Please Fast Track

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

DEPARTMENT: **Airport**

AGENDA DATE: **July 9, 2013**

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

DISTRICTS AFFECTED: **All**

SUBJECT:

Approve a resolution, authorizing the City Manager to sign a General Aviation Non-Commercial Ground Lease by and between the City of El Paso ("Lessor") and Rook Property Management, LLC ("Lessee")

BACKGROUND / DISCUSSION:

The City of El Paso entered into a Non-Commercial Aviation Ground Lease with El Paso Air Limited, effective October 1, 1976. Subsequently the lease was assigned to Robert E. Rook, Jr., as Trustee of the Patsy Marie Taylor Revocable Trust and Trustee of the Henry L. Taylor Marital Deduction Trust, effective January 22, 2013.

Robert E. Rook Jr., currently Trustee of the Taylor Trusts will sell the assets to Rook Property Management, and will surrender the October 1, 1976 Lease, requesting City Council to approve a new General Aviation Non-Commercial Ground Lease by and between the City of El Paso ("Lessor") and Rook Property Management, LLC ("Lessee").

The new lease will have a term of 20-years with two, 10-year options; annual rental will be $23,202.00 (60,000 Sq. Ft. @ $ 0.3867/Sq. Ft.) to be adjusted every fifth year based on the change in the CPI. U.S. Customs and Border Patrol is the current tenant of the General Aviation property located at 7301 Boeing Drive, which is being used as a hangar and general service area for flight operation for C&BP.

PRIOR COUNCIL ACTION:

- Council approved the Non-Commercial Aviation Ground Lease on October 1, 1976
- The Lease was then assigned to West Texas Energy Company on December 8, 1981
- The Lease was then assigned to M-Bank El Paso on June 25, 1985
- The Lease was then assigned to Lear Partners of New Mexico on July 23, 1985
- The Lease was then amended on January 13, 1987 (First Amendment)
- The Lease was further amended on May 8, 1990 (Second Amendment)
- The Lease was then assigned to Frank James on August 1, 1990
- The Lease was then assigned to Henry L. Taylor on June 1, 1999
- The Lease was subsequently assigned to Robert E. Rook, Jr., as Trustee of the Patsy Marie Taylor Revocable Trust and the Henry L. Taylor Marital Deduction Trust on January 22, 2013

AMOUNT AND SOURCE OF FUNDING:

N/A - Revenue Generating

BOARD / COMMISSION ACTION:
N/A

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

DEPARTMENT HEAD:

Monica Lombraña

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

Information copy to appropriate Deputy City Manager

RESOLUTION

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

That the City Manager be authorized to sign a General Aviation Non-Commercial Ground Lease Agreement between the City of El Paso ("Lessor") and Rook Property Management, LLC ("Lessee") for the following described property:

Lots 16, 17 and 18, Block 4, El Paso International Airport Tracts, an addition to the City of El Paso, El Paso County, Texas, municipally known and numbered as 7301 Boeing Dr., El Paso, Texas.

ADOPTED this the ____ day of _____ 2013.

THE CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

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

11-1003-022/180505/Reso/Lease Rook Prop. Mgt.
7301 Boeing

GENERAL AVIATION
NON-COMMERCIAL GROUND LEASE

El Paso International Airport
El Paso, Texas

JULY 9, 2013
Effective Date

ROOK PROPERTY MANAGEMENT, LLC
Lessee

GENERAL AVIATION NON-COMMERCIAL GROUND LEASE
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ATTACHMENTS

EXHIBIT "A" – Sketch of Premises to be leased
EXHIBIT "B" – Rules, Regulations and Land Use Requirements - General Aviation Non-Commercial Area
EXHIBIT "C" – List of Sublessees

GENERAL AVIATION
NON-COMMERCIAL GROUND LEASE

THIS GENERAL AVIATION NON-COMMERCIAL GROUND LEASE AGREEMENT, hereinafter referred to as the "Lease", is made this ____ day of _____ 2013, between the City of El Paso ("Lessor") and ROOK PROPERTY MANAGEMENT, LLC ("Lessee").

WITNESSETH:

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

WHEREAS, the City of El Paso ("Lessor") entered into a Non-Commercial Aviation Ground Lease ("Lease") with an effective date of October 1, 1976 by and between Lessor and El Paso Air Limited, a General Partnership, for the following described leased premises:

> Lots 16, 17 and 18, Block 4, El Paso International Airport Tracts, an addition to the City of El Paso, El Paso County, Texas, municipally known and numbered as 7301 Boeing Dr., El Paso, Texas, and as shown on Exhibit "A" which is attached hereto and made a part hereof for all purposes ("Property"),

WHEREAS, the Lease was assigned to West Texas Energy Company by a Lease Assignment consent on December 8, 1981;

WHEREAS, the Lease was assigned to Mbank El Paso, National Association by a Lessor's Approval of Assignment dated June 25, 1985;

WHEREAS, the Lease was assigned to Lear Partners of New Mexico by a Lessor's Approval of Assignment dated July 23, 1985;

WHEREAS, the Lease was amended by that First Amendment to Lease dated January 13, 1987;

WHEREAS, the Lease was further amended by that Second Amendment to Lease dated May 8, 1990;

WHEREAS, the Lease was assigned to Frank James by that certain Lessor's Approval of Assignment dated August 1, 1990;

WHEREAS, effective June 1, 1999, the Lease was subsequently assigned to Henry L. Taylor by that Lessor's Approval of Assignment dated May 25, 1999;

WHEREAS, effective January 22, 2013, the Lease was assigned to Robert E. Rook, Jr., as Trustee of the Patsy Marie Taylor Revocable Trust and Robert E. Rook, Jr. as Trustee of the Henry L. Taylor Marital Deduction Trust;

WHEREAS, Robert E. Rook, Jr., as Trustee of the Patsy Marie Taylor Revocable Trust and Robert E. Rook, Jr. as Trustee of the Henry L. Taylor Marital Deduction Trust is selling the leasehold interest and improvements to Rook Property Management L.L.C., and Rook Property Management L.L.C had requested a new lease with Lessor; and

WHEREAS, Lessor has agreed to a surrender of the October 1, 1976 Lease, as amended, whereupon all Lessee's obligations, except as herein stated, with regard to the October 1, 1976 Lease will terminate subject to the terms and conditions of this Lease.

NOW THEREFORE, Lessor and Lessee agree as follows:

ARTICLE I – LEASE TERMINATION

Section 1.01 Lease Termination. Effective as of 11:59:59 p.m., on July 8, 2013, the October 1, 1976 Lease, as amended (the Original Lease") shall be terminated and Lessee's use and occupancy of the Premises, as described in Section 2.01, shall be governed in all respects by this Lease; provided, however, that Lessee retains liability for any previous acts or omissions of Lessee giving rise to liability under the Original Lease.

Section 1.02 Ownership of Improvements. By signing this Lease, Lessee affirms that through the termination of the Original Lease, all of Lessee's rights and interest in any improvements on the Premises are retained by Lessee.

ARTICLE II - PREMISES AND PRIVILEGES

Section 2.01 Description of Premises. 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, described as follows:

> Lots 16, 17 and 18, Block 4, El Paso International Airport Tracts, an addition to the City of El Paso, El Paso County, Texas, municipally known and numbered as 7301 Boeing Dr., El Paso, Texas, and as shown on Exhibit "A" which is attached hereto and made a part hereof for all purposes ("Premises),

Lessor and Lessee acknowledge that Lessee owns all improvements located on the Premises as of the effective date of this Lease. Lessee agrees that these improvements will be subject to all terms and conditions of this Lease.

