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

DEPARTMENT: Aviation

AGENDA DATE: July 9, 2013

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

DISTRICT(S) AFFECTED: 3

SUBJECT:

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

This item is a Resolution to authorize the City Manager to sign an Ground Lessor's Estoppel Certificate and Amendment to Ground Lease by and between the City of El Paso and Mac Hotel Properties I, L.P. for the following described property:

> Tract F of Lot 1, Block 19, El Paso International Airport Tracts, Unit 10, City of El Paso, El Paso County, Texas, consisting of 156,116.54 square feet of land and municipally known and numbered as 6789 Boeing Drive, El Paso, Texas.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

In October 2012, City Council approved the Lessee's request to terminate the old lease and enter into a new lease agreement with a term of forty (40) years plus one option to extend of ten (10) years to facilitate the sale of the improvements. As a next step in this deal, the Lessee is refinancing its loan for the property and the lender, Morgan Stanley, has requested an estoppel certificate and amendment to the Lease. There are two key amendments that the Lessee is requesting to allow it to meet the requirements of the lender.

In the case of a default, the Lessee's lender has requested permission to assign the Lease at auction or private sale. A provision has been added to address the lender's concerns about identifying the prior consent requirement as an exception in its representations should the note be sold.

Additionally, the Lease is being amended to state that the Lease, in the absence of a default, cannot be amended or voluntarily surrendered without the Lender's approval. Lessee is responsible for submitting the Lender's approval along with any request to amend the Lease.

The minimum annual guarantee (MAG) for the first year of the lease (November 1, 2012-October 31, 2013) will remain $87,487.71, plus percentage of revenues for room rentals (5%), alcoholic beverage sales (4%), food sales (2%), and miscellaneous sales and services (6%).

PRIOR COUNCIL ACTION:

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

10/23/2013 – Approval of simultaneous termination of Hotel Site Lease effective February 1, 2004, and new Hotel Site Lease effective November 1, 2012, for an initial term of for 40 years plus one option to extend of ten (10) years.

AMOUNT AND SOURCE OF FUNDING:

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

N/A – This is a revenue generating item

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A

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

DEPARTMENT HEAD: Monica Lombraña

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

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

Information copy to appropriate Deputy City Manager

RESOLUTION

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

That the City Manager be authorized to sign a Ground Lessor's Estoppel Certificate and Amendment to Ground Lease by and between the City of El Paso ("Lessor") and Mac Hotel Properties I, L. P. ("Lessee") for the premises described as follows:

> Tract F of Lot 1, Block 19, El Paso International Airport Tracts, Unit 10, City of El Paso, El Paso County, Texas, consisting of 156,116.54 square feet of land and municipally known and numbered as 6789 Boeing Drive, El Paso, Texas.

Dated this ____ day of _____ 2013.

CITY OF EL PASO

_____
Oscar Leeser
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen
Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

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

12-1003-199/176732/Reso/Estoppel Cert & Amend. Ground Lease
Mac Hotel Properties (Hawthorn)

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Attn: Christopher T. Nixon, Esq.

GROUND LESSOR'S ESTOPPEL CERTIFICATE
AND AMENDMENT TO GROUND LEASE

Morgan Stanley Mortgage Capital Holdings LLC
1585 Broadway, 10th Floor
New York, NY 10036

Re: Ground Lease Agreement (the "Lease"), more particularly described in Exhibit B, by and between the City of El Paso ("Lessor"), and Mac Hotel Properties I, L.P. ("Lessee"), and demising real property located at 6789 Boeing Drive, El Paso Texas consisting of approximately 3.5839 acres (the "Premises").

Gentlemen:

You have advised us that **MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC**, a New York limited liability company (together with its successors and assigns including any subsequent holders of the Loan, the "Lender"), has proposed to make a loan ("Loan") to Lessee in the amount of $6,000,000.00, maturing on July 1, 2023. The Loan will be secured by, among other things, the leasehold estate ("Leasehold Estate") in the real property described on Exhibit A hereto (the "Property"). The Loan will be secured by that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Deed of Trust") executed by Lessee, as borrower, for the benefit of Lender encumbering the Leasehold Estate and the improvements located on the Leasehold Estate. For the purpose of providing information to Lender and its successors and assigns, with the understanding that they will rely upon the information provided herein, the undersigned Lessor certifies, covenants and agrees as follows, effective as of July__, 2013:

1. Lessor is the fee owner of the Property and is the landlord under the Lease, and there are no mortgages or deeds of trust or other interests, estates, liens or encumbrances encumbering Lessor's fee simple title to the Property.

2. A true and complete copy of the Lease is attached hereto as Exhibit B and, except as reflected in Exhibit B, the Lease has not been modified or amended in any other respect. There are no other agreements, whether oral or written, by and among Lessee, Lessor (or any of

its successors and assigns) with respect to the Lease or concerning the Premises. For purposes of recordation of this Ground Lessor's Estoppel Certificate ("Estoppel") only the description of the Lease will be attached as Exhibit B to the recorded copy of this Estoppel.

3. The Lease is in full force and effect and, to Lessor's knowledge, there is no existing default or event of default under the Lease, and Lessor knows of no event which, with notice or the passage of time or both, would constitute a default or event of default under the Lease. To Lessor's knowledge, Lessee has not assigned the Leasehold Estate or its interest in the Lease, except in connection with the ground lease mortgage loan from NewCon 95 LTD to Lessee, which is being paid in full in connection with the closing of the Loan.

4. Lessee currently leases the Leasehold Estate pursuant to the Lease. The leasing of the Leasehold Estate pursuant to the Lease is permitted by the Lease.

5. There is no defense, offset, claim or counterclaim by or in favor of Lessor against Lessee under the Lease.

6. There is no suit, action, proceeding or audit pending or, to Lessor's knowledge, threatened against or affecting Lessor or the Premises at law or in equity or before or by any court, administrative agency, or other governmental authority which questions the validity of the Lease or which, if determined adversely against Lessor, might result in any adverse change to the Leasehold Estate or the Property.

7. The only real property presently demised under the Lease is the Property and, to Lessor's knowledge, the only person or entity presently having an interest in the Leasehold Estate as tenant under the Lease is Lessee.

8. The Lease commenced on November 1, 2012, and will expire pursuant to its terms on October 31, 2052. The Lease contains one (1) option to extend the term of the Lease for ten (10) years.

9. Lessee has paid all rent and charges arising and due and payable under the Lease with respect to the Leasehold Estate through July 1, 2013. No additional rent or charge (including, without limitation, as applicable, taxes, maintenance, operating expenses or otherwise) that has been billed to Lessee by Lessor is overdue. There are no provisions for, and Lessor has no rights with respect to, terminating the Lease, except as expressly set forth in the Lease. Lessor acknowledges and agrees that the Minimum Annual Guarantee for the First Lease Year payable under the Lease with respect to the Leasehold Estate is $87,487.72. No security deposit is presently held by Lessor under the Lease with respect to the Leasehold Estate.

10. Lessor acknowledges that neither the execution and delivery of the Deed of Trust by Lessee, nor any modification thereof or assignment of the beneficial interests thereunder, will be a default under the Lease.

11. Lessor hereby recognizes Lender and its successors and assigns as a "mortgagee" for all purposes under the Lease and agrees that Lender and its successors and assigns shall be entitled to the benefit of all leasehold mortgagee protection provisions contained in the Lease,

including, without limitation, the provisions of Article X of the Lease. Lessor acknowledges that Lender has requested, and hereby agrees to send, copies of all notices hereafter given by Lessor to Lessee, and Lessor will send such notices to:

Lender: Morgan Stanley Mortgage Capital Holdings, LLC
1585 Broadway, 10th Floor
New York, NY 10036

or to such other address as Lender may hereafter specify by written notice to Lessor.

12. Notwithstanding anything to the contrary contained elsewhere in the Lease, the Lease is assignable to the Lender without the consent of Lessor, and in the event the Lease is so assigned, the Lease is further assignable by Lender without the prior consent of Lessor, on a one time basis only, as long as Lessor receives written notice of the assignment from the Lender or the assignee.

13. Notwithstanding anything to the contrary contained elsewhere in the Lease, Lender may assign its interest in the Loan without the consent of Lessor, and any successor holder of the Loan may further assign the Loan without the consent of Lessor. Provided, however, that the parties acknowledge and agree that Lessor has no obligation to provide notice to any successor or assignee of Lender unless Lessor has received written notice of the existence and address of such successor or assignee pursuant to the terms of Section 10.01 of the Lease, which requires such successor or assignee 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 such Mortgagee." After receipt of such notice, Lessor shall serve such successor or assignee, by certified mail at the latest address furnished by such successor or assignee, a copy of every notice served by Lessor upon Lessee under the terms and provisions of the Lease so long as the Loan is in effect.

14. As long as Lender holds any mortgages or deeds of trust on the Leasehold Estate:

(a) Section 10.02 B of the Lease is amended to state that Lessor will not cancel this Lease in the absence of default. In addition, as a condition precedent to any amendment or a voluntary surrender of the Lease or an agreement to terminate or shorten the Lease ("Amendment"), Lessee must obtain Lender's prior written consent to such Amendment and deliver same to Lessor. As between Lessor and Lessee, Lessee shall have the responsibility to negotiate with Lender to obtain Lender's prior written consent to any Amendment of the Lease. Lessor will not process for signature any Amendment of the Lease without first receiving from Lessee a copy of Lender's signed approval of such Amendment. Without limiting the foregoing, Lessor and Lessee agree and acknowledge that no notice of an Amendment given under the Lease is effective against Lender, its successors or assigns, unless a copy of such notice has been delivered to Lender.

