

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

**DEPARTMENT:** Airport  
**AGENDA DATE:**  
**CONTACT PERSON/PHONE:** Patrick T. Abeln, 780-4724  
**DISTRICT(S) AFFECTED:** 3

**SUBJECT:**

Approve a Resolution authorizing the City Manager to sign a one year Industrial Site Lease between the City, and Mr. & Mrs. Casillas for the property located at 7729 Lockheed Dr.

**BACKGROUND / DISCUSSION:**

Mr. & Mrs. Casillas were assigned the Industrial Site lease in November of 1985 and are currently in holdover. Although they were originally interested in removing and replacing the existing structures and executing a new, long-term lease, Mr. and Mrs. Casillas now desire only a one-year term agreement, in order to permit Mr. Casillas to close his insurance business and retire.

Pertinent provisions of the new lease:

Term: One Year

Sq Ft: 20,550

Rate: \$0.44 per Sq Ft, which is 8% of the current fair market value for this property

\$753.50 per Month, or \$9,042.00 per Annum

Other: Demolition of all buildings is required of Mr. and Mrs. Casillas, upon the expiration or early termination of this lease

**PRIOR COUNCIL ACTION:**

The existing lease was approved by Council action in June of 1962, and Council further approved the assignment of the lease to Mr. & Mrs. Casillas in November of 1985

**AMOUNT AND SOURCE OF FUNDING:**

N/A This is a revenue generation lease.

**BOARD / COMMISSION ACTION:**

The Airport Advisory Board at their July 31, 2008 meeting recommended approval of the Industrial Site Lease.

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

**LEGAL:**  **FINANCE:** (if required) \_\_\_\_\_  
Raymond L. Tellez, Asst. City Attorney

**OTHER:**  \_\_\_\_\_  
Patrick T. Abeln, A. A. E., Director of Aviation

*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**

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

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

CITY CLERK DEPT.

08 AUG 11 AM 8:56

## RESOLUTION

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

THAT the City Manager be authorized to sign a Industrial Site Lease by and between the **CITY OF EL PASO** ("Lessor") and **LUIS and YOLANDA CASILLAS** ("Lessee") regarding the following premises: East 100 feet of Lot 10, Block 8, El Paso International Airport Tracts, City of El Paso, El Paso County, Texas, which is municipally known and numbered as 7729 Lockheed, El Paso, Texas.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

CITY OF EL PASO

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

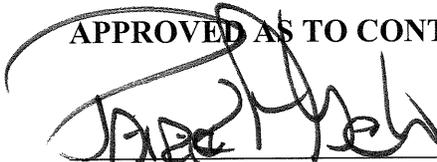
ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Raymond L. Telles  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Patrick T. Abeln, A.A.E.  
Director of Aviation

# **INDUSTRIAL SITE LEASE**

**El Paso International Airport  
El Paso, Texas**

**Luis and Yolanda Casillas  
Lessee**

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**Effective Date**

**INDUSTRIAL SITE LEASE  
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**ATTACHMENTS**

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

**EXHIBIT "B"** - Declaration of Restrictions and Covenants Industrial Zones

## **INDUSTRIAL SITE LEASE**

This **INDUSTRIAL SITE LEASE AGREEMENT** ("Lease") is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2008 by and between the **City of El Paso** ("Lessor") and **Luis and Yolanda Casillas** (collectively referred to herein as "Lessee").

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

**WHEREAS**, the management of the Airport includes property managed by the Director, which is located outside of the boundaries of the Airport;

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

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

**WHEREAS**, Lessee has indicated a willingness and ability to properly keep, maintain and improve said ground in accordance with standards established by Lessor and further agrees to return such grounds to Lessor upon the expiration or termination of this Lease, having removed any and all improvements;

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

### **ARTICLE I - PREMISES AND PRIVILEGES**

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

East 100 feet of Lot 10, Block 8, El Paso International Airport Tracts, City of El Paso, El Paso County, Texas, which is municipally known and numbered as 7729 Lockheed and more fully described in **EXHIBIT "A"** attached hereto and incorporated herein by reference (the "Premises").

**1.02 No Right to Construct.** Lessee shall have no rights or privileges to construct any improvements on the Premises. However, Lessee shall have the right to maintain, operate and remove improvements existing upon the Premises as of the Effective Date, subject to the terms, covenants, and conditions herein contained herein.

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

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

- A. That no functional alteration of the Premises or functional change in the uses of such Premises shall be made without the prior written consent of Lessor; and
- 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 and all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.