Section 2.02 Description of General Privileges, Uses and Rights. Lessor hereby grants to Lessee the following general privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants hereinafter set forth and all of which shall be non-exclusive:

A. The general use of all public airport facilities and improvements, which are now or may hereafter be connected with or appurtenant to the Airport to be used by Lessee for general aviation non-commercial activities as herein defined.

For the purpose of this Lease, "public airport facilities and improvements" shall include all necessary landing area appurtenances including, but not limited to, approach areas, runways, taxiways, aprons, aircraft and automobile parking areas, roadways, sidewalks, navigational and navigational aids, lighting facilities, terminal facilities, or other public facilities appurtenant to the Airport.

B. The right of ingress to and egress from the Premises over and across public roadways serving the Airport for Lessee, its agents, servants, patrons, invitees and suppliers of service or furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now or may hereafter have application at the Airport.

Section 2.03 Description of Specific Privileges, Uses and Rights. In addition to the general privileges, uses and rights described above, and without limiting the generality thereof, Lessor hereby grants to Lessee, its tenants and sublessees, the right to engage in general aviation non-commercial activities on the Premises as defined below. The rights granted under this Lease are specifically limited to said general aviation non-commercial activities, as defined below, and for no other purpose.

Section 2.04 Definition of General Aviation Non-Commercial Activities. "General Aviation Non-Commercial Activities" are hereby defined as those activities which involve the maintenance of a facility for the basing and servicing of the aircraft of Lessee solely for its own benefit and not for the public; it specifically excludes the sale of such aviation services to others, including but not limited to, the into-plane sale of aviation fuel and oil. Lessee shall not offer or permit any sales of goods or services, or repairs of any type from the Premises. A determination as to what constitutes a "sale of aviation fuel and oil" and a "sale of goods or services" shall be at the sole discretion of the Director.

"General Aviation Non-Commercial Activities" shall include, but not be limited to the following:

A. The loading and unloading of aircraft in any lawful activity as incidental to the conduct of any operations outlined in this section;

B. The maintenance, storing and servicing of an aircraft owned or operated by Lessee, its affiliates or subsidiaries, which shall include overhauling, rebuilding, repairing, inspection and licensing of same. The maintenance, storing and servicing shall be solely for non-commercial activities;

C. The unrestricted use of the Public Airport Facilities and navigational aids and facilities relating thereto for purposes of non-commercial landings, takeoffs and taxiing of Lessee's aircraft;

D. The training of Lessee's employees in any art, science, craft or skill pertaining directly or indirectly to the non-commercial operation of Lessee's aircraft;

E. The location, construction, erection, maintenance and removal of improvements (including hangars, shops and related office space) in any lawful manner, upon or in the Premises, for the purpose of carrying out any of the permitted non-commercial activities, subject to the conditions herein provided;

F. The acquisition, sale, exchange or disposal of any aircraft engines, motors, instruments, devices, supplies and accessories appurtenant to any aircraft owned, leased or operated by Lessee;

G. The servicing and operation of aircraft in the non-commercial transportation of Lessee's employees, passengers, merchandise, mail or freight; and

H. The maintenance of offices and the operation or undertaking of any phase of aviation activity related to or contributing to Lessee's effective non-commercial air transportation undertaken as an incidental phase of Lessee's business.

This definition and enumeration shall be cumulative of provisions contained in the "Rules, Regulations and Land Use Requirements - General Aviation Non-Commercial Area," attached as **EXHIBIT "B"** hereto and fully incorporated by reference.

Section 2.05 Restrictions on Uses and Privileges. Lessee shall not use or permit the Premises to be used in whole or in part during the term of this Lease for any purpose other than those set forth in the Lease, without the prior written consent of Lessor. Nor shall Lessee permit any use in violation of any present or future laws, ordinances, rules and regulations, of any public or governmental authority, including, but not limited to laws, rules and regulations relating to sanitation, public health, safety or welfare, or operation and use of the Airport. Lessee hereby expressly agrees at all times during the term of this Lease, at its own cost and expense, to maintain, use and operate the Premises and all improvements, furnishings, fixtures and equipment in a clean, wholesome, and sanitary condition. Lessor expressly agrees to use its best efforts to prevent any unreasonable inhibition or restriction of Lessee's rights hereunder. Lessee shall not at anytime during the term hereof abandon any or all of the Premises without the prior written consent of Lessor.

Section 2.06 Conditions of Granting Lease. The granting of this Lease and its acceptance by Lessee is conditioned upon the covenant that the right to use public airport facilities in common with others authorized so to do shall be exercised only subject to and in accordance with the laws of the United States of America, the State of Texas, and the City of El Paso; the rules and regulations promulgated by their authority with reference to aviation and air navigation; and all applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.

Section 2.07 Right to Construct. Lessee shall have the right and privilege to construct and maintain improvements upon the Premises subject to the terms, covenants and conditions herein contained and subject to the prior written consent of Lessor.

Section 2.08 Authorization to Enter Restricted Area. Lessee understands that the Premises include access points to a restricted area of the Airport and that Lessee and its tenants, subtenants, agents, employees, servants or independent contractors must be separately authorized by Lessor to enter restricted areas of the Airport prior to their entry thereon. The authorization to enter restricted areas of the Airport is not granted by this Lease, but shall be granted to Lessee upon Lessee's completion of security clearance and identification badging requirements necessary of all persons entering restricted areas of the Airport. As Lessee is required to comply with all applicable rules and regulations, any violation of this provision or those security rules and regulations applicable to the restricted areas of the Airport, shall be considered to be a material violation of this Lease and grounds for termination.

Section 2.09 Penalties Assessed by Federal Agencies. Lessee understands and agrees that in the event any federal agency assesses a civil penalty against Lessor or the Airport for any violation, including but not limited to any security violation, as a result of or related to any act or failure to act on the part of Lessee, its tenants, subtenants, agents, employees or independent contractors, Lessee shall reimburse Lessor in the amount of the civil penalty assessed. Failure to reimburse Lessor within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.

Lessee acknowledges that it is familiar with the restrictions imposed on Lessor by the Transportation Security Administration (TSA) in accordance with 49 C.F.R. Part 1542 and any amendments thereto and agrees to assume responsibility for compliance with said regulation as it relates to access and identification procedures on the Premises.

ARTICLE III - OBLIGATIONS OF LESSOR

Section 3.01 Quiet Enjoyment. Lessor agrees that it has good title to the Premises, free and clear of all liens and encumbrances having priority over this Lease; and that Lessor has the right and authority to lease the Premises. Lessor further covenants that all things have happened and been done to make its granting of the Lease effective and Lessor warrants to Lessee peaceful possession and quiet enjoyment of the Premises during the lease term and any extensions; provided Lessee is not in default of its obligations.

Section 3.02 Subordination of Lease. All rights granted in this Lease shall be subordinate to the rights in any deed from the United States to the City of El Paso. This Lease shall further be subordinate to the provisions of any existing or future agreements between Lessor and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States Government be to substantially destroy the commercial value of the Premises, Lessee may cancel this Lease in its entirety.

Section 3.03 **Condition and Maintenance of Premises.** Lessor shall have 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.

Lessor shall, however, reasonably maintain all public roads on the Airport, giving access to the Premises, in good and adequate condition for use by cars and trucks and shall reasonably maintain free and uninterrupted access to the Premises over said roads at all times.