(b) In addition to the rights of lenders set forth in the Lease, if the Lease is terminated for any reason (including, without limitation, rejection of the Lease in bankruptcy) prior to the expiration of the term thereof, as the same may be renewed or

extended, Lender may request from Lessor the reinstatement of the Lease by curing all events of default susceptible of being cured and providing to Lessor written notice of Lender's intent to assume all of Lessee's obligations arising from the Lease within forty-five (45) days after the receipt by Lender of written notice from Lessor of such termination; at which time Lessor will enter into a reinstatement of the Lease with Lender.

15. Except for the construction of improvements identified in Section 4.07 of the Lease, all improvements required to be constructed under the provisions of the Lease have been completed in accordance with the provisions of the Lease, and within the time periods required under the Lease.

16. This Estoppel may not be changed, waived or discharged orally, but only in writing and in no event will be construed to modify the rights and obligations to which Lessor, Lessee or Lender would otherwise be entitled under the Lease.

17. This certification shall inure to the benefit of Lessor, Lessee, Lender, and its participants, and their respective successors and assigns, and all parties claiming by, through or under them, including any successor holder of the Loan now or hereafter held by Lender encumbering the Leasehold Estate, and a copy of this Estoppel may be delivered to any such party. The provisions hereof shall also inure to the benefit of any future lender providing leasehold financing to Lessee as if such future lender were a party hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated to be effective as of the date set forth in the first paragraph hereof.

LESSOR:

CITY OF EL PASO,

By:_____
Name:_____
Title:_____

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

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

STATE OF TEXAS §
§ ss.
COUNTY OF EL PASO §

This instrument was acknowledged on _____, 2013, by _____, the _____ of **CITY OF EL PASO**, a Texas non-profit corporation, on behalf of said non-profit corporation.

[S E A L]

_____
Notary Public, State of Texas

My Commission Expires:

_____

_____
Printed Name of Notary Public

AGREED AND ACKNOWLEDGED:

LESSEE:

MAC HOTEL PROPERTIES I, L.P.,
a Texas limited partnership

By: Mac Hotel Properties I GP, L.L.C.,
a Delaware limited liability company,
its general partner

By: _____
~~D. Dean Macfarlan~~ Bryan Larson
~~Chief Executive Office~~ President

STATE OF Texas §
§ ss.
COUNTY OF Dallas §

President This instrument was acknowledged on July 2, 2013, by ~~D. Dean Macfarlan~~ Bryan Larson, the ~~Chief Executive Officer~~ of Mac Hotel Properties I GP, L.L.C., a Delaware limited liability company, as the general partner of Mac Hotel Properties I, L.P., a Texas limited partnership, on behalf of said company and partnership.

[S E A L]

_____
Notary Public, State of Texas

My Commission Expires:

Angela J. McCorvey
Commission Expires
11-13-15

Angela J. McCorvey
Printed Name of Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY COVERED BY LEASE

[to be attached]

"EXHIBIT A"

PROPERTY DESCRIPTION

Description of a tract land containing approximately 3.5839 acres being a portion of Lot 1, Block 19, El Paso International Airport Tracts, Unit 10, an addition to the City of El Paso, El Paso County, Texas according to the Map thereof on file in Book 53, Page 12, Plat Records of El Paso County, Texas, and being more particularly described by metes and bounds as follows to wit:

Starting at a found city monument located at the centerline intersection of American Drive and Piper Court. Thence South 01°01'53" East along the centerline of American Drive a distance of 200.00 feet to a point. Thence South 88°58'07" West a distance of 34.00 feet to a point lying along the Westerly right-of-way line of American Drive. Thence, 194.31 feet along an arc of a curve to the left along said Westerly right-of-way line, whose interior angle is 13°33'40", whose radius is 820.96 feet, and whose chord bears South 07°48'43" East a distance of 193.86 feet to a found 5/8"ø rebar with yellow plastic cap stamped Tx. 2449, Roe Engr., L.C., said rebar being the "TRUE POINT OF BEGINNING".

Thence 113.84 feet along an arc of a curve to the left along the westerly right-of-way line of American Drive, whose interior angle 07°56'41", whose radius is 820.96 feet, and whose chord bears South 18°33'53" East a distance of 113.75 feet to a found chiseled "x" on concrete sidewalk;

Thence South 22°32'14" East a distance of 100.01 feet to a found chiseled "x" on concrete sidewalk, said chiseled "x" lying on the Westerly right-of-way line of American Boulevard;

Thence 282.62 feet along an arc of a curve to the right along the westerly right-of-way line of American Drive, whose interior angle 21°30'21", whose radius is 752.96 feet, and whose chord bears South 11°47'04" East a distance of 280.97 feet to a found chiseled "x" on concrete sidewalk;

Thence South 01°01'53" East along said Westerly right-of-way line of American Drive distance of 41.34 feet to a found chiseled "x" on concrete sidewalk;

Thence 33.41 feet along an arc of a curve to the right whose interior angle 95°43'23" whose radius is 20.00 feet, and whose chord bears South 46°49'48" West a distance of 29.66 feet to a found chiseled "x" on concrete sidewalk, said chiseled "x" lying on the Northerly right-of-way line of Boeing Drive;

Thence 44.16 feet along an arc of a curve to the left along the northerly right-of-way line of Boeing Drive, whose interior angle 01°28'37" whose radius is 1713.06 feet, and whose chord bears North 84°34'12" West a distance of 44.16 feet to a found chiseled "x" on concrete sidewalk;

Thence North 83°49'53" West along said Northerly right-of-way line of Boeing Drive a distance of 238.32 feet to a set chiseled "x" on concrete sidewalk;

Thence 85.74 feet along an arc of a curve to the left along the northerly right-of-way line of Boeing Drive, whose interior angle 02°38'19" whose radius is 1861.86 feet, and whose chord bears North 85°09'02" West a distance of 85.73 feet to a found chiseled "x" on concrete driveway;.

Thence North 01°01'53" West a distance of 238.14 feet to a found 5/8"ø rebar with yellow plastic cap stamped Tx. 2449, Roe Engr., L.C.;

Thence North 72°28'07" East a distance of 125.12 feet to a found 5/8"ø rebar with yellow plastic cap stamped Tx. 2499, Roe Engr., L.C.;

Thence North 17°31'53" West a distance of 231.00 feet to a set found 5/8"ø rebar with yellow plastic cap stamped Tx. 2499, Roe Engr., L.C.;

Thence North 88°58'07" East a distance of 209.89 feet back to the "TRUE POINT OF BEGINNING", and said parcel containing 156,116.54 square feet or 3.5839 acres of land more or less.

EXHIBIT A

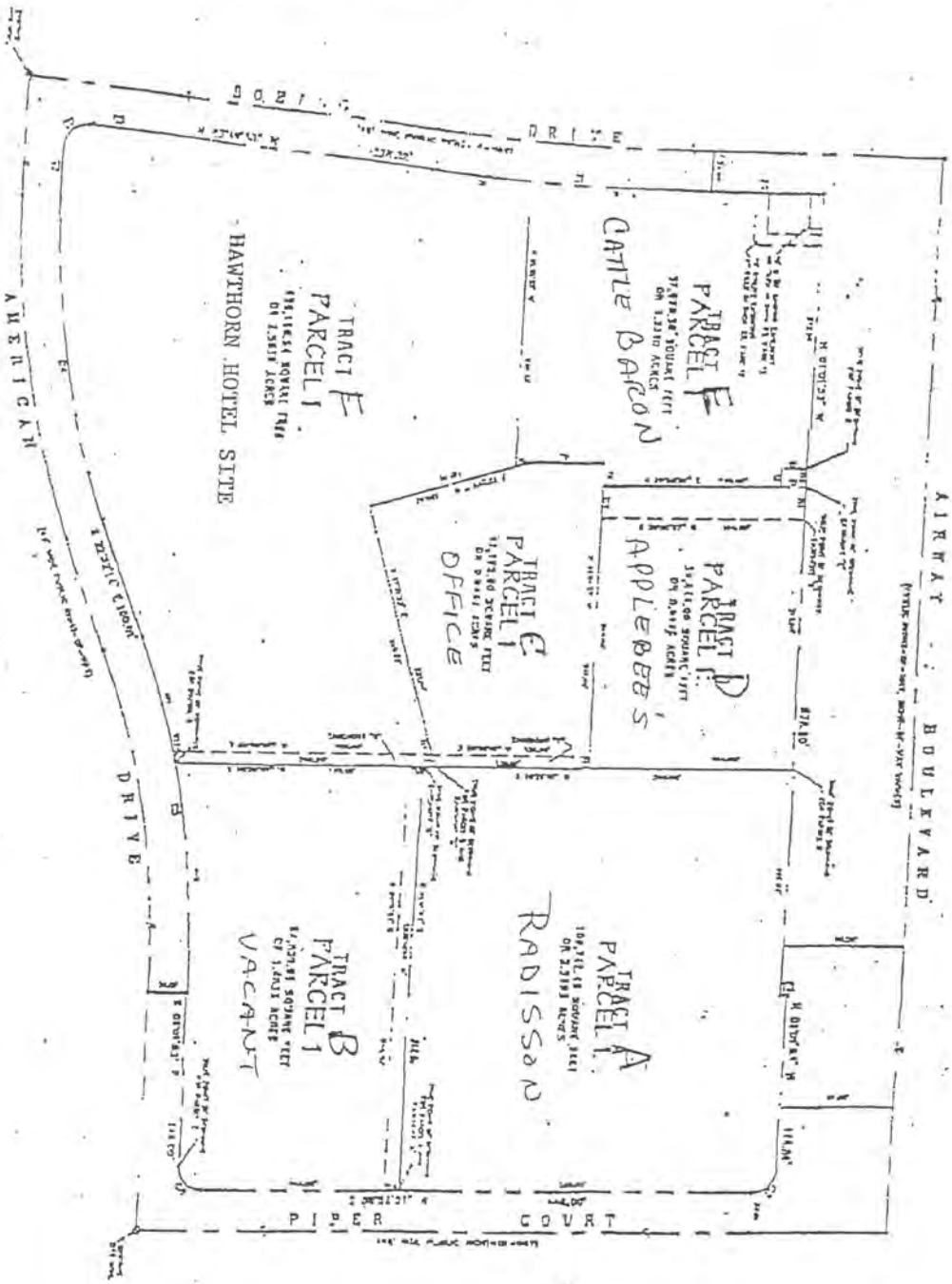
AIRWAY BOULEVARD
DRIVE
PIER COURT
HAWTHORN HOTEL SITE
TRACT F PARCEL 1
CATTLE BARON
TRACT D PARCEL 1
APPLEBEE'S
TRACT C PARCEL 1
OFFICE
TRACT A PARCEL 1
RADISSON
TRACT B PARCEL 1
VACANT

