

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

**DEPARTMENT:** Airport  
**AGENDA DATE:** June 9, 2009  
**CONTACT PERSON/PHONE:** Monica Lombraña, A.A.E.  
Director of Aviation  
780-4793  
**DISTRICT(S) AFFECTED:** 3

**SUBJECT:**

Approve a Resolution authorizing the City Manager to sign new Commercial Site Lease agreement, between the CITY OF EL PASO ("Lessor") and EPII Group, LLC ("Lessee")

**BACKGROUND / DISCUSSION:**

EPII Group, LLC has requested a new ground lease consisting of 77,309 Sq Ft located North of International Drive, between Airway Blvd, and Robert E. Lee. The site, an abandoned Rail Road Right of Way, is still unimproved, and held by El Paso International Airport.

**LEASE:** Area: 77,309 Sq Ft  
Rate: \$0.18 per Sq Ft (\$13,915.62 per annum)  
Term: 20-Years  
Options: 4, five year options to extend the lease

**PRIOR COUNCIL ACTION:**

None, this is a new Commercial Site Lease Agreement

**AMOUNT AND SOURCE OF FUNDING:**

N/A This is a revenue generation lease.

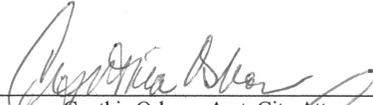
**BOARD / COMMISSION ACTION:**

The Airport Advisory Board at their May 28, 2009 meeting recommended approval of the Assignment.

CITY CLERK DEPT.  
09 MAY 29 PM 12:17

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

**LEGAL:**

  
Cynthia Osborn, Asst. City Attorney

**FINANCE:** (if required) \_\_\_\_\_

**OTHER:**

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

*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

# RESOLUTION

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

That the City Manager be authorized to sign an Industrial Site Lease by and between the City of El Paso, on behalf of the El Paso International Airport, and EPII Group, LLC for the following property:

A portion of Lot 19, Block 1, International Industrial Center, Unit 1 Replat, El Paso, El Paso County, Texas, which is municipally known and numbered as 6601 International Drive.

**ADOPTED** this the \_\_\_\_ day of \_\_\_\_\_ 2009.

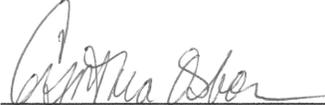
**THE CITY OF EL PASO**

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Cynthia Osborn  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

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

# INDUSTRIAL SITE LEASE

El Paso International Airport  
El Paso, Texas

EPII Group, LLC  
Lessee

June 1, 2009  
Effective Date

CITY CLERK DEPT.  
09 MAY 29 PM 12:17

**INDUSTRIAL SITE LEASE  
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**ATTACHMENTS**

**EXHIBIT “A”** - Property Description & Metes and Bounds of Premises

**EXHIBIT “B”** - Declaration of Restrictions and Covenants – Industrial Drive

## INDUSTRIAL SITE LEASE

This **INDUSTRIAL SITE LEASE AGREEMENT** (“Lease”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2009 by and between the City of El Paso (“Lessor”) and EPII Group, LLC (“Lessee”).

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

**WHEREAS**, the management of the Airport includes Airport property located outside of the boundaries of the Airport;

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

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

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

**WHEREAS**, Lessee has indicated a willingness and ability to properly keep, maintain and improve said ground in accordance with standards established by Lessor;

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

### ARTICLE I - PREMISES AND PRIVILEGES

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

A portion of Lot 19, Block 1, International Industrial Center, Unit 1 Replat, El Paso, El Paso County, Texas, which is municipally known and numbered as 6601 International Drive and more fully described in **EXHIBIT “A”** attached hereto and incorporated herein by reference (the “Premises”).

**1.02 Right to Construct.** Lessee shall have the right and privilege to construct, maintain, and remove improvements upon the Premises subject to the terms, covenants, and conditions herein contained herein.

**1.03 Restriction of Privileges, Uses and Rights.** The rights and privileges granted Lessee hereunder are subject and expressly limited to the construction and operation of facilities in accordance with this Lease, including the Declaration of Restrictions and Covenants, Industrial Zones – International Drive (“Declarations”), which are attached hereto and incorporated herein for all purposes as **EXHIBIT “B”**.

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

- A. The execution of a Guaranty of Industrial Site Lease by Donald C. Luciano (“Guarantor”), Individually, which guarantees payment of rent and other charges or fees due to the Lessor and provides that Guarantor shall remain fully liable for the prompt and complete performance of any and all obligations arising, or to arise, under this Lease.
- B. That no functional alteration of the Premises or functional change in the uses of such Premises shall be made without the prior written consent of Lessor; and
- C. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority and all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.