ARTICLE IV - OBLIGATIONS OF LESSEE

Section 4.01 **Net Lease.** The use and occupancy of the Premises by Lessee shall be without cost or expense to Lessor. It shall be the sole responsibility of Lessee to:

A. Keep, maintain, repair and operate the Premises and all improvements located thereon in a good state of repair at all times at Lessee's sole cost and expense;

B. Pay all taxes and governmental charges of any kind whatsoever that may be assessed against Lessee or Lessor, with respect to the Premises, Lessee's use and/or occupancy of the Premises, or any improvements thereon, and all of Lessee's personal property located on the Premises during the term of this Lease including any extensions or option periods granted thereto;

C. Pay all casualty, bond, and liability insurance premiums required in accordance with the requirements of this Lease; and

D. Supply to Lessor information regarding operational activities, tenants, subtenants, based aircraft, and similar activities as requested by the Director from time to time.

Section 4.02 **Condition of Premises.** Lessee accepts the Premises in their present condition and, without expense to Lessor, shall repair and maintain any installations thereon and remove or cause to be removed any debris to the extent required for its use.

Section 4.03 **Compliance with Laws.** Lessee, at Lessee's expense, agrees that it will design, construct, operate, and maintain any tenant improvements on the Premises in accordance with the requirements of **EXHIBIT "B"**, and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, including but not limited to the El Paso City Code, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

In addition, Lessee agrees, if required, it will remove all improvements, 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

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 (ADA), 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 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 and any improvements thereon.

A. Definitions.

(1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including, but not limited to, the ambient air, ground water, surface water, and land use, including sub-strata land.

(2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, including but not limited to gasoline, oil, jet fuel, lubricants, 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 tenants, subtenants, agents, employees, contractors, invitees,

licensees, or a third party in violation of any Environmental Law; it being expressly understood and agreed that Lessee will have Hazardous Materials stored on the Premises and shall do so in accordance with this Lease and all applicable laws, rules and regulations of governmental agencies exercising jurisdiction. **Without limiting the generality of any other indemnity clauses contained in this Lease, Lessee shall indemnify, defend and hold harmless Lessor, its officers, directors, 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 caused by the act or omission of Lessee, its tenants, subtenants, agents, employees, contractors, invitees, licessees or a third party.** 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 Environmental Laws. 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 having authority to enforce Environmental Laws because of Hazardous Material located on the Premises or in 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, any improvements thereon, or any surrounding property, Lessee shall promptly take all actions, at its sole cost and expense, as are necessary to return the Premises, and any improvements thereon or the surrounding property to the condition existing prior to the introduction of any such Hazardous Material to the Premises, any improvements thereon or the surrounding property; 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, any improvements thereon or the surrounding property.

(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, any improvements thereon or on surrounding property 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 in any lease, agreement, license or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

C. Reporting.

(1) At any time that Lessee submits any filing or response pertaining to its property, operations, or presence on the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the Federal Aviation Administration (FAA), the Environmental Protection Agency (EPA) or the Texas Commission on Environmental Quality (TCEQ), or any successor agencies, Lessee shall provide duplicate copies to Lessor of such filing(s) or response(s) with any related documents at the time same are made.

(2) Upon expiration, termination or cessation of this Lease for any reason, Lessee shall provide to Lessor a Phase I Environmental Site Assessment meeting ASTM standards of the Premises ("Lessee's Report"); and if, in the opinion of Lessor, if Lessee's Report indicates that the Premises is in violation of applicable Environmental Laws,

then Lessee shall perform work as is necessary to cause the Premises to be in compliance with applicable Environmental Laws.

Section 4.04 Maintenance. Lessee shall, at its sole cost and expense, maintain the Premises, and the improvements and appurtenances thereto in a presentable condition consistent with good business practice and equal in appearance and character to other similar improvements on the Airport. Lessee shall repair all damages to the Premises caused by its employees, patrons or its operation; shall maintain and repair all equipment on the Premises including any drainage installations, paving, curbs, islands, buildings and improvements; and shall repaint its own buildings as necessary.

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 maintenance is not undertaken by Lessee within ten (10) days after receipt of written notice, Lessor shall have the right to enter on the Premises and perform the necessary maintenance. Lessee shall be required to reimburse Lessor the cost of making the repairs plus ten percent (10%) as an administrative and overhead charge. Failure to make full payment to Lessor within ten (10) days of receipt of invoice shall be an event of default.

Section 4.05 Utilities. Lessee shall pay for all costs or charges for utility services furnished to Lessee during the term of the Lease. Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense, subject to approval by all appropriate City of El Paso departments; and Lessee shall pay for any and all service charges and hook-up fees incurred.

Section 4.06 Trash, Garbage, and Other Refuse. Lessee shall provide complete and proper arrangements for the adequate sanitary handling and disposal of all trash, garbage and other refuse caused as a result of the operation of its business. Lessee shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner and make arrangements to have the garbage, trash and other refuse removed from the Airport on a regular basis. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

Section 4.07 Permitted Uses. Lessee covenants and agrees that in no event will it enter into any business activity on the Airport other than those specified in Article I.

ARTICLE V - TERM OF LEASEHOLD

Section 5.01 Initial Term. The term of this Lease shall be for a period of twenty (20) years, commencing on the Effective Date ("Initial Term").

Section 5.02 Options To Extend. In the event that Lessee is not in default of any terms of this Lease, Lessee shall have the option to extend this Lease for two (2) additional terms of ten (10) years each. Lessee may exercise the first ten (10) 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 ten (10) years on the same terms and conditions, except that Ground Rentals shall be adjusted as noted below.

In the event that Lessee is not in default of any terms of this Lease, Lessee may exercise the second ten (10) year option ("Second Option Period") by notifying Lessor in writing at least one hundred and twenty (120) days prior to the expiration of the First Option Period. In the event Lessee exercises its second option, the Lease shall be extended for an additional ten (10) years on the same terms and conditions, except that Ground Rentals for this Second Option Period shall be readjusted as noted below.

Lessee's options to extend the Lease shall terminate if Lessee fails to notify Lessor in writing one hundred 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.

Section 5.03 Holding Over. It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rental of one and one-half (1.5) times the current monthly installments of Ground Rental. Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of Lessor to retake and resume possession of the Premises.

Section 5.04 National Emergency. In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, the term of this Lease shall be extended by the amount of the period of such suspension.

ARTICLE VI – GROUND RENTAL

Section 6.01 Ground Rental. For the purpose of computing rental payments due, Lessor and Lessee agree that the Premises comprise **60,000** square feet of land. The annual Ground Rental for the Premises will be calculated on the basis of **$0.3867** per square foot per annum for the land. Therefore, the annual Ground Rental for the first five (5) years of the Initial Term shall be **$23,202.00.**

Section 6.02 Commencement of Rental. Payment of Ground Rental by Lessee to Lessor as aforesaid shall commence on the Effective Date.

Section 6.03 Readjustment of Annual Rental.

For the purpose of computing adjustments to rental payments, Lessor and Lessee agree as follows, with each adjustment effective as of the appropriate anniversary date, regardless of the date the actual adjustment is made:

A. Rents shall be adjusted on each fifth (5th) anniversary of the Effective Date during the Initial Term. Lessor and Lessee agree that percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U) shall govern the rent readjustment for these anniversary dates. The parties further agree that for the purposes of computing such percentage increase during the Initial Term, the Base Year CPI-U shall be established as that rate in place ninety (90) calendar days prior to the Effective Date of this Lease. Rents shall be adjusted pursuant to the percentage increase in the CPI-U from the Base Year CPI-U to the rate in place ninety (90) days prior to the applicable date of readjustment (i.e. the fifth (5th) anniversary date of the Effective Date).