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

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

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

## **ARTICLE III - OBLIGATIONS OF LESSEE**

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

- A. Keep and maintain the Premises and improvements located thereon in a good state of repair at all times;

- B. Pay any and all taxes assessed against the Premises, improvements located on the Premises, Lessee's interest in the Premises and improvements, and all of Lessee's personal property located on the Premises; and
- C. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

**3.02 Condition of Premises.** Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon subject to Lessor's performance of the obligations imposed on Lessor under this Lease.

**3.03 Compliance With Laws.** Lessee, at Lessee's expense, agrees that it will operate and maintain the improvements on the Premises in accordance with the Declarations, and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon. By way of example and not in limitation of the foregoing, the execution of this Lease and approval of Lessee's plans by the Director or designee shall not preclude the requirement that Lessee obtain all other approvals necessary for development of Lessee's project such as, but not limited to, building permits and certificates of occupancy.

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

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

A. Definitions.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder

and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.

- (2) "Hazardous material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel and the like.
- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

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

**improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.**

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Lessee results in any contamination of the Premises or any improvements thereon, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.
- (3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.
- (4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (5) Lessee shall insert the provisions of this Section 3.03 in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

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

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

C. Reporting.

- (1) At any time that Lessee submits any filing pertaining to its property, operations, or presence on the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the Federal Aviation Administration, the Environmental Protection Agency or the Texas Commission on Environmental Quality, Lessee shall provide duplicate copies of the filing(s) made along with any related documents to Lessor.
- (2) Upon expiration, termination or cessation of this Lease for any reason, Lessee shall provide current environmental inspection and inventory reports on the Premises acceptable to Lessor; and if, in the opinion of Lessor, the Premises shall require environmental remediation, Lessee shall perform same to return the Premises into a (like new) condition equal or better to that as of the Effective Date of the Lease.

**3.04 Landscaping and Maintenance of Improvements.** Lessee shall maintain the landscape located on the Premises in a good state of repair and condition and in a presentable condition comparable in appearance and character to similar improvements on land managed by the Department of Aviation for the benefit of the City of El Paso. Notwithstanding anything to the contrary in the Declarations, Lessor agrees that attractive, low water usage landscaping is a desirable goal.

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

**3.05 Utilities.** Lessee shall pay for all costs or charges for utility services furnished to Lessee during the term hereof. Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; subject to approval by all appropriate departments of the City of El Paso including, at a minimum, the Director of

Developmental Services, or successor, and Lessee shall pay for any and all service charges incurred therefor.

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

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

**3.08 Removal of Improvements.** Upon the expiration or early termination of this Lease, Lessee, at its own cost and expense, shall be responsible for the removal of all improvements from the Premises. In furtherance of the same, and within six (6) months prior to the expiration of this Agreement, Lessee shall cause to be made, executed, and delivered to Lessor an instrument to guarantee the removal of all improvements from the Premises. Such instrument may be in the form of a performance bond, letter of credit or such other instrument that is mutually acceptable to Lessee and the Director and shall be in place until removal of all improvements. The removal of all improvements shall be complete within one hundred and eighty (180) days from the expiration or early termination of this Lease.

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

**4.01 Term.** This Lease shall be for a term of one (1) year, commencing on the Effective Date first noted on the Title Page ("Primary Term").

**4.02 Additional Term.** Lessee shall be required to remove all improvements from the Premises within one hundred eighty days (180) of the expiration of the Primary Term or early termination of this Lease ("Additional Term"). Time is of the essence with regard to the removal of improvements and the Additional Term.

**4.03 Holding Over.** It is agreed and understood that any holding over by Lessee of the Premises beyond the Primary Term or Additional Term shall operate and be construed as a tenancy from month to month at a Ground Rent of one and one-half (1.5) times the current monthly Ground Rent, and Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice,

demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

## **ARTICLE V - GROUND RENT**

**5.01 Ground Rent.** For the purpose of computing rental payments due, Lessor and Lessee agree that the Premises comprise 20,550 square feet of land. The annual Ground Rent for the Premises will be calculated on the basis of \$0.44 per square foot per annum for the land. Therefore, the annual Ground Rent for the Primary and Additional Terms shall be \$9,042.00, or \$753.50 per month.

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

**5.03 Time of Payment.** The Ground Rent shall be paid in twelve (12) equal monthly installments. Said monthly Ground Rent payments shall be paid in advance on or before the first day of each and every month during the Primary Term of this Lease.

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

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

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

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

**6.01 Fire and Other Risks Insurance.** Lessee, at its sole cost and expense, shall throughout the Primary Term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Premises insured for the mutual benefit of Lessor and Lessee against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief, in an amount equal to the actual replacement cost of such improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (hereinafter called "Full Insurable Value").