EXHIBIT B

DESCRIPTION AND COPIES OF LEASE, AMENDMENTS, ASSIGNMENTS, NONDISTURBANCE AGREEMENTS AND SUBLEASES

There are no amendments, assignments, and nondisturbance agreements. In addition, there are no subleases.

DALLAS_1 5998219v1

3E

HOTEL SITE LEASE

El Paso International Airport
El Paso, Texas

November 1, 2012
Effective Date

MAC HOTEL PROPERTIES I, L.P.
Lessee

HOTEL SITE LEASE
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EXHIBIT "A" - Metes & Bounds and Legal Description of Premises
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EXHIBIT "C" - Identified Improvements to be constructed
EXHIBIT "D" - Sample Hotel Gross Revenues Reporting Form

HOTEL SITE LEASE

THIS LEASE AGREEMENT is made this 23rd day of October 2012 by and between the City of El Paso ("Lessor") and Mac Hotel Properties I, L.P., a Texas limited partnership, ("Lessee").

WHEREAS, Lessor owns and operates El Paso International Airport, located in the County of El Paso, State of Texas, ("Airport");

WHEREAS, effective February 1, 2004, Lessor and Lessee entered into a Hotel Site Lease ("Original Lease") for the following property: Tract F of Lot 1, Block 19, El Paso International Airport Tracts, Unit 10, City of El Paso, El Paso County, Texas, municipally known and numbered as 6789 Boeing Drive, El Paso, Texas;

WHEREAS, Lessee has requested the termination of the current Lease and has requested that a new Lease be entered into; and

WHEREAS, Lessor deems it advantageous to itself and to its operation of the Airport to terminate the current Lease and enter into a new Lease with the Lessee for the parcel of land described herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out.

ARTICLE 1 – LEASE TERMINATION

1.01 Lease Termination. Lessor acknowledges that the Original Lease will be terminated effective as of 11:59:59 PM on October 31, 2012. However, Lessee acknowledges it retains liability for any previous acts or omissions of Lessee giving rise to liability under the Original Lease.

1.02 Uninterrupted Possession. By signing this Lease, Lessee affirms that it has been in continuous possession and control of the Premises covered in the Original Lease from February 1, 2004, through the date this Lease is signed.

1.03 Ownership of Improvements. By signing this Lease, Lessee affirms it owns all improvements located on the Premises and that the responsibilities for said improvements as described in the Original Lease will survive the termination of the Original Lease.

1.04 Revenue Reporting. Lessor requires that the Lessee submit a certified revenue report for the portion of the lease year that has elapsed on the Original Lease for the period of February 1, 2012 through the termination date of October 31, 2012. This certified revenue report is due within ninety (90) days, no later than December 30, 2012, of the termination of the Original Lease.

ARTICLE II – PREMISES AND PRIVILEGES

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:

> Tract F of Lot 1, Block 19, El Paso International Airport Tracts, Unit 10, City of El Paso, El Paso County, Texas, municipally known and numbered as 6789 Boeing Drive, El Paso, Texas, consisting of 156,116.54 square feet and more fully described on Exhibit "A" attached hereto and fully incorporated herein by references ("Premises").

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

2.03 Restrictions of Privileges, Uses and Rights. The rights granted hereunder are expressly limited to the construction and operation of facilities in accordance with Exhibit "B", Lease Restrictions and Covenants, attached hereto and fully incorporated herein by reference ("Lease Restrictions and Covenants").

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

A. That no alteration to the exterior of the Premises or change in the uses of the Premises shall be made without the specific prior written consent of Lessor. That no change of flag, a hotel re-branding or change in affiliation shall be made without the prior written consent of Lessor.

B. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas, the rules and regulations promulgated by their authority with reference to aviation and air navigation; and all reasonable and applicable rules, regulations and ordinances of Lessor, as all these laws, rules, and regulations, may be amended.

ARTICLE III - OBLIGATIONS OF LESSOR

3.01 Quiet Enjoyment. Lessor agrees that upon Lessee's paying rent and performing all of the covenants, conditions, and agreements herein set forth, Lessee shall and may

peaceably and quietly have, hold, and enjoy the Premises hereby demised for the terms hereby provided. Lessor has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder, and to do so throughout the Lease term and any renewals or extensions thereof.

3.02 Condition and Maintenance of Premises. Lessee accepts the Premises "**AS IS**". Lessor assumes no responsibility as to the condition of the Premises or the improvements located thereon and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition. Lessor will not be responsible for any expenses incurred in connection with preparing the site.

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

4.01 Net Lease. This Lease, in every sense, shall be without cost to Lessor for the development, maintenance and improvement of the Premises or the operation of a hotel on the site. It shall be the sole responsibility of Lessee to develop, keep, maintain, repair and operate the entirety of the Premises and all improvements and facilities placed thereon at Lessee's sole cost and expense.

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

4.03 Signs. Lessee shall not install any billboards or advertising signs on the Premises, provided, however, that Lessee may maintain on the exterior of any such buildings, its name(s) in accordance with the standards prescribed in the Lease Restrictions and Covenants.

4.04 Right to Close for Repairs. Lessee may, from time to time, close the Premises or parts of thereof only for such reasonable periods of time as may be required to make repairs, alterations, remodeling, or for any reasonably necessary reconstruction. Lessee shall provide Lessor with prior written notice of any such closing.

4.05 Operational Licenses and Permits. Lessee may apply for restaurant and alcoholic beverage licenses and other permits or licenses necessary for the operation of improvements on the Premises. The cost of obtaining any such licenses and permits shall be borne solely by the Lessee. As fee owner of the Premises, Lessor agrees and understands that it may be required to provide assistance to the Lessee in acquiring

such permits or licenses, including the execution of certain applications. Lessor agrees to provide such assistance as may be necessary and appropriate, in Lessor's discretion; provided, however, that LESSEE SHALL INDEMNIFY AND HOLD LESSOR HARMLESS FROM ALL LIABILITIES, CLAIMS, COSTS AND EXPENSES WHICH LESSOR MAY INCUR BY REASON OF HAVING SIGNED ANY SUCH APPLICATION OR APPLICATIONS.

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

4.07 Time of Construction. Lessee agrees to begin construction of the improvements identified in Exhibit "C" on the Premises no later than March 1, 2013 and complete construction by January 31, 2014. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one (1) complete set of the Final Plans as approved by the governmental agencies exercising jurisdiction thereover and copies of all issued permits. Lessee shall also provide a copy of the executed Certificate of Occupancy for the Premises to Lessor. In the event Lessee shall fail to begin or complete construction within the specified time period, Lessor shall be entitled to the percentage of gross revenues identified in Paragraph 6.01 C, Incentive to Construct, of this Lease.

4.08 Compliance With Laws. Lessee, at Lessee's expense, agrees that it will construct, operate and maintain improvements on the Premises in accordance with the Lease Restrictions and Covenants and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, as amended from time to time, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

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

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

A. Definitions.

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

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

B. Compliance.

(1) Lessee shall not cause or permit any hazardous material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. **Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon.** This obligation includes, but is not limited

to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises. However, excluding any environmental conditions that occurred and existed prior to the effective date of this lease. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

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

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

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

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

(5) Lessee shall insert the provisions of this Section 4.08 in any lease agreement or contract by which it grants a right or privilege to any person, firm or Corporation under this Lease.

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

Lessee's failure or the failure of its agents, employees, contractors, invitees or the failure of a third party to comply with any of the requirements and obligations of this Section shall constitute a material default of this Lease and shall permit Lessor to pursue the remedies as set forth in Section 11.02 in addition to all other rights and remedies provided by law or otherwise provided in the Lease, to which Lessor may resort cumulatively, or in the alternative.

4.09 Minimum Improvement Standard. Lessee covenants and agrees that the existing facilities, exclusive of paving and landscaping, cover a minimum of twenty percent (20%) of the Premises' land area, and no more than fifty percent (50%) of the Premises, and that any future improvements or modifications to the improvements will be in compliance with this requirement.

4.10 Maintenance. Lessee shall, at its sole cost and expense, maintain the Premises and the buildings, improvements and appurtenances thereto, in a presentable condition consistent with good business practice 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 thereon; shall maintain and repair all equipment thereon, 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 said maintenance is not undertaken by Lessee within ten (10)

days after receipt of written notice, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which shall be borne by Lessee.