All readjustments shall be effective as of the fifth (5th) anniversary date, without regard to the date the actual adjustment is made; provided, however, that in no event shall the readjusted rent be less than the rate in place immediately prior to such readjustment nor more than twenty percent (20%) more than the rent established at the beginning of the immediately preceding five-year period.

B. Within ninety (90) days prior to or after the beginning of the First Option Period, if exercised, the Rent shall be adjusted to a rate equal to eight percent (8%) of the then fair market value of the Premises, disregarding the value of any Lessee-owned improvements located on the Premises, established as set forth in this Lease. In no event however, shall the Rent for the First Option Period be less than the Rent for the rental period for the immediately preceding five (5) year period. The Rent shall become effective as of the First Option Period, regardless of the date the actual adjustment is made.

C. Within ninety (90) days prior to or after the beginning of the Second Option Period, if exercised, the Rent shall be adjusted to a rate equal to eight percent (8%) of the then fair market value of the Premises, disregarding the value of any Lessee-owned improvements located on the Premises, established as set forth in this Lease. In no event however, shall the Rent for the Second Option Period be less than the Rent for the rental period for the immediately preceding five (5) year period. The Rent shall become effective as of the Second Option Period, regardless of the date the actual adjustment is made.

D. The fair market value of the Premises shall be determined by an appraisal of the Premises. Lessor will select an appraiser ("First Appraiser") from its list of qualified appraisers to establish the fair market value of the Premises, disregarding the value of any Lessee-owned improvements located on the Premises. Lessor shall notify Lessee in writing of such selection and, if Lessee is

not satisfied with the selection of the First Appraiser, Lessee, within fifteen (15) days after receipt of said notice, shall notify Lessor in writing of Lessee's selection of a qualified second appraiser ("Second Appraiser"). The selection of the Second Appraiser must be from the Lessor's list of qualified appraisers. If Lessee does not respond within fifteen (15) days after receipt of the written notice, or it does not select a Second Appraiser from Lessor's list of qualified appraisers and notify Lessor in writing as required herein, the First Appraiser shall proceed to establish the fair market value of the Premises, disregarding the value of any Lessee-owned improvements located on the Premises. This will be the First Appraisal and the fair market value determined by the First Appraiser will be the Rent for the Option Period which has been exercised.

However, if a Second Appraiser is selected and Lessor is satisfied with such selection, the Second Appraiser shall proceed to determine the fair market value of the Premises. The fair market value determined by the Second Appraiser will be the Rent for the Option Period, and this value will become the First Appraisal.

If Lessor is not satisfied with the selection of the Second Appraiser and Lessor and Lessee cannot mutually agree on the selection of one appraiser, then the First Appraiser will proceed to independently determine the fair market value of the Premises.

If either Lessor or Lessee protests the fair market value of the Premises determined by the First Appraisal, the protesting party must notify the other party, in writing within fifteen (15) days after receiving written notice of the fair market value of the Premises identified in the First Appraisal. Lessee shall pay the Rent as determined by the First Appraisal under protest until there is a final determination of the fair market value for the Premises for which the Rent is determined. Should the final determination of the fair market value of the Premises be a lower rate that the fair market value of the Premises determined by the First Appraisal, Lessee's account will be credited by Lessor accordingly.

The protesting party will select an appraiser ("Qualified Appraiser") from the Lessor's list of qualified appraisers to appraise the Premises. The Qualified Appraiser must complete the appraisal within thirty (30) days of a notice to proceed. If the fair market value of the Premises determined in the appraisal by the Qualified Appraiser and the fair market value of the Premises identified in the First Appraisal are within ten percent (10%) of each other, then the fair market value of the Premises shall be the lower of the fair market values identified in the two appraisal reports. This amount will be the Rent for the exercised Option Period.

If the fair market value of the Premises determined by the Qualified Appraiser and the fair market value of the Premises identified in the First Appraisal differ by fifteen percent (15%) or more, the fair market value of the Premises shall be established by the averaging of the fair market value of the Premises determined in the appraisal by the Qualified Appraiser and the fair market value of the Premises identified in the First Appraisal. This amount will be the Rent for the exercised Option Period.

The Rent shall be effective as of the date the exercised Option Period begins. In any case, the fees and expenses of the First Appraiser will be paid by Lessor, the fees and expenses of the Second Appraiser will be paid by Lessee, and the fees and expenses of a Qualified Appraiser shall be borne equally by the Lessor and Lessee. Any appraiser on Lessor's list of qualified appraisers and designated to serve in accordance with the provisions of this Lease shall be an unbiased and disinterested party and shall be a Texas licensed appraiser qualified to appraise real estate of the type covered by this Lease situated in El Paso County, Texas, and shall have been actively engaged in the appraisal of real estate similar to the Premises and located in El Paso County, Texas for a period of not less than five (5) consecutive years immediately preceding his/her appointment.

Section 6.04 Time of Payment. All rentals due hereunder shall be paid in twelve (12) equal monthly installments. Said monthly rental payments shall be paid in advance on or before the first day of each and every month during the term or any extension of this Lease

Section 6.05 Security Deposit. Prior to the commencement of this Lease, Lessee shall tender a Security Deposit in an amount equal to three (3) months of Rent to Lessor. The purpose of the Security Deposit is to guarantee Lessee's performance of its obligations under this Lease and the payment of all Rent due hereunder. Lessee shall be obligated to maintain the Security Deposit for eighteen (18) consecutive months from the Effective Date of this Lease. The Security Deposit shall be in such form acceptable to the Director in his/her reasonable discretion. Within twenty (20) days after expiration of the eighteen (18) month period, if Lessee has not defaulted under the Lease, Lessor will return the Security Deposit to Lessee. Lessor's rights under this Section shall be in addition to all other rights and remedies provided to Lessor under this Lease.

If Lessee provides Lessor with an irrevocable Letter of Credit for the Security Deposit, the Letter of Credit, in a form acceptable to the Director in her/his reasonable discretion and approved by the City Attorney, shall be issued by a national banking association. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to pay sums due and owing pursuant to Lease.

Section 6.06 Unpaid Rent, Fees and Charges. Any installment of rent, fees, or other charges or monies accruing under any provisions of this Lease that are not received by Lessor by the 20th day of the month in which payment is due, shall bear interest from the date such rental or other amount was due at the lesser of the rate of eighteen percent (18%) per year or the then maximum nonusurious rate under applicable law, (the lesser of said amounts being herein referred to as the "**Maximum Rate**.") In the event the late charge is ever deemed to be "interest" the amount of interest on past due amounts shall be automatically reduced so that the combination of said late charge and the interest on past due amounts, if any, does not exceed the Maximum Rate. Any amount collected which exceeds the Maximum Rate will be deemed credited to other amounts owed by Lessee to Lessor under this Lease, and any remaining excess after such credit shall be refunded to Lessee. It is the intent of both Lessor and Lessee to at all times comply with the

applicable law regarding the maximum nonusurious amount or rate of interest which may be contracted for, charged, taken, reserved or received by Lessor.

