans.** Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of improvements shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with all laws, rules, and regulations of federal, state, county and municipal authorities. It is specifically understood that El Paso International Airport is only one of numerous departments of Lessor and that, in addition to obtaining approval of the Director of Aviation, Lessee shall be required to obtain the approval of other departments as well, such as Engineering or Development Services.

Section 2.05 **Utilities**. Lessee shall pay for all meters and measuring devices installed by Lessee or a utility on the Premises and shall pay for all connection service charges, deposits and utilities consumed by Lessee.

Section 2.06 **Trash, Garbage, Etc.** Lessee shall make suitable arrangements for the storage, collection, and removal of all trash, garbage and other refuse resulting from Lessee's activities on the Premises. Lessee shall provide appropriate, covered, commercial type receptacles, for such trash, garbage, and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets, in an attractive, safe, and sanitary manner.

Section 2.07 **Permitted Uses**. Lessee will not enter into any activity on the Premises other than temporary parking of fully functioning rental cars. However, Lessee is also permitted to temporarily store only those wrecked vehicles that are pending insurance claim resolution, provided that such wrecked vehicles are entirely screened from the view of the public.

ARTICLE III
TERM OF LEASEHOLD

Section 3.01 **Term**. The term of this Lease shall be for a period of twenty-four (24) months commencing on the Effective Date of this Lease, which is June 8, 2010 and expiring on June 7, 2012.

Section 3.02 **Holding Over**. It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rental of one and one half (1½) times the current monthly rental, and Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

Section 3.03 **Recapture**. Notwithstanding any other provision of this Lease, should Lessor execute a lease of the Premises, or should the Premises be required for Airport use, Lessee shall vacate the Premises within thirty (30) days of receipt of written notice from the Director and this Lease shall terminate.

Section 3.04 **National Emergency**. In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, the term of this Lease shall be extended by the amount of the period of such suspension.

ARTICLE IV
RENTALS

Section 4.01 **Ground Rental**. For the purpose of computing the monthly rental to be paid by Lessee to Lessor for the Premises (hereinafter referred to as the "Ground Rental"), Lessor and Lessee agree that the Premises comprise **100,000** square feet. The Ground Rental for the Premises will, during the lease term, be calculated on the basis of **100,000** square feet at an annual rate of $0.51 per square foot. Initially, therefore, the annual Ground Rental shall be FIFTY-ONE THOUSAND AND 00/100 DOLLARS ($51,000.00) per year.

Section 4.02 **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.

Section 4.03 **Time of Payment**. The annual rent 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 of this Lease and shall be in the amount of FOUR THOUSAND TWO HUNDRED FIFTY AND 00/100 DOLLARS ($4,250.00) per month.

Section 4.04 **Unpaid Rent, Fees and Charges**. Any installment of Ground Rental, any fees, or other charges or monies accruing under any provisions of this Lease that are not received by the 10th day of the month in which payment is due, shall bear interest at the rate equal to the maximum allowed by law from the date when the same was due according to the terms of this Lease until paid by Lessee.

Section 4.05 **Place of Payment**. All payments provided herein shall be paid to Lessor at the following address:

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

ARTICLE V
INSURANCE AND INDEMNIFICATION

Section 5.01 **Liability Insurance**. Lessee, at its sole cost and expense shall, throughout the term of this Lease, provide and keep in force for the benefit of Lessor and Lessee, as their respective interests may appear, comprehensive general liability insurance in an amount not less than Five Hundred Thousand Dollars ($500,000.00) for bodily injury to one person for each occurrence, One Million Dollars ($1,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Hundred Thousand Dollars ($100,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

Section 5.02 **Authorized Insurance Companies**. All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor. Such policies shall contain:

A. A statement of the coverage;

B. A statement certifying the Lessor to be listed as an additional insured;

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 fifteen (15) day's prior written notice to Lessor.

Section 5.03 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 VI
EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

Section 6.01 Expiration. This Lease shall expire at the end of the term or any extension thereof.

Section 6.02 Cancellation. Subject to the provisions of Article VI, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due;

B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;

C. Make any general assignment for the benefit of creditors;

D. Abandon the Premises;

E. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;

F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or

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

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

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

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

Section 6.03 **Repossessing and Reletting**. In the event of default by Lessee hereunder which shall remain uncured after the required notices have been given pursuant to this Lease, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such lawful force as may be necessary; and

B. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

Section 6.04 **Assignment, Subleasing and Transfer**. Lessee shall not sublease, assign or transfer this Lease.

Section 6.05 **Rights Upon Expiration**. At the expiration of this Lease, Lessor shall be entitled to have the Premises returned to Lessor clear of all improvements, or may, at its option, take title to the improvements in lieu of removal by or for Lessee.