4.11 Utilities. Lessee, at its expense, shall have the right to connect any and all sewer, water and utility mainlines or cables. Lessee shall pay for all service charges incurred for such connections. Lessee shall also pay for all meters and measuring devices installed by Lessee or a utility on the Premises and shall pay for all utilities consumed by Lessee.

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

4.13 Permitted Uses. Lessee covenants and agrees that in no event will it enter into any business activity or use of the Premises other than those specified in this lease and the Lease Restrictions and Covenants.

ARTICLE V - TERM OF LEASEHOLD

5.01 Term. The term of this Lease shall be for a term of forty (40) years commencing on the Effective Date as shown on the title page of this Lease ("Initial Term").

5.02 Option to Extend. So long as Lessee is not in default of the terms and conditions of this Lease, Lessee shall have the option to extend this Lease for an additional term of ten (10) years by notifying Lessor in writing of Lessee's election at least one hundred twenty (120) days prior to the expiration of the Initial Term. In the event the option to extend is so exercised, the Lease shall be extended for ten (10) years under the same terms and conditions.

5.03 Holding Over. It is agreed and understood that any holding over by Lessee of the Premises after the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month subject to the terms and condition of this Lease and at a rental of one and one-half times the current monthly minimum annual guarantee or percentage rental, whichever is greater. Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the

Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

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 - FEES AND RENTAL

6.01 Rental. Lessee shall pay to Lessor a Minimum Annual Guarantee or Percentage Rental, whichever is greater, as set forth herein below.

A. Minimum Annual Guarantee. For the purpose of computing the Minimum Annual Guarantee, Lessor and Lessee agree that the Premises comprise 156,116.54 square feet of land. The Minimum Annual Guarantee for the first Lease Year shall be calculated on the basis of 156,116.54 square feet at $0.5604 per square foot or EIGHTY SEVEN THOUSAND FOUR HUNDRED EIGHT SEVEN AND 71/100 DOLLARS ($87,487.71). For the second Lease Year and each succeeding Lease Year thereafter, including any extension or Option Period of this Lease, the Minimum Annual Guarantee shall be equal to eighty percent (80%) of the immediately preceding Lease Year's Percentage Rental; however, in no event shall the Minimum Annual Guarantee be less than the Minimum Annual Guarantee set forth in the first Lease Year. Lease Year means the twelve (12) consecutive month period beginning on the effective date of this Lease and each twelve (12) consecutive month period thereafter throughout the term of the Lease and any extension thereof. For example, the first lease year will be November 1, 2012 through October 31, 2013.

B. Percentage Rentals. Percentage Rentals shall be equal to the sum of five percent (5%) of Gross Revenues from room rentals, four percent (4%) of Gross Revenues from all alcoholic beverage sales, two percent (2%) of Gross Revenues from food sales and six percent (6%) of Gross Revenues from miscellaneous sales and services.

C. Incentive to Construct. If construction of the improvements identified in Exhibit "C" is not completed by January 31, 2014, beginning with the month of February 2014, Lessee will pay 5.25% of Gross Revenues for room rentals until Lessee completes construction and begins paying additional revenue related to the improvements identified in Exhibit "C". The completion of construction will be defined as the date the certificate of

occupancy is issued. Lessee shall provide a copy of the executed Certificate of Occupancy for the Premises to Lessor.

6.02 Gross Revenues. Gross Revenues shall include, but not be limited to, all monies or other consideration paid or payable to Lessee for business conducted on the Premises, such as those derived from room rentals, conference or ballroom room rentals, vending machines, food sales, and beverage sales, whether for cash or credit and without any deduction for credit card discounts and whether the same shall be paid or unpaid. Gross Revenues from miscellaneous sales and services shall include the gross revenues and receipts of Lessee (and all subtenants, licensees, concessionaires, permittees and others doing business on the Premises), from the sale of merchandise or rentals or services other than room rentals, beverage sales and food sales; provided that, in the case of miscellaneous sales and services by Lessee's subtenants, licensees, concessionaires, or permittees, only the net owed to Lessee from such subtenants, licensees, concessionaires or permittees shall be considered Gross Revenues from miscellaneous sales and services.

Excluded from Gross Revenues are:

A. Amounts of any sales or similar taxes imposed by Federal, State, County or City laws which are separately stated to and paid by the Lessee, whether currently levied or hereinafter levied or imposed, and directly payable to the taxing authority by the Lessee. No deduction shall be allowed from Gross Revenues for the payment of franchise taxes or taxes levied on the Lessee's activities, facilities, equipment or property, either real or personal;

B. Amounts of gratuities paid or given by customers to Lessee's employees in conjunction with Lessee's business activities on the Premises;

C. Receipts from the sale of fixtures, supplies or equipment of Lessee, its subtenants, licensee, and concessionaires used in the operation of business upon the Premises.

D. The value of any goods, wares or merchandise transferred by Lessee from the Premises to any other hotel, motel or business operated by Lessee, or by a wholly-owned subsidiary of Lessee for its own use or use of a subsidiary; and

E. Amounts which Lessee is unable to collect due to the filing of a bankruptcy petition by person or entity owing Lessee which results in the imposition of an automatic stay under the Bankruptcy Code. This uncollectible income shall not be included as Gross Revenues for the period of time during which the automatic stay is in effect and prevents Lessee from pursuing its collection efforts. However, immediately upon the removal of the

automatic stay, Lessee shall include all income, which was excluded under this provision and which has not been deemed uncollectible by the Bankruptcy Court, as Gross Revenues for the month following the removal of the automatic stay. Lessee agrees that prior to excluding any amounts under this provision; Lessee shall provide the Director of Aviation ("Director") with documentation that an automatic stay has been imposed.

6.03 Commencement of Rental. Payment of rental by Lessee to Lessor as aforesaid shall commence on the effective date of this Lease, which is November 1, 2012. The Minimum Annual Guarantee shall be paid in twelve (12) equal monthly installments in advance on or before the first day of each month throughout the term of the Lease. The portion (if any) of the Percentage Rentals due which exceeds the Minimum Annual Guarantee shall be paid no later than the 20th day of the month immediately following the month for which the Percentage Rentals were due.

6.04 Records of Lessee. With respect to business done by Lessee on the Premises, Lessee shall keep true and accurate amounts, records, books, and data which shall show all sales made and services performed for cash, credit, or otherwise (without regard to whether paid or not); and shall set forth all the Gross Revenues, as defined hereinabove.

As a portion of all Rentals due is determined by business activity of Lessee on the Premises, Lessee agrees to keep such books and records in accordance with generally accepted accounting practices, and such other records as Lessor may request and to deliver these documents to the Airport within ten (10) calendar days and at no cost to the City after a request for the documents has been made by the Director of Aviation. Invoices, cash receipts, and all other books and records of Lessee, shall be available for inspection or audit by authorized representatives of Lessor at all reasonable times and after ten (10) calendar days notice, during business hours for a period of three-hundred sixty (360) calendar days after the end of each Lease Year and after any hold over year, if any. If an audit is required by Lessor in accordance with this Lease, appropriate records will be maintained for a period of sixty (60) calendar days after completion of the audit.

With each payment of the Minimum Annual Guarantee and Percentage Rentals, Lessee shall submit to the Director a statement showing Lessee's Gross Revenues from the operation of its activities on the Premises for the preceding calendar month. This report is due by the 20th day of the month immediately succeeding that in which the revenue was made. This report shall be submitted in a format similar to the form provided in Exhibit "D".

Within ninety (90) calendar days following the end of each Lease Year, a statement showing Gross Revenues for the preceding Lease Year shall be submitted and certified from the Lessee's records by a certified public accountant. Such statement shall be signed and certified by the certified public accountant as an accurate

report of Lessee's Gross Revenue for the preceding Lease Year as defined in Section 6.02 Gross Revenues. Such statement showing Gross Revenues for the preceding Lease Year is to be accompanied by Lessee's payment covering any deficiency between payment made during the preceding Lease Year and the payment due for such Lease Year as identified in the Gross Revenue statement. If the Gross Revenue statement indicates that the amount due to Lessor is less than the payments made for the preceding year, then Lessor will reimburse to Lessee the excess amount without interest.

If, after the submission of Lessee's annual Gross Revenue statement, Lessor reasonably questions the accuracy of such statement, Lessor may, at its sole option, require Lessee to submit at Lessee's own cost, a certified Gross Revenue statement prepared by an independent certified public accountant; provided, however, that request shall not be made more frequently than once a Lease Year. "Independent" shall mean a certified public accountant who is not affiliated in fact or appearance in any manner with Lessee or its parent company or any subsidiaries. Nothing contained herein shall affect or diminish the rights granted pursuant to Section 6.05 below. Any failure of Lessor to request a certified Gross Revenue statement by an independent certified public accountant in any Lease Year shall not operate to bar or destroy the right of Lessor to request such a certified Gross Revenue statement in any subsequent Lease Year. The submission of such Gross Revenue statement by Lessee shall not be construed to limit Lessor's right to request audits as set forth in this Lease. Lessee, at its own expense, shall supply all records in a type, style and form satisfactory to the Director. Lessee shall maintain monthly Gross Revenue statements, as required hereunder, for a minimum of one (1) year at a place of business accessible to Lessor in El Paso, Texas. Lessee shall maintain annual Gross Revenue statements, as required hereunder, at its principal place of business, for a minimum of five (5) years, and shall forward same to Lessor during that time, if requested by Lessor.

6.05 Audit. For the purpose of determining accuracy of reporting Gross Revenues, Lessor may make a spot test audit and base its findings for the entire period upon such spot test; provided however, that such a spot test shall include at least twenty-five percent (25%) of the total time of the period being audited.