Section 6.07 Place of Payment. All rental and other required payments provided herein shall be paid to Lessor at the following address:

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

Section 6.08 Landing Fees. Each aircraft used by or for Lessee that exceeds 60,000 pounds maximum gross landed weight, or as weight limits may be amended in the El Paso City Code, shall incur airport landing fees equal to the number of thousands of pounds of the maximum gross landed weight of aircraft arrivals multiplied by the cost recovery rate set forth in the budget resolution approved by Lessor for the fiscal year for which the landings occurred. Such fees do not apply to flights, which depart from the Airport and return to the Airport due to emergency, weather or other reasons without landing at another airport. The fees incurred for each landing will be due each calendar month and payable within ten (10) days from the end of the month in which the landings occurred. Each payment shall be accompanied by a statement showing the dates of all revenue flights made to or from the Airport during the month, the maximum gross landing weight of each aircraft landing at the Airport and any additional details and breakdown required by the Director.

ARTICLE VII - INSURANCE AND INDEMNIFICATION

7.01 Insurance. Prior to the execution of this Agreement, Lessee shall obtain, provide proof of, and shall maintain for the term of this Agreement, the types and amounts of insurance coverage listed below:

Comprehensive General Liability Insurance in amounts as reasonably set from time to time by Lessor, but not less than One Million Dollars ($1,000,000.00) for bodily injury to one person for each occurrence;,

Two Million Dollars ($2,000,000.00) for bodily injuries to more than one person arising out of each occurrence, and

One Million Dollars ($1,000,000.00) for Property Damage arising out of each occurrence,

or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

7.02 Additional Insured. Lessor shall be named as an Additional Insured on all insurance policies either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

All polices shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the Lessor or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

Commercial General Liability and Property Damage coverage requirements may be satisfied through a combination of individual policy limits and umbrella coverage but the amounts under each type of coverage shall be subject to the final approval of the City's Risk Manager.

7.03 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 of the Parties, 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 selected be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee, unless the value claimed by Lessee is confirmed through such an appraisal, in which case the Lessor shall reimburse the Lessee for the cost of such appraisal.

7.04 Payment and Performance Bonds. Prior to commencement of any construction work on the Premises the total cost of which will exceed Fifty Thousand Dollars ($50,000.00), 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 all 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 project.

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 project.

In accordance with Article 35.03.004 of the Texas Insurance Code, if a Performance or Payment bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas.

In lieu of the payment and performance bonds described in Paragraph A and B, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable Letter of Credit in a form acceptable to the Director in her/his reasonable discretion and approved by the City Attorney, in an amount equal to the full amount of the construction contract awarded. Such Letter of Credit shall be issued by a national banking association and shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvement contemplated by the construction contract.

7.05 Authorized Insurance and Surety Companies. All required policies of insurance and bonds shall be written by insurance and surety 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) calendar days prior to the effective date of the insurance policy for which the certificate is issued and prior to the Effective Date of this Lease. Each insurance policy shall contain:

A. a statement of the coverage provided by the policy;

B. a statement certifying the Lessor to be listed as an additional insured in the policy;

C. a statement of the period during which the policy is in effect;

D. a statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and

E. an agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days' prior written notice to Lessor.

7.06 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 VIII - DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY

Section 8.01. Obligations of Lessee. During the term hereof, except as provided in Section 8.03 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 Development Standards. In the event the preliminary plans and specifications are not approved, 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 a 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 shall require Lessee to furnish a performance and payment bond 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.

E. Upon completion of the construction, Lessee shall deliver to Lessor, a complete set of record (as-built) drawings of the construction signed and sealed by a professional engineer licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises.

Section 8.02. 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.

Section 8.03. 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 Option Period of this Lease, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessor, unless Lessor has elected to have the Premises returned to it clear of all improvements in accordance with this Lease, in which case Lessee shall be entitled to such insurance proceeds. All rents payable under this Lease shall be prorated and paid to the date of such termination.

ARTICLE IX - CONDEMNATION

Section 9.01 Definitions. The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning

agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.

B. "Total Taking" means the taking of the fee title to all of the Premises and improvements thereon.

C. "Substantial Taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:

1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;

2. The conduct of Lessee's business on the Premises would be substantially prevented or impaired;

3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Lease.

D. "Partial Taking" means the taking of a fee title that is not either a Total or Substantial Taking.

E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.

F. "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the taking.

G. "Award" means compensation paid for the taking, whether pursuant to judgment, or by agreement, or otherwise.

H. "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

Section 9.02 Notice of Condemnation. The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

A. Notice of intended taking;

B. Service of any legal process relating to condemnation of the Premises or improvements; or

C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

Section 9.03 Rights of Parties During Condemnation Proceeding. Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

Section 9.04 Taking of Leasehold. Upon a total taking, Lessee's obligation to pay rent and other charges hereunder shall terminate on the Date of Taking, but Lessee's interest in the leasehold shall continue until the taking is completed by deed, contract or final order of condemnation. If the taking is substantial under the aforementioned definition, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives notice of the intended taking, elect to treat the taking as a total taking. If Lessee does not so notify Lessor, the taking shall be deemed a partial taking. Upon a partial taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

Section 9.05 Total Taking. Upon a Total Taking, all of Lessee's obligations under the Lease shall terminate as of the Date of Taking. In such event, all sums awarded for any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Premises, as unencumbered by Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

Section 9.06 Partial Taking. Upon a Partial Taking, all awards shall be disbursed as follows:

A. To the cost of restoring the improvements on the Premises; and

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

Section 9.07 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 Option Period, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor if its intention to that effect; provided, however, that all sums awarded for Lessee owned improvements and the Leasehold estate shall be disbursed to Lessor.

Section 9.08 Taking of Temporary Use of Premises and Improvements. Upon any Taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the Taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such taking, Lessee shall receive, hold and disburse the award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

If any such taking is for a period extending beyond the expiration date of the term, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings.

ARTICLE X - ENCUMBRANCES

Section 10.01 Encumbrance. As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiary under a deed of trust, whether one or more. Lessee may encumber its leasehold estate and its interest in the improvements constructed by Lessee 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 or demand served by Lessor upon Lessee under the terms and provisions of this Lease so long as such Mortgage is in effect.

Section 10.02 Mortgagee's Rights. Upon receipt of a notice or demand in accordance with Section 10.01 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 day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or

D. To institute foreclosure proceedings and prosecute same diligently to conclusion.

Section 10.03 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 XI
EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

Section 11.01 Expiration. This Lease shall expire at the end of the term, applicable Option Period or any extension thereof.

Section 11.02 Cancellation. Subject to the provisions of Article X 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 and such petition is not dismissed within ninety (90) days after filing;

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

F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or

G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within ninety (90) 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 that or 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 Lessor to retake and resume possession of the Premises.

Section 11.03 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, change the locks on the Premises, install fences and gates, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and

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

Section 11.04 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 pursuant to the Bankruptcy Code U.S.C. 101, et seq., shall be deemed, without further act or deed to have assumed all the obligations arising under

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

Section 11.05 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 executed after the effective date of this Lease 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. In addition, Lessee shall provide a list of its sublessees and the sublessees contact information to the Director every six months. The subleases described on **EXHIBIT "C"** to this Lease are in existence on the Premises prior to the effective date of this Lease. Lessor acknowledges that the subleases will not be disturbed by the surrender of the Original Lease and execution of this Lease.