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

Lessee, as their respective interests may appear, comprehensive general liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for bodily injury to one person for each occurrence, One Million Dollars (\$1,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

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

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

**6.04 Indemnification.** LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF LESSEE'S BUSINESS ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF LESSEE OF ANY TERMS OF THIS LEASE, OR FROM ANY ACT OR NEGLIGENCE OF LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF LESSOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LESSOR BY REASON OF ANY SUCH CLAIM, LESSEE, UPON NOTICE FROM LESSOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LESSOR.

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

**7.01 Obligations of Lessee.** During the term hereof, except as provided in Section 7.03 below, should the improvements constructed by Lessee upon the Premises be partially damaged 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/or rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such damage.

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

**7.03 Cancellation of Lease.** Should the improvements on the Premises be damaged or destroyed to the extent deemed by Lessee not cost efficient to repair, replace or rebuild, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessor, unless Lessor has elected to have the Premises returned to it clear of all improvements in accordance with this Agreement, in which case Lessee shall be entitled to such insurance proceeds, but shall be required to remove all improvements. All Ground Rents payable under this Lease shall be prorated and paid to the date of such cancellation. The receipt of insurance proceeds by Lessor will relieve Lessee from any responsibility to restore the Premises to their former condition.

**ARTICLE VIII - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER**

**8.01 Expiration.** This Lease shall expire at the end of the Additional Term or any written extension thereof.

**8.02 Cancellation.** Subject to the provisions noted herein, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;

- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises;
- E. Be in violation of any local, state, or federal rules or regulations or in default in the performance of any of the covenants and conditions required herein (except Ground Rent payments) to be kept and performed by Lessee, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

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

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

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

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

- A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and
- B. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Premises and the amounts

received from reletting the Premises during any month or part thereof be less than the Ground Rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

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

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

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

**8.06 Rights Upon Expiration.** At the expiration or early termination of this Lease, Lessor shall be entitled to have the Premises returned to Lessor clear of all improvements. Lessee shall have one hundred and eighty (180) days after expiration in which to remove such improvements; provided that any occupancy by Lessee for the purposes of removal shall be subject to the Ground Rent due hereunder. Notwithstanding any provision herein to the contrary, upon Lessee's failure to so remove said improvements within the timelines enumerated herein, Lessor may remove same at Lessee's expense.

**8.07 Landlord's Lien.** It is expressly agreed that in the event of default in the payment of Ground Rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for Ground Rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as

provided herein, the Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first the necessary proper expense of removing, storing and selling such property, then to the payment of any Ground Rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

## **ARTICLE IX - GENERAL PROVISIONS**

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

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

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

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

**9.03 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.

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

LESSOR: City Clerk  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901

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

LESSEE: Luis & Yolanda Casillas  
7729 Lockheed  
El Paso, Texas 79925

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.

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

**9.06 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.

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

- A. That in the event facilities are constructed, maintained, or otherwise operated on the Premises for the purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation and as said Regulations may be amended.
- B. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.
- C. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- D. That Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of

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

- E. Economic Discrimination. To the extent that, under this Lease, Lessee furnishes goods or services to the public at the Airport, Lessee agrees that it shall:
1. Furnish each and every good and service on a fair, reasonable, and not unjustly discriminatory basis to all users of the Airport, and
  2. Charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers as otherwise permitted under the law.
- F. That, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Lease and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

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

**9.09 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.

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

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

**9.11 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.

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

**9.13 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 may 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.

**9.14 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.

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

The Lessee in good faith may contest any tax or governmental charge; provided that the Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom.

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

**9.17 Survival of Certain Provisions.** All provisions of this Lease, which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, the provisions dealing with compliance with all laws and indemnification.

**9.18 Restrictions and Reservations.** This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the

land. Lessor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

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

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

**9.20 Lease Termination.** Upon full execution of this Lease, any and all prior leases by and between Lessor and Lessee for the Premises shall be terminated and this Lease shall govern the Lessee's use and occupancy of the Premises, in all respects. Further, by signing this Lease, Lessee affirms that it has been in continuous possession and control of the Premises pursuant to any and all prior leases until the date this Lease is signed.

**9.21 Authorization To Enter Lease.** Each of the persons executing this Lease on behalf of Lessee warrants to Lessor that he/she has full right and authority to enter into this Lease, and is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

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

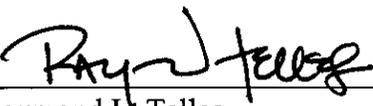
(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

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

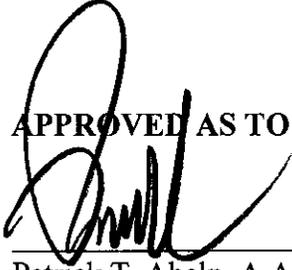
**LESSOR: CITY OF EL PASO**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Raymond L. Telles  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Patrick T. Abeln, A.A.E.  
Director of Aviation

**ACKNOWLEDGMENT**

THE STATE OF TEXAS    )  
  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2008,  
by **Joyce A. Wilson as City Manager of the City of El Paso** (Lessor).