## **ARTICLE II - OBLIGATIONS OF LESSOR**

**2.01 Quiet Enjoyment.** Lessor agrees that upon Lessee's paying rent and performing all of the covenants, conditions, and agreements set forth in this Lease, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises. Lessor has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

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

### ARTICLE III - OBLIGATIONS OF LESSEE

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

- A. Keep and maintain the Premises and improvements located thereon in a good state of repair at all times;
- B. Pay any and all taxes assessed against the Premises, improvements located on the Premises, Lessee's interest in the Premises and improvements, and all of Lessee's personal property located on the Premises; and
- C. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

**3.02 Condition of Premises.** Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon subject to:

- A. Lessee's right to construct certain improvements under the terms of this Lease; and
- B. Lessor's performance of the obligations imposed on Lessor under this Lease.

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

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

A. Definitions.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including 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 sublessees, 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. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Lessee results in any contamination of the Premises or any improvements thereon, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.
- (3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any

governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.

- (4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (5) Lessee shall insert the provisions of this Section 3.03 in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

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 herein, in addition to all other rights and remedies provided by law or otherwise provided 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 reports 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.

**3.04 Minimum Improvement Standard.** Lessee covenants and agrees that it shall construct facilities, exclusive of paving and landscaping, to cover a minimum of twenty percent (20%) of the Premises' land area, and a maximum of fifty percent (50%) of the Premises' land area.

**3.05 Time of Construction.** Lessee agrees to begin construction within twelve (12) months from the Effective Date of this Lease and to complete said construction within thirty-six (36) months from the Effective Date of this Lease. In the event that Lessee shall fail to begin or complete construction within the specified time periods, the Lessor, at its option, may recapture the undeveloped or partially developed Premises with a reduction of the rental rate corresponding to the rates described in Section 5.01 hereof for the particular portion recaptured. In addition, in the event of a default hereunder, Lessor shall also be entitled to exercise all of its rights and remedies as provided elsewhere in this Lease. In the event Lessor elects to exercise either its recapture option or its other rights and remedies under this Section, Lessor shall first give Lessee written notice of Lessor's intention to exercise its recapture or other rights and remedies, specifying the nature of the alleged default and giving Lessee the opportunity to cure as set out in Section 10.02 hereinbelow.

**3.06 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 the Department of Aviation is only one of numerous departments of the City 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 Developmental Services Department.

**3.07 Landscaping and Maintenance of Improvements.** Lessee shall landscape the Premises and keep the improvements on the Premises in a good state of repair and condition and in a presentable condition comparable in appearance and character to similar improvements on land managed by the Department of Aviation for the benefit of the City of El Paso. The exterior finish on the improvements shall be repainted and refinished as necessary to maintain the appearance of such improvements. Notwithstanding anything to the contrary in the Declarations, Lessor agrees that attractive, low water usage landscaping is a desirable goal and agrees to consider and approve appropriate low water usage landscaping plans as a part of the architectural review process.

Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform whatever maintenance Lessor deems necessary. If said maintenance is not undertaken by Lessee within ten (10) calendar days after receipt of written notice, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which plus ten percent (10%) shall be borne by Lessee.

**3.08 Utilities.** Lessee shall pay for all costs or charges for utility services furnished to Lessee 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 of Developmental Services, or successor, and Lessee shall pay for any and all service charges incurred therefor.

**3.09 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 its use and occupancy of the Premises. 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.

**3.10 Permitted Uses.** Lessee will not enter into any business activity on the Premises other than those permitted in the Declarations.

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

**4.01 Term.** This Lease shall be for a term of twenty (20) years, commencing on the Effective Date first noted on the Title Page (“Initial Term”).

**4.02 Options To Extend.** In the event that Lessee is not in default of any terms of this Lease, Lessee shall have the option to extend this Lease for four (4) additional terms of five (5) years each. Lessee may exercise the first five (5) year option (“First Option Period”) by notifying Lessor in writing at least one hundred and twenty (120) days prior to the expiration of the Initial Term. In the event Lessee exercises its first option, the Lease shall be extended for five (5) additional years on the same terms and conditions, except that the Ground Rent shall be adjusted as set forth, below. In no event, however, shall the adjusted Ground Rent during the First Option Period be less than the Ground Rent in place for the five (5) year period immediately preceding the First Option Period.

In the event that Lessee is not in default of any terms of this Lease, Lessee may exercise the remaining five (5) year options by notifying Lessor in writing at least one hundred and twenty (120) days prior to the expiration of the current Option Period. In the event Lessee exercises an additional option, the Lease shall be extended for an additional five (5) years on the same terms and conditions, except that the Ground Rent for the Option Period shall be readjusted as set forth below. In no event, however, shall the adjusted Ground Rent during any five (5) year Option Period be less than the Ground Rent in place for the five (5) year period immediately preceding the Second Option Period as established in the First Option Period.

Lessee’s options to extend the Lease shall terminate if Lessee fails to notify Lessor in writing one hundred twenty (120) days before the expiration of the Initial Term or any relevant option period. Time is of the essence with regard to the one hundred twenty (120) day notice requirement.