Section 11.06 Rights Upon Expiration. Upon the expiration, termination or cessation of this Lease for any reason ("expiration"), Lessee, at its own cost and expense, shall be responsible for the removal of all improvements from the Premises. In furtherance of the same, and within one hundred twenty (120) days prior to the expiration of this Lease, Lessee shall cause to be made, executed, and delivered to Lessor an instrument to guarantee the removal of all improvements from the Premises. Such instrument may be in the form of a performance bond, letter of credit or such other instrument that is mutually acceptable to Lessee and the Director and shall be in place until removal of all improvements.

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

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

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

If Lessee fails to remove said improvements and compact the soil, to provide the required engineering report or an environmental assessment or to complete any required remediation of the

Premises, Lessor may elect to perform and Lessee shall promptly reimburse Lessor for all its costs upon written notice from Lessor.

Lessor may, at its option, take title to the improvements in lieu of removal by or for Lessee at no additional consideration to Lessee. Lessee may request Lessor to make such election at least one hundred eighty (180) but not more than three hundred sixty (360) days before the beginning of the last year of this Lease, Option Period or any extension or renewal thereof. If Lessor exercises its option to take title to the improvements, Lessee will not be required to deliver to Lessor an instrument to guarantee the removal of all improvements from the Premises. However, Lessee shall execute all documents deemed necessary by Lessor to effectuate such transfer of title to Lessor.

Section 11.07 Landlord's Lien. It is expressly agreed that in the event of default in the payment of rentals 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 Rentals 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 Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, 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 rentals or other sums due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

ARTICLE XII - GENERAL PROVISIONS

Section 12.01 Continuity of Rules, Regulations and Land Use Requirements - General Aviation Non-Commercial Area. This Lease is subject to the terms, covenants and conditions contained in **EXHIBIT "B"**. Lessor reserves the right to revise the standards set forth in such exhibit 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 said exhibit includes, but is not limited to, the right to revise said document because of the development of new concepts or improved construction and architectural techniques.

Section 12.02 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 at 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 and any amendments or successor 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 said land which would constitute an airport hazard.

Section 12.03 Time is of the Essence. Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

Section 12.04 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
P.O. Box 1890
El Paso, Texas 79950-1890

Director of Aviation
El Paso International Airport
6701 Convair Road
El Paso, Texas 79925-1099

LESSEE:

Rook Property Management, LLC
P.O. Box 220462
El Paso, Texas 79913
Attn: Robert E. Rook, Jr.

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown on the return receipt for delivery, rejection, or undeliverable. 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 paragraph.

Section 12.05 Attorney's Fees. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

Section 12.06 Agreement Made in Texas. The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

Section 12.07 Nondiscrimination Covenant. Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

A. That in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for the purpose for which 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 (DOT) and as said Regulations may be amended.

B. That no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.

C. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.

D. That Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

E. Economic Discrimination. To the extent that, under this Lease, Lessee furnishes goods or services to the public at the Airport, Lessee agrees that it shall:

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

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

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

Section 12.08 Affirmative Action. Lessee assures that no person shall, on the grounds of race, creed, color, age, disability, sex, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the DOT by local governments for Airport use, or otherwise applicable to persons leasing premises from Lessor. Lessee assures that it will require that its covered sub-organizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublessees) to the same effect.

Section 12.09 Cumulative Rights and Remedies. All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

Section 12.10 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 the other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

Section 12.11 Agreement Made in Writing. This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

Section 12.12 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.

Section 12.13 Severability. If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 12.14 Successors and Assigns. All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

Section 12.15 Taxes and Other Charges. Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against Lessee or Lessor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, during the Term of this Lease including any extensions granted thereto. By March 1 of each year of this Lease and at no charge to Lessor, Lessee will provide written proof satisfactory to the Director that all taxes and governmental charges of any kind as described herein have been paid in full.

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

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

Section 12.16 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 LESSEE'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE.

Section 12.17 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, Sections 4.03 and 7.05.

Section 12.18 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.

Section 12.19 Right of Entry. Lessor reserves for itself and any authorized agent to, at any reasonable time and without notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all the Environmental Laws and for the purpose of showing the Premises; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Section 12.20 Subordination of Lease. All rights granted in this Lease shall be subordinate to the rights in any deed from the United States to the City of El Paso. This Lease shall further be subordinate to the provisions of any existing or future agreements between Lessor and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States Government be to substantially destroy the commercial value of the Premises, Lessee may cancel this Lease in its entirety.

Section 12.21 Authorization to Enter Lease. Each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing entity, 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 the Director's request, Lessee will provide evidence satisfactory to the Director confirming these representations.

Section 12.22 Effective Date. Regardless of the date signed, this Lease shall be effective as of the date indicated on the Title Page of this Lease. Simultaneously with the full execution and delivery of this Lease, Lessor and Lessee shall execute and acknowledge a memorandum of this Lease in form and substance reasonably acceptable to Lessor and Lessee. Lessee shall provide to Lessor a copy of the memorandum filed of record in the Real Property Records for El Paso County, Texas.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have approved this Lease as of this _____ day of _____, 2013.

LESSOR: CITY OF EL PASO

_____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

_____
Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

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

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2013, by **Joyce A. Wilson** as the **City Manager** of the **City of El Paso (Lessor)**.

_____
Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

LESSEE: ROOK PROPERTY MANAGEMENT, LLC

By: _____

Printed Name: ROBERT E. Rook

Title: Manager/Member

ACKNOWLEDGMENT

THE STATE OF Texas)
)
COUNTY OF El Paso)

This instrument was acknowledged before me on the 7th day of June, 2013, by RE Rook as Manager/member of **ROOK PROPERTY MANAGEMENT, LLC** (Lessee).

ALLYSON NICOLE LEWIS
Notary Public, State of Texas
My Commission Expires
June 07, 2014