In addition, Lessor shall have the right, during any one Lease Year of this Lease, to authorize up to two (2) audits of the Lessee's records pertaining to the Lease. The cost of such audits shall be borne by Lessor, unless the results of such audits reveal a discrepancy of more than three percent (3%) between the Gross Revenues reported by the Lessee and the Gross Revenues as determined by audit for any twelve (12) month period. In case of such discrepancy, the full cost of the audit shall be borne by the Lessee.

Failure of Lessor to exercise its right to audit the Lessee, as set forth herein, shall in no way be construed as a waiver of any right to payment by Lessor of any rental or other payments due Lessor under the terms of this Lease, and Lessor hereby expressly

reserves its rights under common or statutory law, or otherwise, to enforce all terms of this Lease, including any right to payment hereunder.

6.06 Time of Payment. All Minimum Annual Guarantee payments due hereunder shall be paid in twelve (12) equal monthly installments. Said monthly minimum guarantee 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. Any deficiency between said monthly minimum guarantee and the Percentage Rental of Gross Revenues shall be paid to Lessor on or before the 20th day of the month immediately following the month for which the Gross Revenues were reported.

If construction of the improvements is not completed by January 31, 2013, beginning with the month of February 2014, Lessee will pay 5.25% of Gross Revenues for room rentals until Lessee completes the construction and begins paying additional revenue as proposed. The completion of construction will be defined as the date the certificate of occupancy is issued.

6.07 Unpaid Rent, Fees and Charges. Any installment of rent, any fees, or other charges or monies accruing under any provisions of this Lease that are not received by the 20th day of the month in which payment is due, shall bear interest at the rate equal to the maximum allowed by law from the date when the same was due according to the terms of this Lease until paid by Lessee.

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

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

ARTICLE VII - INSURANCE AND INDEMNIFICATION

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

shall be borne by Lessee. The resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser selected by Lessee be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value.

7.02 Liability Insurance. Lessee, at its sole cost and expense shall, throughout the term of the Lease, provide and keep in force for the benefit of Lessor and Lessee, as their respective interests may appear, comprehensive general liability in an amount not less than Five Hundred Thousand Dollars ($500,000.00) for bodily injury to one person for each occurrence, One Million Dollars ($1,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Hundred Thousand Dollars ($100,000.00) for property 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.

7.03 Performance and Payment Bonds. In the event of construction on the Premises, Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds for any work in excess of $50,000.00, as follows:

A. Prior to the date of commencement of any construction of any improvements on the Premises, a contract surety bond in a sum equal to the full amount of the construction project cost.

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

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

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 project.

C. In accordance with Article 7.19-1 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. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed 10% of the reinsurer's capital and surplus.

7.04 Authorized Insurance Companies. All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld.

Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Each such certificate shall contain:

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

B. A statement of the period during which the policy is in effect;

C. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance;

D. 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; and

E. A statement certifying the Lessor has been listed as an additional named insured on the policy.

7.05 Indemnification. Lessee agrees to indemnify and hold Lessor harmless against any and all claims, demands, damages, costs, and expenses, including investigation expenses and reasonable attorney's fees for the defense of such claims and demands, arising out of or attributed directly, or indirectly to the operation, conduct or management of Lessee's business on the Premises, its use of the Premises, or from any breach on the part of Lessee of any terms of this Lease, or from any act or negligence of Lessee, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the Premises including claims and damages arising in whole, or in part, from the negligence of Lessor. In case of any action or proceeding brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, agrees to defend the action or proceeding by counsel acceptable to Lessor.

ARTICLE VIII - DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY

8.01 Obligations of Lessee. During the term hereof, except as provided in Section 8.03 below, should the improvements upon the Premises be damaged or destroyed, in whole or in part, by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessee, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent and value as nearly as practical, to 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 Lease Restrictions and Covenants. In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefore and the requested modifications or alterations thereto.

B. Upon approval of the preliminary plans and specifications, as herein provided, Lessee shall prepare or cause to be prepared final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.

C. Prior to commencing construction, Lessee shall provide to Lessor a performance and payment bond as set forth in Section 7.03 and, if requested, Builder's Risk Insurance.

D. Upon compliance with the foregoing, and Section 8.02 below, 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.

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.

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 Lease Year of the Initial Term or last Lease Year of the option period, 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. All rents payable under this Lease shall be prorated and paid to the date of such cancellation. The receipt of insurance proceeds by Lessor will relieve Lessee from any responsibility to restore the Premises to their former condition.

ARTICLE IX - CONDEMNATION

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; or

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

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.

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.

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.

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

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.

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 Lease year of the initial term or option period, Lessee shall be relieved of the

responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect; all awards shall be disbursed in accordance with Section 9.06 (B) hereinabove.

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. Lessee shall receive, hold, and disburse any award in trust for expenditures that are necessary 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. 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

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. Lessee may encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage. The Mortgagee of any such Mortgage may deliver to Lessor a written notice specifying:

A. The amount of the obligation secured by the Mortgage.

B. The date of the maturity or maturities thereof; and

C. The name and mailing address of the Mortgagee.

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

10.02 Mortgagee's Rights.

A. Upon receipt of a notice or demand in accordance with Section 10.01 above, Mortgagee shall have one-hundred twenty (120) days after receipt of such notice within which, at Mortgagee's election, either:

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

2. To perform such other action as may be necessary to cure the default;

3. If a non-monetary default cannot be cured within one-hundred 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

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

In the case of either item 3 or 4 above, if the Mortgagee shall be delayed from taking the applicable action as a result of a judicial restriction such as a temporary restraining order, injunction or bankruptcy stay, then the aforementioned time limit shall be extended by the number of days of delay occasioned by such judicial restriction.

B. Lessor will not cancel this Lease in the absence of default, accept a voluntary surrender of this Lease or shorten the lease term without the prior written consent of the Mortgagee. However, after receipt of a request for this consent, approval will be assumed in the event Mortgagee does not respond in writing within thirty (30) days from receipt of notice.

C. Lessee hereby constitutes and appoints any Mortgagee as Lessee's agent and attorney-in-fact with full power, in Lessee's name, place and stead, and at Lessee's cost and expenses, to enter upon the Premises and perform all acts required to be performed hereunder.

D. 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. In the event of Lessee's bankruptcy, any person or entity to which this Lease is assigned to pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

In the event of Lessee's bankruptcy, if the Lessee rejects the Lease which results in a termination of the Lease, the Mortgagee may at its option

request reinstatement of the Lease by curing all events of default and providing written notice of its intent to assume all of Lessee's obligations arising from the Lease within thirty (30) days from the date the Lease is deemed rejected by the bankruptcy court. Failure to provide such written notice and cure the default within the thirty (30) day time period will result in a termination of Mortgagee's right of reinstatement.

E. Any action to be taken by Mortgagee hereunder as a prerequisite to keeping this Lease in effect shall be deemed to have been taken properly by such Mortgagee if such action is taken by nominee, agent or assignee of the Mortgagee.

F. The parties hereto shall give the Mortgagee notice of any condemnation proceedings affecting the Premises. The Mortgagee shall have the right to intervene and be made a party to any such condemnation proceedings and the parties hereto do hereby consent that the Mortgagee may be made such party, or intervenor.

10.03 Equipment Leasing. Some of the equipment and furniture (collectively designated herein as "Trade Equipment"), now or hereafter to be installed by Lessee in and used upon the Premises, may or will be directly financed by lender or owned by an equipment rental company ("Equipment Lessor") and leased to Lessee either directly from the Equipment Lessor or by way of equipment sublease or assignment of equipment lease from an Equipment Sublessor, and Lessor hereby agrees to recognize the rights therein of any such lender or Equipment Lessor or sublessor (or assignee). Lessor agrees that all such items of financed or leased Trade Equipment installed or to be installed on the real property constituting the Premises shall be and remain personal property and not real property, notwithstanding the fact that the same may be nailed or screwed or otherwise attached or affixed to such real property, and further agrees to recognize the rights therein of any such lender or Equipment Lessor or sublessor (or assignee). Lessee shall have the right at any time to remove or replace any and all such financed or leased Trade Equipment regardless of whether annexed or attached to the Premises, and to the extent of their respective interests therein such lender or Equipment Lessor or sublessor (or assignee) shall also have such a right. Any damage to the Premises caused by such a removal shall be repaired by and at the expense of Lessee or other party removing it. Lessor waives any claim arising by reason of any Lessor's lien or otherwise with the respect to the financed or leased Trade Equipment or to Trade Equipment upon which Lessee has granted a security interest to bona fide lender, and agrees that any such lender or Equipment Lessor or sublessor (as assignee) may remove and dispose of the same without reference to, and free and clear of, any or other demand of Lessor, provided that said disposal or sale shall not be made on the Premises. With respect to any Trade Equipment which is not leased, or subject to a security interest, Lessor agrees that as long as Lessee is not in default under the terms of the Lease, Lessee shall have the right to replace the same irrespective of

whether annexed or attached to the Premises. Any damage to the Premises caused thereby shall be promptly and effectively repaired and at the expense of Lessee.

10.04 No Subordination of Lessor's Fee. Lessor shall not be required to subordinate its fee, reversionary interest, or estate in and to any land, buildings or improvements now or hereafter erected on the Premises.