**4.03 Holding Over.** It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a Ground Rent of one and one-half (1.5) times the current monthly Ground Rent, 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.

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

## **ARTICLE V - GROUND RENT**

**5.01 Ground Rent.** For the purpose of computing rental payments due, Lessor and Lessee agree that the Premises comprise 77,309 square feet of land. The annual Ground Rent for the Premises will be calculated on the basis of \$0.18 per square foot per annum for the land. Therefore, the annual Ground Rent for the Initial Term shall be \$13,915.62, or \$1,159.64 per month.

**5.02 Commencement of Ground Rent.** Payment of Ground Rent by Lessee to Lessor as aforesaid shall commence on the Effective Date of this Lease, as noted on the Title Page.

**5.03 Readjustment of Ground Rent.** The Ground Rent payable under this Lease shall be adjusted as follows, with each adjustment becoming effective as of the appropriate anniversary or option period commencement date, regardless of the date the actual adjustment is made.

The Ground Rent shall be adjusted every fifth (5<sup>th</sup>) year anniversary of the Effective Date during the Initial Term of this Agreement by the cumulative percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), issued by the Bureau of Labor Statistics of the United States Department of Labor. Lessor and Lessee agree that percentage increases in the CPI-U shall govern Ground Rent readjustments during the Initial Term. The parties further agree that for the purposes of computing such percentage increases, the Base Year CPI-U shall be established as that rate in place ninety (90) calendar days prior to the Effective Date of this Lease. Ground Rent shall be adjusted pursuant to the percentage increase in the CPI-U from the Base Year CPI-U to the rate in place ninety (90) days prior to the applicable date of readjustment (i.e. five (5) year intervals from the Effective Date).

The Ground Rent shall further be adjusted at the commencement of each option period to equal eight percent (8%) of the then fair market value of the Premises, disregarding the value of any Lessee-owned improvements on the Premises. In no event, however, shall the Ground Rent during either option period be less than the Ground Rent established for the rental period immediately preceding the applicable option period.

**5.04 Time of Payment.** The Ground Rent shall be paid in twelve (12) equal monthly installments. Said monthly Ground Rent payments shall be paid in advance on or before the first day of each and every month during the term of this Lease, including any option periods.

**5.05 Unpaid Ground Rent, Fees and Charges.** Any installment of Ground Rent, fees, or other charges or monies accruing under any provisions of this Lease that are not received by Lessor by the twentieth (20<sup>th</sup>) 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.

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

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

## **ARTICLE VI - INSURANCE AND INDEMNIFICATION**

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

**6.02 Liability Insurance.** Lessee, at its sole cost and expense shall, throughout the term of this Lease, provide and keep in force for the benefit of 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.

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

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

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

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

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

**6.04 Authorized Insurance Companies.** All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld. Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Each such certificate shall contain:

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

**6.05 Indemnification.** LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING

OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF LESSEE'S BUSINESS ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF LESSEE OF ANY TERMS OF THIS LEASE, OR FROM ANY ACT OR NEGLIGENCE OF LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF LESSOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LESSOR BY REASON OF ANY SUCH CLAIM, LESSEE, UPON NOTICE FROM LESSOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LESSOR.

**ARTICLE VII - DESTRUCTION OF IMPROVEMENTS BY FIRE  
OR OTHER CASUALTY**

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

- A. Prior to commencing such work, Lessee shall deliver to Lessor a set of the preliminary construction plans and specifications in accordance with the terms and provisions of the Declaration of Lease Restrictions and Covenants attached hereto as Exhibit "B". In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto.
  
- B. Upon approval of the preliminary plans and specifications, as herein provided, Lessee shall prepare or cause to be prepared final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.

- C. Prior to commencing construction, Lessor may require Lessee to furnish a performance and payment bond in accordance with Sections 6.03 and 6.04 and, if requested, Builder's Risk Insurance.
- D. Upon compliance with the foregoing, and after settlement shall have been made with the insurance company or companies and said proceeds of such insurance policy or policies shall have been paid to Lessee, Lessee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.

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

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

## **ARTICLE VIII - CONDEMNATION**

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

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

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

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

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

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

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

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

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

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

**8.07 Obligations of Lessee Under Partial Taking.** Promptly after any such partial taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary,

should there be a partial taking in the last year of the initial term or any renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect; provided however, that all sums awarded for Lessee owned improvements and the Leasehold estate shall be disbursed to Lessor.

**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 Ground Rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such taking, Lessee shall receive, hold and disburse the award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

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

## **ARTICLE IX - ENCUMBRANCES**

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

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

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

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

- A. To cure the default if it can be cured by the payment or expenditure of money;

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

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

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

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

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

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises;
- E. Be in violation of any local, state, or federal rules or regulations or in default in the performance of any of the covenants and conditions required herein (except Ground Rent payments) to be kept and performed by Lessee, and such violation or 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.