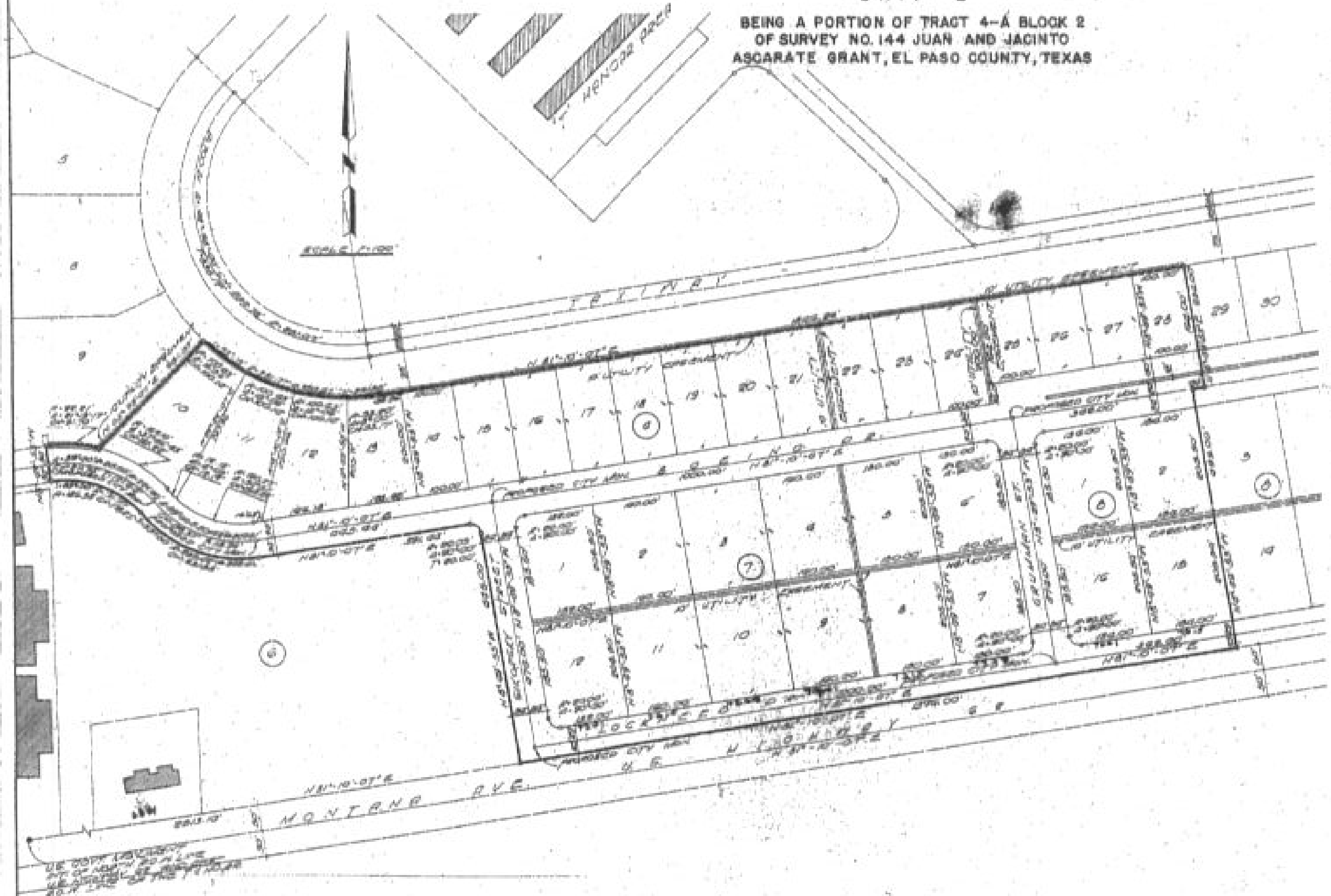
Allyson N. Lewis

Notary Public, State of Texas

EL PASO INTERNATIONAL AIRPORT TRACTS

UNIT 2

BEING A PORTION OF TRACT 4-A BLOCK 2
OF SURVEY NO. 144 JUAN AND JACINTO
ASCARATE GRANT, EL PASO COUNTY, TEXAS



DEDICATION

CITY OF EL PASO

ACKNOWLEDGEMENT

CITY PLAN COMMISSION

SMITH & CREMANS ASSOCIATES
EL PASO, TEXAS

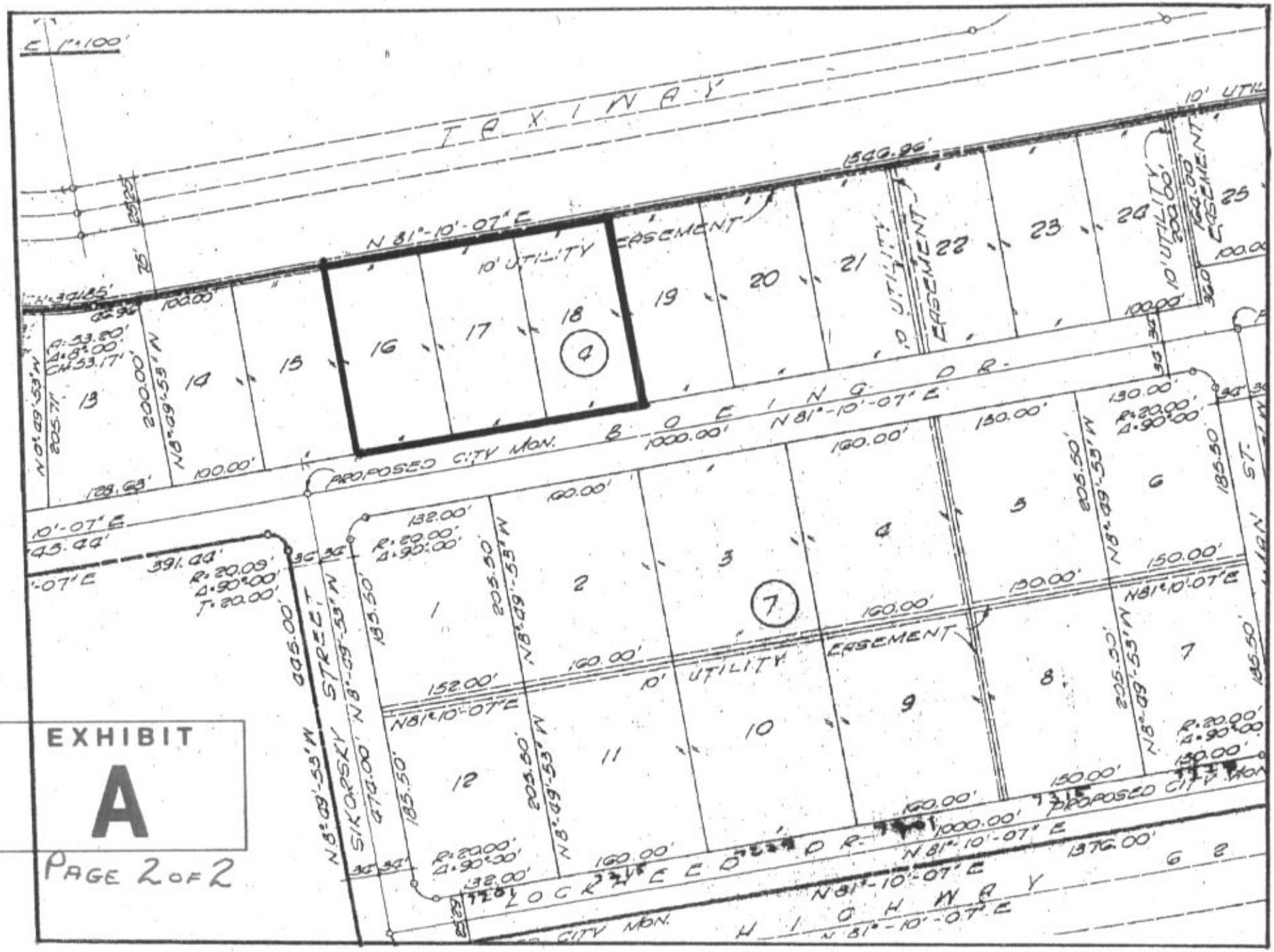
8-68-F

E. P. INT. AIRPORT TRA

EXHIBIT

A

PAGE 1 OF 2



EXHIBIT

A

PAGE 2 OF 2

EXHIBIT B

RULES, REGULATIONS AND LAND USE REQUIREMENTS

GENERAL AVIATION NON-COMMERCIAL AREA

El Paso International Airport

El Paso, Texas

RULES, REGULATIONS AND LAND USE REQUIREMENTS
GENERAL AVIATION NON-COMMERCIAL AREA

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EXHIBIT "B"

RULES, REGULATIONS AND LAND USE REQUIREMENTS

GENERAL AVIATION NON-COMMERCIAL AREA

The City of El Paso hereby declares that the property, more particularly described hereinafter, is, and shall be, held and conveyed subject to the rules, regulations and requirements hereinafter set forth, each and all of which are for the benefit of each tenant of any portion of said property, each and all of which shall inure to, and pass with, each and every parcel of said property, and each and all of which shall apply to and bind the respective successors in interest of said property and any portion thereof, as follows:

ARTICLE I - PROPERTY

The real property, subject to these rules, regulations and land use requirements is situated on the El Paso International Airport and is more particularly described in Exhibit "A" of the Lease to which these Rules, Regulations and Land Use Requirements are attached.