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

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)



**PROPERTY DESCRIPTION**  
**20,550 Square Feet or 0.472 Acre**

Being a portion of Lot 10, Block 8, El Paso International Airport Tracts, Unit One (recorded in volume 18, page 30, plat records), City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

**COMMENCING FOR REFERENCE** at the city monument at the intersection of Lockheed Drive (54 feet wide) and Beech Street (68 feet wide) and the city monument at the intersection of said Lockheed Drive and Grumman Street bears, South 81°10'07" West, 1300.57 feet;

**THENCE**, along the monument line in said Lockheed Drive, South 81°10'07" West, a distance of 188.00 feet;

**THENCE**, leaving said monument line, North 08°49'53" West, a distance of 29.00 feet to a found ½ inch rebar at the Southeast corner of said Lot 10 in the North right-of-way line of said Lockheed Drive and **POINT OF BEGINNING** for the herein described tract;

**THENCE**, along said right-of-way line, South 81°10'07" West, a distance of 100.00 feet to a found ½ inch rebar;

**THENCE**, leaving said right-of-way line, North 08°49'53" West, a distance of 205.50 feet to a found ½ inch rebar in the North line of said 10;

**THENCE**, along said North line, North 81°10'07" East, a distance of 100.00 feet to the Northeast corner of said Lot 10;

**THENCE**, along the East line of said Lot 10, South 08°49'53" East, a distance of 205.50 feet to the **POINT OF BEGINNING** and containing 20,550 square feet or 0.472 acre of land.

This description was prepared from a survey made on the ground on September 18, 2002 with plat of survey prepared of same date.

**PREPARED BY:**  
Cutts Land Surveying, Inc.  
El Paso, Texas  
September 23, 2002  
Job No. 020909





# **EXHIBIT "B"**

## **DECLARATION OF RESTRICTIONS AND COVENANTS INDUSTRIAL ZONES**

**Blocks 1-A, 1-B, 1-C, 2-A, 2-B, 2-C, 3, 5, 7, 8, 9, 10, 11,  
12, 13, 14, 15, 16, 17 and 18**

**El Paso International Airport  
El Paso, Texas**

**DECLARATION OF RESTRICTIONS AND COVENANTS  
INDUSTRIAL ZONES  
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**DECLARATION OF RESTRICTIONS AND COVENANTS  
INDUSTRIAL ZONES**

**Blocks 1-A, 1-B, 1-C, 2-A, 2-B, 2-C, 3, 5, 7, 8, 9, 10, 11,  
12, 13, 14, 15, 16, 17 and 18**

**El Paso International Airport  
El Paso, Texas**

**THIS DECLARATION** made this \_\_\_ day of \_\_\_\_\_, 2006 by the City of El Paso, a political subdivision of the State of Texas, hereinafter referred to as the "Declarant";

**WHEREAS**, Declarant is the owner of El Paso International Airport, located in the City of El Paso, State of Texas, hereinafter referred to as the "Airport", and,

**WHEREAS**, Declarant has established a general overall Development Plan for the development of said Airport and has included in said overall Development Plan certain property for the establishment of a desirable industrial environment for certain manufacturing, business, or industrial uses, and,

**WHEREAS**, Declarant desires to subject the development of said property to certain conditions, restrictions, and covenants in order to ensure the development of a desirable environment for said activities, and to ensure that said development will be compatible with adjacent land uses on the Airport by performance, appearance, and general operating characteristics.

**NOW, THEREFORE**, Declarant hereby declares that the property more particularly described hereinafter is and shall be held and conveyed subject to the conditions, restrictions and covenants hereinafter set forth, each and all of which are for the benefit of each Tenant of any portion of said property and each and all of which shall inure to and pass with each and every Lot on said property, and each and all of which shall apply to and bind the respective successors in interest of said property and any portion thereof, as follows:

**ARTICLE 1 - PROPERTY**

The real property subject to this Declaration is situated on the El Paso International Airport, and is more particularly described as follows: El Paso International Airport Tracts, Blocks 1-A, 1-B, 2-A, 2-B, 2-C, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18.