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

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

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

Any person or entity to which this Lease is assigned 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 Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

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

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

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

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

## ARTICLE XI - GENERAL PROVISIONS

**11.01 Continuity of Deed Restrictions and Covenants.** This Lease agreement is subject to the terms, covenants and conditions contained in the Declarations. Lessor reserves the right to revise the standards set forth in the Declarations provided, however, that such revisions will not, in Lessor's opinion, cause a substantial reduction in the value of Lessee's leasehold interest. Lessor's right to revise the restrictions and covenants contained in the Declarations includes but is not limited to, the right to revise said document because of the development of new concepts or improved construction and architectural techniques.

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

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

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

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

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

LESSOR:	City Clerk City of El Paso 2 Civic Center Plaza El Paso, Texas 79901	Director of Aviation El Paso International Airport 6701 Convair Rd. El Paso, Texas 79925-1091
LESSEE:	EPII Group, LLC 1400 Texas Avenue El Paso, Texas 79901 Attn: Donald C. Luciano	

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

**11.05 Attorney's Fees.** If 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.

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

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

- A. That in the event facilities are constructed, maintained, or otherwise operated on the Premises 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.

**11.08 Affirmative Action.** Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from Lessor, 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.

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

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

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.

**11.11 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.

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

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

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

**11.15 Taxes and Other Charges.** The Lessee shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully 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, during the term of this Lease including any extensions or option periods granted thereto.

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.

**11.16 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.

**11.17 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 3.03 and 6.05.

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

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

**11.20 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.

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

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have approved this Lease as of the date first noted above.

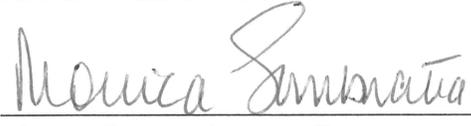
LESSOR: CITY OF EL PASO

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Cynthia Osborn  
Assistant City Attorney

APPROVED AS TO CONTENT:

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

**ACKNOWLEDGMENT**

THE STATE OF TEXAS    )  
  )  
COUNTY OF EL PASO    )

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

\_\_\_\_\_  
Notary Public, State of Texas

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

LESSEE: EPII GROUP, LLC

Printed Name: David Weiland  
Title: member

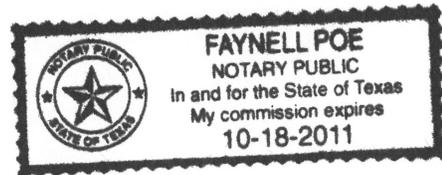
**ACKNOWLEDGMENT**

THE STATE OF Texas )  
COUNTY OF El Paso )

This instrument was acknowledged before me on this 11 day of May, 2009,  
by David Weiland as Member of EPII Group LLC (Lessee).