ARTICLE II - DEFINITIONS

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

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

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

C. **"STREET"** shall mean any street, highway, or other thoroughfare shown on the map entitled "El Paso International Airport Tracts," as filed with the County Clerk, County of El Paso, Texas.

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

E. **"FRONT LOT LINE"** shall mean the property line which faces the Apron.

F. **"REAR LOT LINE"** shall mean the property line which faces the Street.

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

H. **"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.

I. **"LOT"** shall mean the land area shown on Exhibit "A".

ARTICLE III - PERMITTED USES

No building, structure, or land shall be used for any purpose other than those purposes set out in the Lease attached hereto.

ARTICLE IV - PERFORMANCE STANDARDS

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

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

Lessee shall comply with all environmental ordinances and environmental state and federal laws.

A. **FIRE AND EXPLOSIVE HAZARDS.** No activity shall be undertaken involving fire or explosive hazard which shall endanger the property, improvements, or employees of any other property owner or tenant.

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

C. **AIR POLLUTION.** No activity of any type shall be conducted or permitted on the leased premises, which violates any applicable federal, state or local law, rule or regulation.

D. **DUST CONTROL.** All ground areas not covered by structures shall be landscaped or surfaced with concrete, asphaltic concrete, asphalt oil or other comparable dust-free surfacing; shall be maintained in good condition, free of weeds, dust, trash, and other debris; and shall be properly drained and graded.

ARTICLE V - DEVELOPMENT OF SITE - REQUIRED IMPROVEMENTS

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

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

Offstreet parking facilities shall be provided generally in accordance with the El Paso City Code and any amendments or successor ordinances thereto and shall be sufficient for the parking of all automobiles necessary to the conduct of the business.

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

B. **AIRCRAFT PARKING AND SERVICING.** Except for routine parking and servicing of transient aircraft on a specifically designated transient parking apron, all provisions for parking of all aircraft of Lessee and its patrons, if any, shall be on the lot(s) leased. Parking of aircraft in areas other than the lot(s) leased or on transient parking aprons specifically designated by the City is expressly prohibited.

C. **VEHICLE LOADING.** All provisions for the loading and maneuvering of vehicles incidental to the operation of the business shall be placed on lot(s) leased; on-street vehicle loading shall not be permitted.

D. **SETBACKS.** All buildings shall be set back a minimum of twenty-five (25) feet from the front lot line and twenty-five (25) feet from the rear lot line. Side setbacks shall be a minimum of ten (10) feet.

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

E. **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. 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 D above. In addition, paving or landscaping shall extend from the property line to the curb, such paving or landscaping to be compatible with treatment for this area on other lots in the same Block.

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

F. **BUILDING HEIGHTS.** All building heights shall conform to FAA rules and regulations, and any amendment and successor rules and regulations. The term building height shall include any building equipment, extrusions, etc.

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

H. **TYPE OF CONSTRUCTION.** All buildings shall be framed with reinforced concrete or masonry, structural steel or structural aluminum. Siding shall be masonry, glass, or enameled steel. Concrete or masonry units shall be kept neatly painted, if used.

All buildings shall conform to applicable laws, ordinances and building codes of the City of El Paso.

I. **PIPES.** No water pipe, gas pipe, sewer pipe or drainage pipe (other than those within structures) shall be installed or maintained upon any building site above the surface of the ground, except hoses and movable pipes used for irrigation or similar purposes, as approved by the City.

J. **FENCING.** Construction of fencing between buildings of all tenants on all lots shall be required. The placement and design of such construction shall be in accordance with plans and specifications prescribed by the City, or its authorized agent, for the General Aviation Non-Commercial area and shall be uniform throughout the area.

ARTICLE VI - 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 Department of Aviation, Director of Aviation ("Director"), or his/her authorized agent, before any application for a building permit and before any construction can take place. Said approval shall be based on the general conformity with the lease provisions and these Rules, Regulations and Land Use Requirements.

The following plans, if applicable, shall be submitted to the Director for review:

1. A plot plan at a scale not smaller than 1 inch equals 100 feet showing the relationship of the proposed improvements to the building site and to the improvements on adjacent lots, utilities and access thereto, curbs, walks, driveways, parking areas, etc.

2. Building Plans and Specifications of sufficient detail to permit the City, or its authorized agent, to determine compliance with all applicable laws and ordinances

and with the restrictions herein. These plans and specifications may be manufacturers' standard plans, if such are sufficient as aforesaid.

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 such 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 shall be deemed thereafter to bind the City to its future approval or disapproval of any matter subject 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, 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 FAA or any successor agencies, where applicable.

D. **APPROVAL OF PLANS.** Approval of plans and specifications shall be at the sole discretion of the City. If the City or its authorized agent fails to approve or disapprove such plans and specifications within sixty (60) days after submission thereof, said plans and specifications, as pertaining to these Rules, Regulations and Land Use Requirements, shall be deemed approved as submitted.

Approval of said plans and specification may be withheld because of:

1. Failure to comply with any of these restrictions.
2. Failure to include such information as may be reasonably requested.
3. Reasonable objection to the design and appearance of the proposed structure.
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.

Approval of any plans or specifications for use on any one parcel shall not be deemed a waiver of the City's right, in its discretion, to disapprove the same plans or specifications if such plans or specifications are subsequently submitted for approval for use on any other parcel or parcels.

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 owner of the parcel upon which such structure is or will be placed.

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 within a reasonable time period, such period to be determined jointly by the City and the Lessee and to be set forth in writing by the City.

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 shall be considered in default of its Lease for such property, 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 any parcel until a complete plan thereof has been submitted to, and approved by, the City, in a manner similar to that required for architectural plans.

H. **PLANS FOR ALTERATIONS IN IMPROVEMENTS.** All plans for alterations to the building site, either for the construction of additional facilities or alterations to existing buildings, shall be prepared, submitted and approved, as outlined in Paragraphs 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 IV.

I. **CONSTRUCTION WITHOUT APPROVAL.** If any structure shall be altered, erected, placed or maintained upon any parcel, other than in accordance with plans and specifications approved by the City, such alterations, erection 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 shall be considered in default of the Lease for such property, and the City may terminate the Lease in accordance with the provisions set forth in that document.

J. **FEE FOR EXAMINATION OF PLANS AND SPECIFICATIONS.** The City may charge and collect a fee of not more than Two Hundred Fifty Dollars ($250.00) 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 may, at any reasonable time and without notice, enter upon and inspect any parcel 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 VII - 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 said property 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 a parcel more than ten (10) days after a request in writing from the City to have them removed has been received by Lessee, the City, or its authorized agent, may enter upon any parcel 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 therefore. 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 receipt of written notice from the City, the City, or its authorized agent, shall have the right to enter on any of the lot(s) leased and plant or replant such areas, without being deemed guilty of trespass. The costs therefore, 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 Code of the City of El Paso shall be maintained in force at all times by each Lessee.

EXHIBIT C

List of Sublessees

1. Department of Homeland Security, Customs and Border Protection
(fka U.S. Government, DOJ, Immigration and Naturalization Service), Lessor's Approval of Sublease approved by the El Paso City Council on Jan. 25, 2005.