10.05 Encumbrancing by Lessor. Lessor hereby represents that Lessor's interest in the Premises is not currently subject to mortgage or deed of trust lien (a "Fee Mortgage"). Notwithstanding anything to the contrary contained herein, any future Fee Mortgage shall be, and shall state that it is, subordinate to this Lease, unless the holder of such Fee Mortgage (a "Fee Mortgagee"), Lessee and Mortgagee first enter into a non-disturbance agreement in recordable form providing that Lessee's and Mortgagee's rights under this Lease will not be disturbed or modified as a result of any foreclosure of the lien of the Fee Mortgage so long as Lessee performs all of its obligations hereunder.

ARTICLE XI - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

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

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;

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

D. Abandon the Premises;

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

F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or

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

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

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

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

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, 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.

11.04 Assignment and Transfer. Lessee shall not assign or transfer this Lease without the prior written approval of Lessor; provided, however, that Lessor will not

withhold its consent to an assignment or transfer of this Lease to an assignee that i) possesses sufficient financial strength to operate the hotel on the Premises and satisfy its obligations under this Lease and ii) such assignee demonstrates substantial experience in owning and operating hotel properties similar to those on the Premises or is hiring a property manager who demonstrates substantial experience in owning and operating hotel properties similar to those on the Premises. Lessor's approval shall not be required in the event of an assignment of this Lease by Lessee to the first Mortgagee.

Any person or entity to which this Lease is assigned to pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

11.05 Subleasing. Lessee shall not sublease all or any part of the Premises with the exception of the routine renting of rooms and/or services that are associated with the typical operation of a hotel.

11.06 Rights Upon Expiration or Early Termination. 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, both above and below ground level, including the foundation, 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 acceptable to 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 condition reasonably equivalent to the condition of the Premises as of the Effective Date of the Lease, reasonable wear and tear excepted.

Any occupancy by Lessee for the purposes of removing the improvements, completing the environmental assessment and any required remediation of the Premises shall be subject to the rental due hereunder and provided further that Lessee shall continue to

be bound by the terms and conditions of this Lease. Lessee and Lessor agree that this continued tenancy will not be continued as an extension or renewal of the lease term for other than the aforementioned one hundred eighty (180) days.

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

Lessor may, at its option, take title to the improvements in lieu of removal by or for 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.

11.07 Landlord's Lien. It is expressly agreed that in the event of default in the payment of rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, belonging to Lessee which are placed in, or become a part of, the Premises, as security for rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Lessor agrees that Lessor will not levy a landlord's lien against any personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the Lessor may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first the necessary proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

Notwithstanding the foregoing, upon the written request of Lessee, Lessor agrees to subordinate its landlord's lien on furniture, inventory or equipment to any Mortgagee or any other lender not affiliated with Lessee who provides financing for this furniture, inventory or equipment.

ARTICLE XII - GENERAL PROVISIONS

12.01 Continuity of Deed Restrictions and Covenants. This Lease agreement is subject to the terms, covenants and conditions contained in the Covenants. Lessor reserves the right to revise the standards set forth in the Lease Restrictions and

Covenants provided, however, that such revisions will not, in Lessor's opinion, cause a substantial reduction in the value of Lessee's leasehold interest. Lessor's right to revise the Lease Restrictions and Covenants 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.

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 on the El Paso International Airport.

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

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

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.

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
2 Civic Center Plaza
El Paso, Texas 79999

COPY TO: Director of Aviation
El Paso International Airport
6701 Convair Road.
El Paso, Texas 79925-1099

LESSEE: Mac Hotel Properties I, L.P.
8343 Douglas Avenue, Suite 300
Dallas, Texas 75225
Attn: President

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

12.05 Attorney's Fees. If Lessor brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, Lessor shall be entitled to recover reasonable attorney's fees and all costs incurred, in addition to any other relief sought.

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.

12.07 Nondiscrimination Covenant. Lessee, for himself, his 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 (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

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

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

D. That Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations,

Department of Transportation, Subtitle A, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P. L. 93-112) and 49 CFR Part 27.

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

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

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

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

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

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.

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

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

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.

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

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.

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.

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 during the term of this Lease and at no cost to Lessor, Lessee shall provide written proof satisfactory to the Director that all such taxes and governmental charges for the previous calendar year 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.

12.16 Restrictions and Reservations. This Lease is subject to all rights-of-way, easements, dedications, restriction, 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 the all Environmental Law and the purpose of showing the Premises; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

12.17 Subordination of Lease. All rights granted in this Lease shall be subordinate to the rights in any deed of the Premises from the United States to the City of El Paso.

12.18 Entire Agreement. This document contains all of the agreements between the parties and may not be modified except by an agreement in writing signed by both parties.

12.19 Authorization To Enter Lease. If Lessee signs this Lease as a Corporation each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing Corporation that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

12.20 Lessee's Investment. All improvements upon the Premises or alterations to such improvements made by Lessee shall be collectively referred to herein as "Lessee's Investment." Lessee's Investment is the property of Lessee. Lessee shall retain all rights to depreciation, deductions and tax credits arising from ownership of Lessee's Investment and Lessee's Investment shall be included as part of Lessee's leasehold interest in the Premises.

12.21 Recording. Lessor and Lessee will execute for the purposes of recordation in the appropriate recording office a memorandum or short form of the Lease containing the names of the parties, a description of the Premises, the term of this Lease, and such other provisions as either party may reasonably require. The cost and expenses of recording the memorandum or short form of this Lease shall be borne by Lessee. Each party agrees that it will not record the Lease in its entirety unless such a recording is

required by any Mortgagee. The memorandum or short form of Lease shall not be recorded until after the effective date of the Lease.

12.22 Estoppel Certificates. Lessor and Lessee will, at any time and from time to time request of the other party, execute, acknowledge, and deliver to the other party a certificate certifying:

A. That this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same are in full force and effect as modified and stating such modifications);

B. The dates, if any, to which the annual minimum rental, percentage rental and any additional rental and charges have been paid; and

C. Whether there are any existing defaults by the other party to the knowledge of the party making such certification specifying the nature of such default, if any.

Any such certificate may be relied upon by any party to whom the certificate is directed.

12.23 Waiver of Warranty of Suitability. Lessor disclaims any warranty of suitability that may arise by operation of law. Lessee leases the Premises as is and Lessor does not warrant that there are no latent defects that are vital to Lessee's use of the Premises for their intended commercial purpose.

12.24 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, the indemnification provisions of Paragraph 4.07, Compliance with Law, and Paragraph 7.05, Indemnification.

12.25 Effective Date. Regardless of the date signed, this Lease shall be effective as of November 1, 2012.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this 23rd day of October 2012.

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 23rd day of October, 2012, by Joyce A. Wilson as City Manager of the City of El Paso (Lessor).

Notary Public, State of Texas

My Commission Expires:
12/10/2015

JACQUELINE S. LEYVA
NOTARY PUBLIC
In and for the State of Texas
My commission expires
12-10-2015

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

CITY CLERK DEPT.
2012 OCT 16 AM 8:39

CITY CLERK DEPT.

2012 OCT 17 AM 11:53

LESSEE:
MAC HOTEL PROPERTIES I, L.P.,
A Texas Limited partnership

By: Mac Hotel Properties I GP, L.L.C.,
A Delaware limited liability company, its general partner

By: _____
Printed Name: D. Dean Mactarlan
Title: CEO

Mac Hotel Properties I GP, L.L.C. hereby joins in the execution of the Lease for the purposes of unconditionally guaranteeing the payment and performance of all of Lessee's obligations under this Lease.

MAC HOTEL PROPERTIES I GP, L.L.C.,
a Delaware limited liability company

By: _____
Printed Name: D. Dean Mactarlan
Title: CEO

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF DALLAS)

This instrument was acknowledged before me on this 15th day of October, 2012, by D. Dean Mactarlan as CEO of the Mac Hotel Properties I, GP, L.L.C., a Delaware limited liability company, the general partner of Mac Hotel Properties I, L.P., a Texas limited partnership on behalf of said partnership (Lessee).

_____
Notary Public, State of Texas

My Commission Expires:
May 19, 2015

JESSICA LOVATO
Notary Public, State of Texas
My Commission Expires
May 19, 2015

[ACKNOWLEDGMENTS CONTINUE ON FOLLOWING PAGE]

CITY CLERK DEPT.

2012 OCT 17 AM 11:53

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF DALLAS)

This instrument was acknowledged before me on this 15th day of October, 2012, by D. Dean McFarlan as of Mac Hotel Properties I, GP, L.L.C., a Delaware limited liability company, on behalf of said company (Lessee).

Jessica Lovato
Notary Public, State of Texas

My Commission Expires:
May 19, 2015

JESSICA LOVATO
Notary Public, State of Texas
My Commission Expires
May 19, 2015

"EXHIBIT A"

PROPERTY DESCRIPTION

Description of a tract land containing approximately 3.5839 acres being a portion of Lot 1, Block 19, El Paso International Airport Tracts, Unit 10, an addition to the City of El Paso, El Paso County, Texas according to the Map thereof on file in Book 53, Page 12, Plat Records of El Paso County, Texas, and being more particularly described by metes and bounds as follows to wit:

Starting at a found city monument located at the centerline intersection of American Drive and Piper Court. Thence South 01°01'53" East along the centerline of American Drive a distance of 200.00 feet to a point. Thence South 88°58'07" West a distance of 34.00 feet to a point lying along the Westerly right-of-way line of American Drive. Thence, 194.31 feet along an arc of a curve to the left along said Westerly right-of-way line, whose interior angle is 13°33'40", whose radius is 820.96 feet, and whose chord bears South 07°48'43" East a distance of 193.86 feet to a found 5/8"ø rebar with yellow plastic cap stamped Tx. 2449, Roe Engr., L.C., said rebar being the "TRUE POINT OF BEGINNING".