Notary Public, State of \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

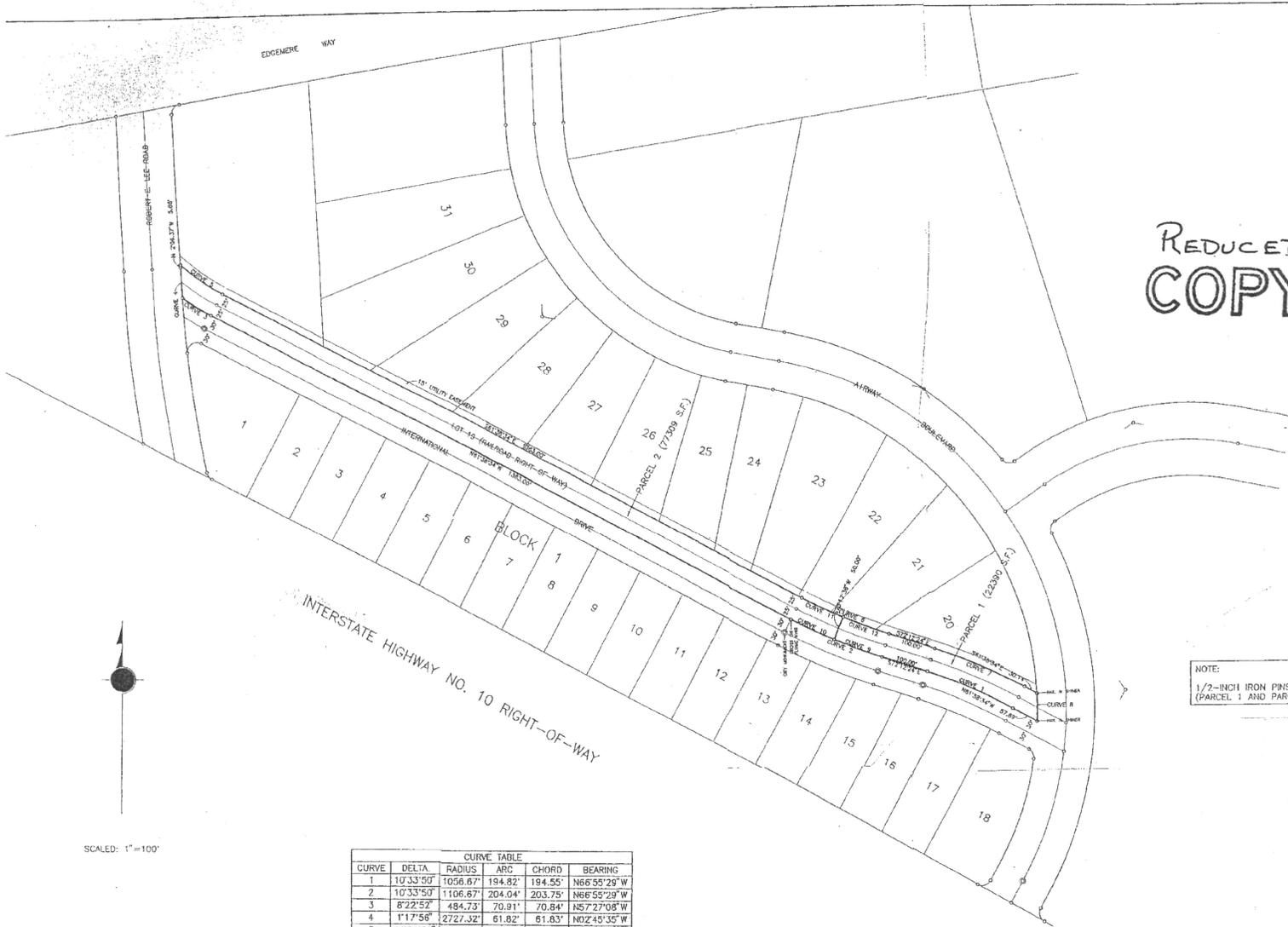


EXHIBIT

A

Page  
1 of 2

REDUCED  
COPY



NOTE:  
1/2-INCH IRON PINS WERE SET AT ALL CORNERS OF LOT 19 (PARCEL 1 AND PARCEL 2) EXCEPT AS OTHERWISE LABELLED.



SCALED: 1"=100'

REDUCED  
COPY

CURVE	DELTA	RADIUS	ARC	CHORD	BEARING
1	10°33'50"	1056.67'	194.82'	194.55'	N66°53'29"W
2	10°33'50"	1106.67'	204.04'	203.75'	N66°55'29"W
3	8°22'52"	484.73'	70.91'	70.84'	N57°27'08"W
4	11°17'56"	2727.32'	61.82'	61.83'	N02°45'35"W
5	14°01'29"	434.73'	106.54'	106.15'	S54°37'19"E
6	10°33'50"	1056.67'	194.82'	194.55'	S66°55'29"E
7	10°33'50"	1106.67'	204.04'	203.75'	S66°55'29"E
8	04°49'07"	680.15'	57.20'	57.18'	S00°40'14"E
9	05°30'00"	1106.67'	106.23'	106.19'	N89°27'24"W
10	05°03'50"	1106.67'	97.81'	97.78'	N64°10'29"W
11	05°03'50"	1056.67'	93.39'	93.36'	S64°10'29"E
12	05°30'00"	1056.67'	101.43'	101.39'	S69°27'24"E

I hereby certify that the boundary survey shown on this map was done under my supervision, that it is true and correct to the best of my knowledge and belief and there are no encroachments except as shown herein, the 20th day of January, 2008.

**GUILLERMO LIZON**  
2998  
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 2998

SCALE: _____	<b>BOUNDARY SURVEY</b>	<b>SLI</b>
JOB NUMBER: _____		
FIELD BOOK: _____	LOT 19, BLOCK 1, INTERNATIONAL INDUSTRIAL CENTER, UNIT 1, EL PASO, EL PASO COUNTY.	
DESIGNED BY: _____		
CHECKED BY: _____		
DRAWN BY: _____		
DATE: _____		
FILE: _____		
<b>SLI ENGINEERING, INC.</b> CIVIL ENGINEERS & LAND SURVEYORS & LAND PLANNERS 8600 WESTWOOD DRIVE, EL PASO, TEXAS, 79912 (918) 264-4427 FAX (918) 261-7755 E-MAIL: info@slieho.com		
		SHEET 1 OF 1

SLI ENGINEERING, INC.  
6600 Westwind Drive  
El Paso, Texas 79912  
(915) 584-4457

January 7, 2008

PARCEL 2

A portion of Lot 19, Block 1, International  
Industrial Center, Unit 1 Replat, El Paso,  
El Paso County, Texas.