## ARTICLE 2 - DEFINITIONS

The words and phrases defined in this Article shall have the following meanings when used elsewhere in this Declaration:

- 2.01 **AIRPORT BOARD**: An advisory board appointed by the Mayor and City Council for the purpose of advising them with respect to Airport matters.
- 2.02 **BUILDING**: The main portion of any building located on a Lot and all projections or extensions therefrom, including garages, outside platforms and docks, carports, canopies, and porches. Ground cover shall not be included.
- 2.03 **BUILDING COVERAGE**: The surface area of a Building Site that may be covered by Buildings, expressed as a percentage of the total site area.
- 2.04 **BUILDING SITE**: The entire Lot or Lots (if contiguous) leased by one Tenant.
- 2.05 **CITY**: The City of El Paso, Texas, its duly elected Council, or any duly constituted agent or committee representing said Council to fulfill the obligations herein required.
- 2.06 **DECLARANT**: The City of El Paso, a political subdivision of the State of Texas.
- 2.07 **DIRECTOR OF AVIATION**: Director of the Department of Aviation for the City of El Paso.
- 2.08 **FAA**: The Federal Aviation Administration of the U. S. Government or any federal agencies succeeding to its jurisdiction.
- 2.09 **FRONT LOT LINE**: The property line that faces a Street. On corner Lots or Lots fronting on two parallel Streets, the Front Lot Line shall mean the property lines facing each Street, one of which shall be designated by the City as the principal Street.
- 2.10 **IMPROVEMENTS**: Improvements shall mean but shall not be limited to Buildings, bridges, overpasses, retaining walls, ditches, culverts, lighting supports, earth fills, earth excavations, paving, ground cover, sidewalks, fences, screening walls, signs, and landscaping, constructed, installed, or placed on, under, or above any Lot by or on account of a Tenant.

- 2.11 **INDUSTRIAL PARK COMMERCIAL SUPPORT:** The retail sale of goods and services on a limited basis primarily to the employees of the Tenants in the Industrial Zones as specifically provided herein.
- 2.12 **LOT:** One of the numbered parcels on the map entitled "El Paso International Airport Tracts" as filed with the County Clerk, County of El Paso, Texas.
- 2.13 **REAR LOT LINE:** The property line generally parallel to the Front Lot Line and contiguous to another Lot. On corner Lots, the Rear Lot Line shall be parallel to the Front Lot Line facing the principal Street; on Lots fronting on two parallel Streets, there shall be no Rear Lot Line.
- 2.14 **SETBACK:** The distance a Building must be set back from the property line of a Lot.
- 2.15 **STREET:** Any street, highway, or other thoroughfare shown on the map entitled "El Paso International Airport Tracts," as filed with the County Clerk, County of El Paso, Texas.
- 2.16 **TENANT:** Any person, firm, or corporation leasing or subleasing one or more Lots or space in a Building on a Lot.

### **ARTICLE 3 - PERMITTED USES AND PERFORMANCE STANDARDS**

3.01 **PERMITTED USES:** No Building, structure, or land shall be used for any purpose other than the following, or any combination thereof, and such uses shall satisfy the standards set forth in this Declaration:

A. **Block 3:**

1. Administrative, professional, or government offices.
2. Scientific or research laboratories, including incidental pilot plants in connection therewith.

B. **Block 1-A; Block 1-B; Block 1-C, Lots 1, 2, 3, and 3A; Block 2-A; Block 2-B; Block 2-C, Lots 1 through 10; and Block 5, Lots 1 through 10:**

1. Administrative, professional, or government offices.
2. Scientific or research laboratories, including incidental pilot plants in connection therewith.

3. Wholesaling.
4. Warehousing.
5. Distribution of products and merchandise, but excluding retail sales of consumer goods such as are usually sold to the general public.
6. Processing and compounding of materials.
7. Fabricating and assembling of products.
8. Servicing, maintenance, and storage for car/truck rental and leasing fleet.
9. Accessory uses directly related to the principal use on the Building Site, including but not limited to:
  - a. Facilities for furnishing meals and selling refreshments and personal convenience items solely to employees of the Tenants of a Lot and the guests and management thereof; provided that such facilities shall be located completely within a Building on said Building Site, with no external evidence thereof, including any signs relating thereto.
  - b. Motor Pools, including service station facilities used for services of on-premises motor pools, but excluding public sales or service.
  - c. Business signs for identification in accordance with provisions of Article 4, Paragraph 4.04.
  - d. Outdoor storage facilities as an auxiliary or accessory use when screened from abutting public thoroughfares and other properties by masonry so erected as to screen completely stored materials and vehicles from view at any point at the property line.

C. Block 2-C, Lots 6 through 9; Blocks 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17:

1. All uses permitted in Paragraphs 3.01(A) and (B) of this Article.

2. Certain commercial uses which will perform a necessary and desirable service for all tenants in the Light Industrial Zone of the Airport, including but not limited to:

- a. Banking institutions;
- b. Engineering, reproduction, and art supply firms;
- c. Reproduction facilities; and any other use which, in the judgment of the City, will contribute to the effective operation of all industrial tenants, their employees, and invitees. Such uses shall be governed by all performance, architectural, and building standards as herein set forth, and shall in all ways be compatible with the intent of the plans for development of land uses on the Airport.