Thence 113.84 feet along an arc of a curve to the left along the westerly right-of-way line of American Drive, whose interior angle 07°56'41", whose radius is 820.96 feet, and whose chord bears South 18°33'53" East a distance of 113.75 feet to a found chiseled "x" on concrete sidewalk;

Thence South 22°32'14" East a distance of 100.01 feet to a found chiseled "x" on concrete sidewalk, said chiseled "x" lying on the Westerly right-of-way line of American Boulevard;

Thence 282.62 feet along an arc of a curve to the right along the westerly right-of-way line of American Drive, whose interior angle 21°30'21", whose radius is 752.96 feet, and whose chord bears South 11°47'04" East a distance of 280.97 feet to a found chiseled "x" on concrete sidewalk;

Thence South 01°01'53" East along said Westerly right-of-way line of American Drive distance of 41.34 feet to a found chiseled "x" on concrete sidewalk;

Thence 33.41 feet along an arc of a curve to the right whose interior angle 95°43'23" whose radius is 20.00 feet, and whose chord bears South 46°49'48" West a distance of 29.66 feet to a found chiseled "x" on concrete sidewalk, said chiseled "x" lying on the Northerly right-of-way line of Boeing Drive;

Thence 44.16 feet along an arc of a curve to the left along the northerly right-of-way line of Boeing Drive, whose interior angle 01°28'37" whose radius is 1713.06 feet, and whose chord bears North 84°34'12" West a distance of 44.16 feet to a found chiseled "x" on concrete sidewalk;

Thence North 83°49'53" West along said Northerly right-of-way line of Boeing Drive a distance of 238.32 feet to a set chiseled "x" on concrete sidewalk;

Thence 85.74 feet along an arc of a curve to the left along the northerly right-of-way line of Boeing Drive, whose interior angle 02°38'19" whose radius is 1861.86 feet, and whose chord bears North 85°09'02" West a distance of 85.73 feet to a found chiseled "x" on concrete driveway;

Thence North 01°01'53" West a distance of 238.14 feet to a found 5/8"ø rebar with yellow plastic cap stamped Tx. 2449, Roe Engr., L.C.;

Thence North 72°28'07" East a distance of 125.12 feet to a found 5/8"ø rebar with yellow plastic cap stamped Tx. 2499, Roe Engr., L.C.;

Thence North 17°31'53" West a distance of 231.00 feet to a set found 5/8"ø rebar with yellow plastic cap stamped Tx. 2499, Roe Engr., L.C.;

Thence North 88°58'07" East a distance of 209.89 feet back to the "TRUE POINT OF BEGINNING", and said parcel containing 156,116.54 square feet or 3.5839 acres of land more or less.

EXHIBIT A

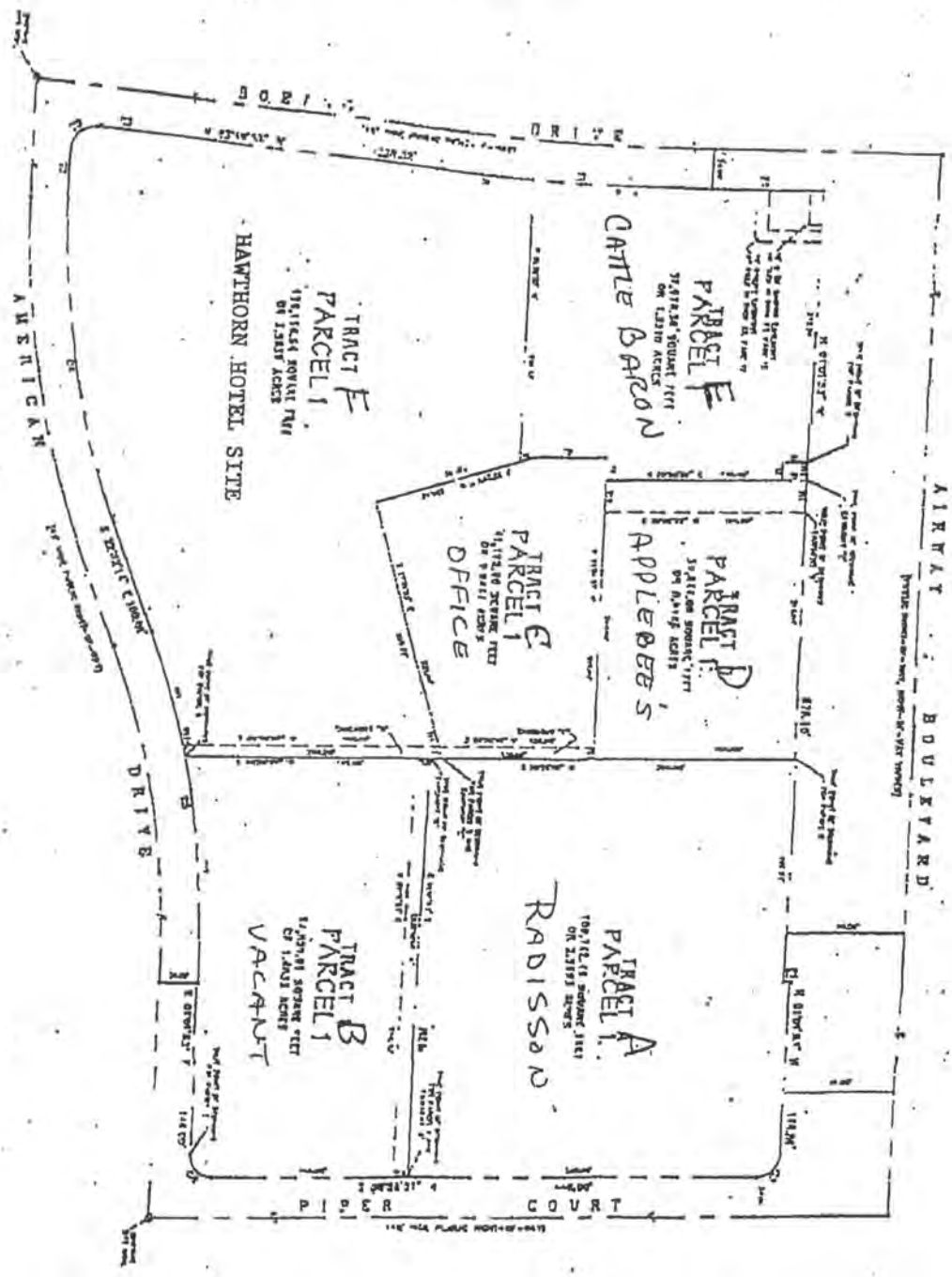
AIRWAY BOULEVARD
AMERICAN DRIVE
PIER COURT
TRACT F PARCEL 1
HAWTHORN HOTEL SITE
CATTLE BARON
TRACT D PARCEL 1
APPLEBEE'S
TRACT E PARCEL 1
OFFICE
TRACT B PARCEL 1
VACANT
TRACT A PARCEL 1
RADISSON

EXHIBIT "B"

LEASE RESTRICTIONS AND COVENANTS

Lessor and Lessee hereby agree that the property more particularly described below shall be used and occupied subject to the Restrictions and Covenants hereinafter set forth:

ARTICLE I – PROPERTY

The real property subject to these Restrictions and Covenants is more particularly described as follows:

Tract F of Lot 1, Block 19, El Paso International Airport Tracts, Unit 10, City of El Paso, El Paso County, Texas, municipally known and numbered as 6789 Boeing, El Paso, Texas, consisting of 156,116.54 square feet. ("Premises")

ARTICLE II - DEFINITIONS

Whenever used in these Restrictions and Covenants or the Lease to which it is attached, the following terms shall have the following meanings:

A. **"AIRPORT"** shall mean the El Paso International Airport as depicted on the Airport Layout Plan.

B. **"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.

C. **"BUILDING COVERAGE"** shall mean the surface area of the Premises that may be covered by Buildings, expressed as a percentage of the total site area

D. **"BUILDING SITE"** shall mean the entire Premises (if contiguous) leased by Lessee and shown as "Premises" in Exhibit A of the Lease to which these Lease Restrictions and Covenants are attached.

E. **"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.

F. **"DIRECTOR OF AVIATION" or "DIRECTOR"** shall mean the Director of Aviation of El Paso International Airport.

G. **"FAA"** the Federal Aviation Administration of the U. S. Government or any federal agencies succeeding to its jurisdiction.

H. **"FRONT LOT LINE"** shall mean the property line where the Premises abuts a street.

I. **"LESSEE"** shall mean Mac Hotel Properties I, L. P., and any assignee permitted under the Lease.

J. **"LOT"** shall mean one of the numbered parcels on the map entitled "El Paso International Tracts Unit 10", as filed with the County Clerk, County of El Paso, Texas.

K. **"PERMITTED USES"** shall mean the uses which may be engaged in upon the Premises.

L. **"PREMISES"** the property as identified in Article I of this Lease, and described in Exhibit A of the attached Lease.

M. **"REAR LOT LINE"** shall mean the property line which does not abut a street, and which usually is opposite the "FRONT LINE LOT".

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

O. **"STREET"** shall mean any street, highway or other public thoroughfare recognized by the City.

ARTICLE III - PERMITTED USES AND PERFORMANCE STANDARDS

A. **Permitted Uses.** No building, structure or land shall be used for any purpose other than for a hotel, including restaurants, bars and gift shops incidental to the primary use as a hotel. Lessee shall not operate or permit others to operate an auto rental concession or business on the Premises, except that Lessee may allow an auto

rental company to maintain a direct telephone line, information or rental desk in the Hotel lobby for the convenience of Hotel guests, provided such auto rental company has an appropriate contractual arrangement with Lessor permitting its operation on airport property. Also, Lessee shall not operate or permit others to operate an auto parking concession or business on the Premises except to the extent necessary to provide parking for Hotel guests and customers. All uses not expressly granted in this paragraph A. are prohibited.