Field Notes

The parcel of Land herein described is a portion of Lot 19, Block 1, International Industrial Center, Unit 1 Replat, El Paso, El Paso County, Texas and is more particularly described by metes and bounds as follows:

Commencing at a city monument which is located at a point of curvature on the centerline of International Drive approximately 635 feet west of the intersection of said centerline with the centerline of Airway Boulevard; thence North 28°21'26" East, a distance of 30.00 feet to a cross chisled on the wingwall of a concrete flume for the true point of beginning of this description;

Thence North 61°38'34" West along the northerly right-of-way line of International Drive, a distance of 1363.00 feet to a 1/2-inch iron pin set at a point of curvature;

Thence in a northwesterly direction 70.91 feet along a curve to the right having a radius of 484.73 feet, a central angle of 8°22'52" and a chord which bears North 57°27'08" West, a distance of 70.84 feet to a 1/2-inch iron pin for corner;

Thence along the easterly right-of-way line of Robert E. Lee Road, 61.82 feet along the arc of a curve to the right having a radius of 2727.32 feet, a central angle of 1°17'56" and a chord which bears North 2°45'35" West, a distance of 61.83 feet to a 1/2-inch iron pin at the point of tangency;

Thence North 2°06'37" West along the easterly right-of-way line of Robert E. Lee Road, a distance of 5.66 feet to a 1/2-inch iron pin for corner;

Thence in a southeasterly direction, 106.54 feet along the arc of a curve to the left having a radius of 434.73 feet, a central angle of 14°01'29" and a chord which bears South 54°37'19" East, a distance of 106.15 feet to a 1/2-inch iron pin at the point of tangency;

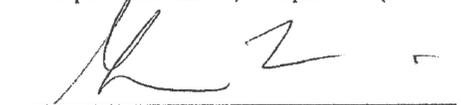
Thence South 61°38'34" East along the northerly boundary of said Lot 19, a distance of 1363.00 feet to a 1/2-inch iron pin for a point of curvature;

Thence 93.39 feet along the arc of a curve to the left having a radius of 1056.67 feet, a central angle of 5°03'50" and a chord which bears South 64°10'29" East, a distance of 93.36 feet to a 1/2-inch iron pin for corner;

Thence South 23°17'36" West, a distance of 50.00 feet to a 1/2-inch iron pin on the right-of-way line of International Drive for corner;

Thence in a northwesterly direction, 97.81 feet along the arc of a curve to the right having a radius of 1106.67 feet, a central angle of 5°03'50" and a chord which bears North 64°10'29" West, a distance of 97.78 feet to a cross chisled on the wing of a concrete flume which is the true point of beginning of this description.

Said parcel contains 77,309 square feet (1.775 Acres) of land more or less.

  
Registered Professional Land Surveyor No. 2998



# DECLARATION OF RESTRICTIONS AND COVENANTS

## INTERNATIONAL DRIVE



## TABLE OF CONTENTS

### DECLARATION OF RESTRICTIONS AND COVENANTS

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# DECLARATION OF RESTRICTIONS AND COVENANTS

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

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

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

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

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

## ARTICLE I DEFINITIONS

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

- A. "Building" shall include both the main portion of such building and all projections or extensions therefrom including, but not limited to, garages, outside platforms, docks, carports, canopies and porches. Ground cover shall not be included.
- B. "Lot" or "Building Site" shall mean the Leased Premises described in the Lease Agreement of which this Declaration is made a part.
- C. "Street" shall mean any street, highway or other thoroughfare abutting the Leased Premises.
- D. "Setback" shall mean the distance a building must be set back from the property line of the Leased Premises.
- E. "Front Lot Line" shall mean the property line, which faces the street; on corner parcels the "front lot line" shall mean the property line, which is the width dimension of the parcel facing a street.

- F. "Rear Lot Line" shall be the property line usually parallel to the front lot line and contiguous to another parcel of property.
- G. "City" shall mean the City of El Paso, Texas its duly elected Council, or any duly constituted agent/committee appointed through said Council to fulfill the obligations herein required.
- H. "Leased Premises" shall mean the premises leased to Lessee as more fully described within the Lease to which this Declaration is attached.
- I. "Lessee" shall mean the individual or entity leasing the Leased Premises, as more fully described within the Lease to which this Declaration is attached.

## **ARTICLE II PERMITTED USES**

Lessee will not enter into any business or other activity on the Leased Premises nor shall Lessee use or permit the use of the Leased Premises for any purpose other than for the purposes set forth in the Lease to which this Declaration is attached.

## **ARTICLE III PERFORMANCE STANDARDS**

- A. GENERAL.** No land or structure shall be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable conditions, which may affect any other property, including but not limited to those conditions noted below and more fully described in this Article:
- Fire and explosive hazard;
  - Noise, vibration, or shock;
  - Smoke, dust, odor or other forms of air pollution;
  - Heat;
  - Glare;
  - Illumination;
  - Electrical or other disturbance;
  - Storing or handling of liquid or solid refuse or wastes; or
  - Storing or handling of other substance, condition, or element in such amount as to affect the surrounding area or adjoining premises.
- B. FIRE AND EXPLOSIVE HAZARD.** No activity shall be undertaken involving fire or explosive hazard, which shall endanger the property, improvements, or employees of the City or any other property owner or tenant.