D. Block 1-C, Lot 4:

1. Hotels, including restaurants and gift shops incidental to the primary use.
2. All uses permitted in Paragraph 3.01(A) of this Article.

E. Block 18: Automobile parking for the public and Airport employees.

3.02 PROHIBITED USES: The following uses shall not be permitted on a Lot at any time: residential; fast food and takeout restaurants; retail commercial except as otherwise specified; trailer courts; labor camps; junkyards; mining and quarrying; lumber or building materials yards; dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or refuse; fat rendering; stockyards or slaughtering of animals; smelting of iron, tin, zinc, or other ores; and large animal raising.

3.03 APPROVAL OF USES: Certain industrial uses may neither be specifically prohibited nor specifically permitted. In these cases, approval in writing of the use must be obtained from the Declarant or its authorized agent prior to approval of plans and specifications for construction of the facility. Plans and specifications must be submitted to the Declarant by way of the Director of Aviation over the signature of the Tenant or the Tenant's authorized representative. The Declarant or its authorized agent shall then have thirty (30) working days from receipt of the plans and specifications to approve or disapprove them. If, after thirty (30) working days, the Declarant or its authorized

agent has not approved or disapproved said plans, it shall be conclusively presumed that the Declarant has disapproved said use.

3.04 **PERFORMANCE STANDARDS:** No Lots shall be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable conditions that may affect any other Lots, including but not limited to:

- Hazardous activities
- Vibration or shock
- Noise
- Smoke, dust, odor, or other forms of air pollution
- Heat or glare
- Electronic or radio interference
- Illumination
- Liquid or solid refuse or waste
- Other substance, condition, or element in such amount  
as to affect the surrounding area or adjoining premises

- A. **Hazardous Activities:** No activity shall be conducted on any Lot that may be or may become hazardous to public health and safety, that shall increase the fire insurance rating for adjoining or adjacent Lots, or that shall be illegal.
- B. **Vibration or Shock:** No vibration or shock perceptible to a person of normal sensibilities shall be permitted within fifty (50) feet of the property line.
- C. **Noise.** No noise objectionable to a person of normal sensibilities shall be permitted within fifty (50) feet of the property line.
- D. **Air Pollution:** Except for the operation of motor vehicles to, from, and on a Lot as incidental to the use thereof, the following requirements shall apply:
  - 1. Any use producing smoke, gas, dust, odor, fumes, aerosols, particulates, products of combustion, or any other atmospheric pollutant shall be conducted within a completely enclosed building.
  - 2. Any use producing atmospheric emissions shall comply with the standards of the U. S. Environmental Protection Agency, the Texas Air Control Board, any local environmental regulatory body, or any successor organizations performing similar functions, as such regulations exist at the date of the lease to which this Declaration is attached, or which may be enacted during the term of such lease.

3. The emission of odors which are detectable at any point beyond the property line of any plant will not be permitted.
- E. Dust Control: All ground areas not covered by structures shall be landscaped or surfaced with concrete, asphaltic concrete, 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.
- F. 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.
- G. 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.
- H. Illumination:
1. The source of illumination of any kind on a Lot shall not be visible at the property line except for normal installation of standard interior lighting fixtures within Buildings.
  2. The maximum height of any lighting standard shall be limited to thirty (30) feet above curb level.
  3. The intensity of illumination shall be limited to 10 foot candles or 0.1 lumens per square foot for open areas or surfaces visible at the property line.
  4. The design and location of exterior lighting shall comply in all respects to the requirements of the FAA or any successor agencies and other governmental agencies having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from, and around the Airport.
- I. Refuse and Trash: No refuse or trash shall be kept, stored, or allowed to accumulate on any Lot.

- J. Sewage Disposal Systems: No cesspool, septic tank, or other sewage disposal system or device shall be installed, maintained, or used on any Lot without the approval of the City.

#### ARTICLE 4 - REGULATION OF IMPROVEMENTS

4.01 MINIMUM SETBACK LINES. No structure of any kind and no part thereof shall be placed on any Lot closer to a property line than hereby described.

- A. Front Setbacks: Setbacks from Front Lot Lines shall be a minimum of twenty-five (25) feet from the Street; the area between the Street(s) and the Front Setback Line shall be landscaped. If visitor parking is provided in the front Setback area, all Buildings shall be set back a minimum of eighty (80) feet from the Lot line. If the Tenant's Lot or Lots front on more than one Street, the front Setbacks shall be from all Lot lines facing a Street.