Section 6.06 **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 Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission or its successor agency, and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first to the necessary proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

ARTICLE VII
GENERAL PROVISIONS

Section 7.01 **Building and Equipment Heights**. Heights shall be limited to the height requirements established in Federal Aviation Regulations Part 77 or successor regulations for the Airport, but shall not exceed a maximum of thirty (30) feet above the curb line.

Section 7.02 **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 El Paso International 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 El Paso International Airport and the right to prevent any other use of the Premises which would constitute an airport hazard.

Section 7.03 **Time is of the Essence**. Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

Section 7.04 **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 City of El Paso 2 Civic Center Plaza El Paso, Texas 79999	Director of Aviation El Paso International Airport 6701 Convair Road El Paso, Texas 79925-1091
LESSEE:	EAN Holdings, LLC 4740 Pan American Freeway NE Albuquerque, New Mexico 87109	

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

Section 7.06 **Agreement Made in Texas**. The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

Section 7.07 **Nondiscrimination Covenant**. Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

A. That in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for the purpose for which a

Department of Transportation 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 Lease, Lessee furnishes goods or services to the public at the Airport, Lessee agrees that it shall:

1. Furnish each and every good and service on a fair, reasonable, and not unjustly discriminatory basis to all users of the Airport, and

2. Charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers as otherwise permitted under the law.

F. That, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Lease and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

Section 7.08 **Affirmative Action**. Lessee assures that no person shall, on the grounds of race, creed, color, age, disability, sex, 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 Department of Transportation by local governments for Airport use,

or otherwise applicable to persons leasing premises from the City of El Paso. Lessee assures that it will require that its covered suborganizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their suborganizations (sublessees) to the same effect.

Section 7.09 **Cumulative Rights and Remedies**. All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

Section 7.10 **Interpretation**. Lessor and Lessee 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 conclusion 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.

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.

Section 7.11 **Agreement Made in Writing**. This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

Section 7.12 **Paragraph Headings**. The Table of Contents of this Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

Section 7.13 **Severability**. If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 7.14 **Successors and Assigns**. All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

Section 7.15 **Taxes and Other Charges**. The Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against the Lessee or the Lessor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, or any improvements thereon, during the term of this Lease including any extensions or option periods granted thereto. Lessor is a tax-exempt

governmental entity and shall not be responsible for any taxes or assessments arising from the Lessee's use of the property or possession of the Premises.

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

Section 7.16 **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 7.17 **Survival of Certain Provisions**. All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 2.03 and 5.03.

Section 7.18 **Restrictions and Reservations**. This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Lessor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

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

Section 7.19 **Subordination of Lease.** All rights granted in this Lease shall be subordinate to the rights in any deed from the United States to the City of El Paso. This Lease shall further be subordinate to the provisions of any existing or future agreements between Lessor and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States Government be to substantially destroy the commercial value of the Premises, Lessee may cancel this Lease in its entirety.

Section 7.20 **Authorization To Enter Lease**. If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Texas,

that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

Section 7.21 **Force Majeure**. Neither party to this Agreement is responsible to the other party for non-performance or delay in performance of the terms and conditions herein due to acts of God, acts of government, wars, riots, strikes, accidents in transportation, fuel or materials shortages, or other causes beyond the control of the parties.

Section 7.22 **Performance Standards**. The Premises shall not be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable conditions

Section 7.23 **Hazardous Activities**. No activity shall be conducted on the Premises that may be or may become hazardous to public health and safety, that shall increase the fire insurance rating for adjoining and adjacent Lots, or that shall be illegal.

Section 7.24 **Effective Date**. Regardless of the date signed, this Lease shall be effective as of the Effective Date, which is first noted on the Title Page.

IN WITNESS WHEREOF, this Lease is approved on this _____ day of _____, 2010.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

LESSOR: CITY OF EL PASO

_____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

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

ACKNOWLEDGMENT
LESSOR

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2010, by **Joyce A. Wilson** as **City Manager** of the **City of El Paso, Texas**.

My Commission Expires:
_____

_____
Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

LESSEE: EAN HOLDINGS, LLC

Name: Kevin Hill
Title: Vice President / General Mgr

ACKNOWLEDGMENT
LESSEE

THE STATE OF New Mexico)
)
COUNTY OF Bernalillo)

This instrument was acknowledged before me on this 27th day of May, 2010, by Kevin Hill as Vice President/General Mgr on behalf of **EAN HOLDINGS, LLC.**

OFFICIAL SEAL
ISABELA CASTRO FIGUEROA
Notary Public
State of New Mexico
My Comm. Expires 07/13/2010

Isabela Castro Figueroa
Notary Public, State of New Mexico

My Commission Expires:
July 13th, 2010

Doc. No.: 55091
Doc. Name: Temp Land Use Lease-EAN

El Paso International Airport **Exhibit "A"**