**C. NOISE.** At no point on any property line of the Leased Premises shall the sound pressure level of any business or other activity (other than the intermittent operation of motor vehicles, aircraft, or other transportation facilities) exceed the decibel levels in the designated octave bands shown below; nor shall any noise or music on the Leased Premises be of such volume, intensity or duration so as to unreasonably interfere with the use and enjoyment of any nearby property. Lessee agrees to immediately comply with all reasonable requests made by Lessor to cease or decrease any noise created on the Leased Premises.

Octave Band Cycles Per Second	Maximum Permitted Sound Level in Decibels RE 0.0002 dynes/cm <sup>2</sup>
0 – 300	75
300 – 1,200	55
1,200 – 4,800	45
4,800 and above	40

**D. VIBRATION OR SHOCK.** No vibration or shock perceptible to a person of normal sensibilities shall be permitted within fifty (50) feet of the Property Line.

**E. AIR POLLUTION.**

- (1) Any permitted use producing smoke, gas, dust, odor, fumes, aerosols, particulates, products of combustion, or any other atmospheric pollutant shall be conducted within a completely enclosed building pursuant to and in accordance with any and all applicable laws, rules and regulations.
- (2) Visible emissions of smoke will not be permitted which exceed Ringlemann No. 1 on the Ringlemann Chart of the U. S. Bureau of Mines other than the exhausts emitted by motor vehicles or other transportation facilities. This requirement shall also be applicable to the disposal of trash and waste materials. Windborne dust, sprays, and mists originating from the Leased Premises will not be permitted.
- (3) No discharge into the atmosphere of any toxic or noxious matter will be permitted.
- (4) The emission of odors which are detectable at any point beyond the property line will not be permitted.

**F. DUST CONTROL.** All ground areas not covered by structures shall be: (1) landscaped or surfaced with concrete, asphaltic concrete, or other comparable dust-free surfacing; (2) maintained in good condition, free of weeds, dust, trash, and other debris; and (3) shall be properly drained and graded. Such development shall be accomplished before issuance of a certificate of occupancy.

**G. HEAT OR GLARE.** Any operation producing intense glare or heat shall be performed within an enclosed or screened area in such manner that the glare or heat emitted will not be discernible from the Property Line.

**H. ILLUMINATION.**

- (1) The maximum height of any lighting standard shall be limited to thirty (30) feet above curb level.
- (2) The intensity of illumination shall be limited to 10 foot candles or 0.1 lumens per square foot for open areas or surfaces visible at the property line.
- (3) The design and location of exterior' lighting shall comply in all respects to the requirements of the Federal Aviation Administration or any successor agencies and other governmental agencies having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from, and around the Airport.

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

- (1) Permitted Signs. Signs shall be limited to those identifying the uses conducted on the site, and those necessary for directional purposes. The size, design, and location of all signs shall require the written approval of the Director of Aviation or authorized agent prior to installation.
- (2) Area and Location. One sign may be permitted on the front setback line of the Leased Premises and one sign may be attached to the side of the building, which faces a public street, both to state only the name, products, and services of the Lessee. The sign on the front setback line shall not exceed one (1) square foot area for each lineal foot of lot frontage and shall not extend more than ten (10) feet in height above the floor line of the building. An approved product or company symbol or device may be used in addition to each sign and, on the front setback line, may extend up to any point on the building. Any such symbol or device shall be considered a sign for the purposes of this Article and shall require the written approval of the Director of Aviation prior to installation.
- (3) Construction. All signs shall comply with all building codes of the City of El Paso and with all rules and regulations of the Federal Aviation Administration or any successor agencies.

**J. REFUSE AND TRASH.** No refuse or trash shall be kept, stored, or allowed to accumulate on the Leased Premises.

**K. SEWAGE DISPOSAL SYSTEMS.** No cesspool, septic tank, or other sewage disposal system or device shall be installed, maintained, or used upon the Leased Premises without the approval of the City of El Paso.

**ARTICLE IV**  
**DEVELOPMENT OF LEASED PREMISES - REQUIRED IMPROVEMENTS**

- A. OFF-STREET PARKING.** All provisions for automobile parking for employees, visitors and invitees of the tenant shall be placed on the Leased Premises. No on-street parking shall be permitted. All parking areas on the Leased Premises shall be paved to provide dust-free, all-weather surfaces.

Off-street parking facilities shall be provided in accordance with the offstreet parking requirements of El Paso City Code Section 20.14 and any amendments or successor provisions. Each parking space shall be designated by white lines painted upon the paved surface.

- B. VEHICLE LOADING.** All provisions for the loading and maneuvering of vehicles incidental to the operation of the business shall be placed on the Leased Premises. On street vehicle loading shall not be permitted.