The front Setback area(s) shall be landscaped and planted in accordance with the Airport Landscaping Standards except for areas used for parking lots, driveways, or sidewalks. In no event shall less than twenty percent (20%) of the required minimum front Setback area(s) facing a Street be landscaped and planted. If no parking area is provided in the front Setback area(s), the entire front Setback area(s) shall be landscaped.

- B. Side Setbacks: Side Setbacks shall be a minimum of twenty (20) feet, and up to a maximum of fifty percent (50%) of the required minimum Setback shall be landscaped and planted at the discretion of the Declarant or its authorized agent. If a single Tenant uses two or more Lots with a common boundary line between them, the side Setback restrictions may be waived by the Declarant or its authorized agent for the term of the shortest lease.

- C. Rear Setbacks: Rear Setbacks shall be twenty (20) feet from the Lot line or utility easement line, except that Buildings on Lots abutting railroad spurs may have loading docks extending to the Rear Lot Line, provided such construction does not interfere with utility services.

- D. Exclusions from Setback Requirements: The following structures or Improvements are excluded from the Setback requirements:

1. Roof overhang.
2. Steps and walks.

3. Paving and associated curbing, except that parking areas will not be permitted within ten (10) feet of Street property lines.
4. Fences.
5. Landscaping.
6. Planters, none over four (4) feet in height.
7. Railroad spur tracks, switches, and bumpers.
8. Approved signs identifying the Tenant or Subtenant.

**4.02 EXCAVATION:**

- A. **General:** No excavation shall be made by a Tenant unless the excavation is directly related to the construction of an Improvement. When construction is complete, all disturbed ground shall be filled or graded and shall be landscaped in accordance with and conform to the Airport Landscaping Standards.
- B. **Cut and Fill:** The Declarant or any authorized agent thereof may at any time make such cuts and fills on any Lot or other part of said Lot 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; provided that after the principal structure on a Lot shall have been completed in accordance with approved plans, the rights of the Declarant under this Paragraph 4.02 shall terminate with respect to such Lot, except that the Declarant shall thereafter have the right to maintain existing Streets and drainage structures.

**4.03 LANDSCAPING:** Every Lot on which a Building shall have been placed shall have landscaping according to plans prepared in accordance with the standards established in this Paragraph 4.03 and any amendments or successor standards thereto, including standards used by the Airport Architectural Review Committee. The first phase of such landscaping, as approved, shall have been completed within ninety (90) days from the date the certificate of occupancy has been filed, with a copy sent to the Director of Aviation, on the initial Building.

Setback areas shall be landscaped to the minimum extent outlined in Paragraph 4.01(A) and (B). 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.

Desert planting, defined as native desert plants set in a ground cover of boulders, pebbles, and/or sand, shall not comprise more than twenty percent (20%) of any given setback area planting program. This limitation may be waived by Declarant or its authorized representative upon submittal of detailed landscape plans indicating a greater coverage by desert planting.

Tenants are encouraged to expand landscape development plans to include such elements as pools, fountains, sculpture, rock arrangements, sheltered outdoor seating areas, all subject to design approval by the Declarant or its authorized agent prior to installation.

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

- A. **Permitted Signs:** Signs on the Airport shall be limited to those identifying the uses conducted on the site, to those necessary for directional purposes, and to those required to advertise the rental of the specific property on which the sign is displayed. The size, design, and location of all signs shall require the written approval of the Director of Aviation or its authorized agent prior to installation. Outdoor advertising, billboards, or flashing lighting shall not be permitted.
- B. **Area and Location:** One sign may be permitted in the front of each leasehold and one sign may be attached to the side of the building which faces a public street, both to state only the name, products, and services of the tenant. The sign in the front of the leasehold shall not exceed one square foot area for each lineal foot of lot frontage and shall not extend more than 35 feet in height above the ground. An approved product or company symbol or device may be used in addition to each sign and, or the front setback line, may extend up to any point on the building. Any such symbol or device shall be considered a sign for the purposes of this Article and shall require the written approval of the City prior to installation.
- C. **Construction:** All signs shall comply with all building codes of the City of El Paso and with all rules and regulations of the Federal Aviation Administration or any successor agencies.

- 4.05 **PARKING AREAS:** Adequate off street parking shall be provided to accommodate the parking requirements of a business within the limits of the Lot. Parking for employees, visitors, and business vehicular traffic shall be provided on the Lot and designated by white lines painted on the paved surface. All parking must comply with applicable City parking ordinances.

Parking shall not be permitted on the public Streets and between the Street pavement and property line. If visitor parking is provided in the front Setback area, all Buildings shall be set back a minimum of eighty (80) feet from the Lot line. If visitor parking is permitted in the front Setback area(s), such parking shall be screened from the Street(s) by approved trees or shrubbery specified in the Airport Landscaping Standards or such other screening as may be approved by the Declarant or its authorized agent.