B. **Performance Standards**. The Premises shall not be used or occupied in any manner so as to create any dangerous, 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;
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.

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

D. **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 of the Premises.

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

F. **Dust Control.** All ground areas not covered by structures shall be landscaped or surfaced with concrete, asphalt 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. Such development shall be accomplished before issuance of a certificate of occupancy.

G. **Heat or Glare.** Any operation producing intense glare or heat shall be performed within an enclosed or screened area in such manner that the glare or heat emitted will not be discernible from the property line of the Premises.

H. **Electronic or Radio Interference.** No electrical, electronic, or radio emissions shall be produced that will interfere, obstruct, or adversely affect the operation of air navigation aids and Airport communications.

I. **Illumination.**

1. Exterior Lighting. The design and location of exterior lighting shall comply in all respects to the requirements of the City, the Federal Aviation Administration or any successors agencies, and other governmental agencies having applicable jurisdiction with respect to height, type and placement of lighting standards as they may affect the safety of flight operations into, from and around the Airport.

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

J. **Signs.** The number, size, design, and location of all signs displayed for observation from outside a Building whether displayed on, near, or within a Building shall be subject to prior written approval by the Director of Aviation. All signs shall comply with an applicable sign ordinances and building codes of the City of El Paso and with all rules and regulations of the Federal Aviation Administration and its successor.

Signs on the Premises shall be limited to those identifying the uses conducted on the Premises, to those necessary for directional purposes, and to those required for temporary advertising of the rental of the Premises. Outdoor advertising, billboards or flashing lighting shall not be permitted.

K. **Refuse or Trash**. No refuse or trash shall be kept, stored or allowed to accumulate on the Premises.

L. **Storage.** All storage of every type, except of automobiles or aircraft, shall be within the buildings or enclosures approved in writing by the Director of Aviation. Storage of parts, service equipment or similar items shall be expressly prohibited outside buildings or such enclosures.

M. **Sewage Disposal Systems.** No cesspool, septic tank or other sewage disposal system or device shall be installed, maintained or used upon the Premises without the written approval of the City.

ARTICLE IV - DEVELOPMENT OF SITE-REQUIRED IMPROVEMENTS

A. **Off Street Parking.** All provisions of automobile parking for employees and visitors of the Lessee shall be placed on the Premises. No parking whatsoever shall be permitted on the streets.

Off street parking facilities shall be provided in accordance with all City laws, rules and regulations, and shall be sufficient for the parking of all automobiles necessary to the conduct of the business. Off street parking facilities shall comply with all local, state, and federal laws including, but not limited to, the American with Disabilities Act.

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

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

C. **Setbacks.** All buildings shall be set back a minimum of twenty-five feet from the lot line(s) facing the street; the area between the lot line(s) and the setbacks shall be landscaped. If visitor parking is provided in the front setback, all buildings shall be setback a minimum of fifty feet from the lot line. At least twenty percent of the required minimum front setback area and side setback areas facing the street shall be landscaped and planted. Side setbacks (not facing the street) shall be a minimum of fifteen feet, and fifty percent of the required minimum setbacks shall be landscaped and planted. Rear setbacks shall be ten feet from the lot line or utility easement line, provided such construction does not interfere with utility services.

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

Setback areas shall be landscaped to the minimum extent outlined in paragraph C above. In addition, paving or landscaping shall extend from the property line to the

curb, such paving and landscaping to be compatible with treatment for this area on other lots on the same Block.

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

E. **Building Heights.** All building heights shall conform to FAA rules and regulations and shall require written approval of the City. The term "building height" shall include any Building equipment, extrusions, etc.

F. **Building Coverage.** All Buildings and structures, or portions thereof, placed on the Premises shall not cover more than 50% of the building site.

G. **Type of Construction.** All Buildings shall be framed with reinforced concrete or masonry, structural steel, structural aluminum, or wood. Siding shall be masonry, glass or enameled steel. Concrete or masonry units shall be kept neatly painted, if used. Pre-fabricated metal buildings are specifically prohibited.

All Buildings shall conform to applicable laws, ordinances and building codes of the City.

H. **Storage and Vehicle Loading Area.** All outside storage and refuse areas shall be constructed and contained to eliminate odors, insects, dust, visual nuisances, and other similar nuisances.

No materials, supplies, or equipment, including Lessee-owned or Lessee-operated trucks, shall be stored in any area on the Premises except inside a closed Building or behind a barrier completely screening such areas from view of adjoining Lots or public Streets.

All provisions for the loading and maneuvering of vehicles incidental to the operation of the business shall be placed on the Premises and shall not encroach into Setback areas except the side setback area; on street vehicle loading shall not be permitted. Vehicle loading shall be permitted only at the rear of Buildings, or on a side, except that such loading performed at a side shall be completely screened from view of adjoining Lots or public Streets.

I. **Pipes.** No water pipe, sewer pipe or drainage pipe (other than those within structures) shall be installed or maintained upon the Premises above the surface of the ground, except hoses and moveable pipes used for irrigation or similar purposes, as approved by the Director of Aviation.

J. **Fencing.** Fencing between Buildings shall be constructed as required by the City. The placement and design of such construction shall be in accordance with plans and specifications approved by the City or its authorized agent.

ARTICLE V - PREPARATION AND SUBMISSION PLANS FOR IMPROVEMENT

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

B. **Codes and Regulations.** All improvements shall be planned and constructed in accordance with the laws and ordinances of the City, as amended, applicable building

codes as amended, all applicable State and Federal laws as amended, and all rules and regulations of the Federal Aviation Administration or any successor agencies; as amended.

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

D. **Commitment to Construct.** Upon approval by the Director of plans for construction of any structure, a copy of the approved plans shall be deposited for permanent record with the Airport.

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

E. **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 specified. Failure to complete such work in the time

specified shall be considered a default and the City may terminate the Lease to which this document is attached.

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

G. **Construction Without Approval.** If any structure shall be altered, erected, placed or maintained upon the Premises other than in accordance with plans and specifications approved by the Director and the City, such alterations, erection and maintenance shall be deemed to have been undertaken without approval required herein. This restriction shall be applicable to landscaping plans and signage plans as well as architectural plans.

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

H. **Fee for Examination of Plans and Specifications.** The City may charge and collect a reasonable fee, as determined every five years by the City or its authorized agent, for architectural review and other reviews of plans submitted for approval. Such plan could relate to initial development or alterations to existing development. The fee shall be payable at the same time such plans are submitted. If initial plans or any subsequent plans are disapproved, an additional review fee, as determined by the City or its authorized agent, shall be paid before further review.

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

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

ARTICLE VI - GENERAL PROVISIONS

A. **Cutting and Filling**. The City or its authorized agent may at anytime make such cuts and fills upon any lot or other part of Premises and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the streets in or adjacent to any Lot and to drain surface waters therefrom.

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

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

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

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

EXHIBIT C

IDENTIFIED IMPROVEMENTS TO BE CONSTRUCTED

Lessee will complete construction of the improvements listed below as a means to increase revenue streams at the Premises by January 31, 2014:

- **Bar/Lounge:** The existing breakfast area consisting of approximately 700 square feet will be redesigned to allow for dual use – breakfast area in the morning and as a bar/lounge in the evening. The area will have a seating capacity of approximately twenty (20).
- **Automated Teller Machine (ATM):** The ATM will be acquired and owned or leased by the Lessee and will be installed in the hallway area near the entrance to the breakfast area. Lessee will maintain a service and processing agreement with a qualified firm to service and process transactions. Users will be charged a fee for transactions.
- **Sundry Store:** A small shop of approximately 60 square feet will be opened in the lobby area adjacent to the reception stocked with items such as toothbrushes, razors, and other personal items, and other products such as small selection of snacks. Shop hours will vary with the seasons, occupancy levels, and special events.

EXHIBIT D
EL PASO INTERNATIONAL AIRPORT

Sample Hotel Site Lease Gross Revenues Reporting Form

Lessee Name: _____

Property Name: _____

Reporting Period: _____ (month/year

Revenue Categories			Percentage Rental*	Amount Due to EPIA
Room Sales				
Gross Revenue	$	-		
Less Allowances*	$	-		
Total Room Sales	**$**	**-**	**5%**	**$ -**
Alcoholic Beverages Sales				
Gross Revenue	$	-		
Less Allowances*	$	-		
Total Alcoholic Beverage Sales	**$**	**-**	**4%**	**$ -**
Food Sales				
Gross Revenue	$	-		
Less Allowances*	$	-		
Total Food Sales	**$**	**-**	**2%**	**$ -**
Miscellaneous Sales & Services* **				
Telephone Revenue				
Gross Revenue	$	-		
Less Cost**	$	-		
Net Telephone Revenue	$	-	6%	$ -
Laundry Revenue				
Gross Revenue	$	-		
Less Cost**	$	-		
Net Laundry Revenue	$	-	6%	$ -
Total Miscellaneous Sales & Services	**$**	**-**	**6%**	**$ -**

Total Amount Due to EPIA	$	-
Less Prepaid Rental Amount	$	-
Balance Due	**$**	**-**

* Percentage rental due for each revenue category as defined in Section 6.01 Rental, Subsection B Percentage Rental.

** Exclusions from gross revenues as defined in Section 6.02 Gross Revenues.

*** This section may be duplicated to identify multiple sources of miscellaneous revenue as appropriate to the operation.