- C. SETBACKS.** All Buildings shall be set back a minimum of twenty-five (25) feet from the lot line(s) facing a street; the area between the lot line(s) and the setback shall be landscaped or paved for parking. At least twenty percent (20%) of the required minimum front setback area and side setback areas facing the street shall be landscaped and planted. Side setbacks (when not facing a street) shall be a minimum of fifteen (15) feet from the lot line. Rear setbacks (when not facing a street) shall be a minimum of ten (10) feet from the lot line or utility easement line.

- D. LANDSCAPING.** A reasonable amount of landscaping, including the planting of ground-covers, shrubs and trees, shall be required, such landscaping to be in accordance with standards established by the City's Department of Aviation. The first phase of such landscaping, as approved, shall be installed within a period not to exceed one hundred eighty (180) days after the notice of completion has been filed on the initial Building.

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

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

Lessee is encouraged to expand landscape development plans to include such elements as pools, fountains, sculpture, rock arrangements, sheltered outdoor seating areas, all subject to design approval by the City or its representative consultants before installation.

- E. BUILDING HEIGHTS.** Building heights shall be limited to a maximum of thirty-five (35) feet above the curb line, including any building equipment, penthouses, other other extrusions.

- F. **TYPE OF CONSTRUCTION.** All buildings shall be framed with reinforced concrete or masonry, structural steel, structural aluminum, or wood which has been satisfactorily treated to resist fire, rot, and insects. Siding shall be masonry, glass, enameled steel, or treated wood. Common masonry and treated wood siding shall be kept neatly painted, if used. All buildings shall conform to all local building codes and ordinances.
- G. **STORAGE FACILITIES.** All storage, except of autos, shall be within buildings or an enclosure.
- H. **PIPES.** No water, gas, sewer or drainage pipes (other than those within structures) shall be installed or maintained upon the Leased Premises above the surface of the ground, except hoses and movable pipes used for irrigation or similar purposes.

**ARTICLE V  
PREPARATION AND SUBMISSION OF PLANS FOR IMPROVEMENTS**

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

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

The following plans shall be required for submission to the appropriate City departments within the time period determined:

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

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

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

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

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

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

**E. COMMITMENT TO CONSTRUCT.** Upon approval by the City of plans for construction of any structure, a copy of the approved plans shall be deposited for permanent record with the City and a copy of such plans bearing the written approval of the City shall be returned to the Lessee.

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

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

**G. LANDSCAPING PLANS.** Trees, shrubs, fences, hedges or other landscaping shall not be planted, placed, or maintained upon the Leased Premises until a complete plan thereof

has been submitted to and approved by the City in a manner similar to that required for architectural plans. All plans for landscape improvements shall be prepared by registered or approved landscape architects. Approval shall be by the City or its representative consultants.

**H. PLANS FOR ALTERATIONS IN IMPROVEMENTS.** All plans for alterations to the Leased Premises, either for the construction of additional facilities or alterations to existing Buildings or other structures, shall be prepared, submitted, and approved as outlined in Paragraph A through G, above, and shall be subject to the same restrictions as herein provided. This paragraph shall apply only to exterior or structural changes; alterations to the interior of buildings shall not be considered unless they affect the performance standards set forth in Article III.

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

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

**J. FEE FOR EXAMINATION OF PLANS AND SPECIFICATIONS.** The City may charge and collect a fee for the examination of any plans and specifications submitted for approval pursuant to this Article. Such fee shall be payable at the time such plans and specifications are submitted.

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

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

## **ARTICLE VI GENERAL PROVISIONS**

**A. CUTTING AND FILLING.** The City or any authorized agent thereof may at any time make such cuts and fills upon any parcel or other part of the Leased Premises and do such

grading and moving of earth as, in its judgment, may be necessary to improve or maintain the streets in or adjacent to any property and to drain surface waters therefrom; provided, however, that after the principal structure upon a parcel shall have been completed in accordance with approved plans, the rights of the City under this paragraph shall terminate with respect to such parcel, except that the city shall thereafter have the right to maintain existing streets and drainage structures.

- B. HOUSEKEEPING.** If accumulations of weeds, rubbish, or items of equipment or supplies are permitted to remain on the Leased Premises more than ten (10) days after a request in writing from the City to have them removed, the city or its authorized agent may enter upon the Leased Premises for the purpose of removing same by whatever means it deems necessary. Such entry shall not be deemed a trespass and the City shall not be subject to any liability therefor. The cost of such work shall be borne by the Lessee.
- C. MAINTENANCE OF LANDSCAPING.** If landscaping areas are not maintained in accordance with the standards prescribed by the City and the condition is not corrected within ten (10) days after written notice from the City, the City or its authorized agent shall have the right to enter on any of the Leased Premises and plant or replant such areas, without being deemed guilty of trespass. The costs therefor, as determined by the City, shall be paid by the Lessee.
- D. USE PERMITS.** Such use and occupancy permits as may be required by the Building or other applicable codes of the City of El Paso shall be maintained in force at all times by the Lessee.

(END OF DECLARATIONS)