- 4.06 **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 company-owned or company-operated trucks, shall be stored in any area on a Lot except inside a closed Building or behind a barrier completely screening such areas from view of adjoining Lots and/or public Streets.

All provisions for the loading and maneuvering of vehicles incidental to the operation of the business shall be placed on the Lot(s) leased 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 and/or public Streets.

- 4.07 **BUILDING HEIGHTS:** Building heights shall be limited to the height requirements established in Federal Aviation Regulations Part 77 or successor regulations for the Airport but shall not exceed a maximum of thirty-five (35) feet above the curb line, including any building equipment, penthouse, extrusions, etc.

- 4.08 **BUILDING COVERAGE:**

- A. **Block 3:** All Buildings and structures, or portions thereof, placed on the Lot(s) shall not cover more than forty percent (40%) of a Building Site.
- B. **Block 1-A, Block 1-B; Block 1-C; Block 2-A; Block 2-B; Block 2-C; Blocks 5, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16:** All Buildings and structures, or

portions thereof, placed on the Lot(s) shall not cover more than fifty percent (50%) of a Building Site.

#### 4.09 BUILDING REGULATIONS:

- A. General: Any Building, Improvement, or structure on a Lot shall conform to the following general conditions of construction practice.
- B. City Zoning Code: The City of El Paso Zoning Code, as amended, shall apply except that in the event of a conflict between the City Zoning Code and the standards in this Declaration, the more stringent requirement shall apply.
- C. FAA Regulations: All construction must comply with applicable codes and ordinances and the rules and regulations of the FAA or any successor agencies, where applicable.
- D. Final Approval by Declarant: Final approval of the compatibility of any Improvement with the overall architectural character of the Industrial Zones shall remain with the Declarant. Construction shall not commence before the Declarant or its authorized agent has granted final approval.

#### 4.10 TYPE OF CONSTRUCTION:

- A. Building Materials: All buildings shall be framed with reinforced concrete or masonry, structural steel, structural aluminum, or wood that has been satisfactorily treated to resist fire, rot, and insects. Approved siding shall be masonry, concrete or glass. Porcelain, enameled steel, anodized aluminum or treated wood may be used upon approval by the Director of Aviation based upon the favorable recommendation of the Airport Architectural review Committee. Concrete, masonry, and treated wood siding shall be kept neatly painted, if used. State-of-the-art changes in types of construction may be permitted from time to time only upon the express condition that any such change be consistent with the intent of this Declaration and that any such change receives written approval of at least three members of the Airport Architectural Review Committee. Pre-fabricated metal buildings are specifically prohibited.
- B. Roof Screening: All heating and cooling towers, equipment, etc., placed on the roofs of Buildings shall be screened or enclosed from view so that they are architecturally compatible with the main portion of the Building.

- C. Accessory Buildings, Enclosures, and Fences: Accessory Buildings, enclosures, and fences shall enhance the design of and be of the same quality of materials as the Buildings they serve.
  - D. Building Codes and Ordinances: All Buildings shall conform to all local building codes and ordinances.
  - E. Approval by Director of Aviation: The type of building construction proposed shall be subject to the written approval of the Director of Aviation as authorized agent of Declarant and the decision of Director of Aviation shall be based on the recommendations of the Airport Architectural Review Committee and appealable to the City Council through the Airport Board.
- 4.11. PIPES: No water pipe, gas pipe, sewer pipe, or drainage pipe (other than those within structures) shall be installed or maintained on any Lot above the surface of the ground, except hoses and movable pipes used for irrigation or similar purposes.

#### **ARTICLE 5 - SUBMISSION OF PLANS FOR IMPROVEMENTS**

- 5.01 SUBMISSION OF PLANS: All plans for Improvements shall be prepared by registered engineers, architects, and landscape architects; shall be of contemporary design; and shall require prior written approval by the Declarant or its authorized agent before any construction may begin.

Prior to the execution of a lease for a Building Site, the Declarant and the Tenant shall jointly determine a reasonable time schedule in which final plans and specifications shall be submitted and construction of facilities shall be completed. Such time schedule shall be incorporated in the lease.

The following plans shall be required for submission to the Declarant within the time schedule determined:

- A. Topographic, Grading, Drainage, Utility, and Plot Plans:
  - 1. Topographic, grading, drainage, and utility plans showing one (1) foot contour intervals and spot elevations referenced to the Airport datum.
  - 2. A plot plan at a scale not smaller than one (1) inch equals one hundred (100) feet showing the relationship of the proposed Improvements to the Lot(s) demised and to the Improvements on

adjacent Lots, utilities, and access thereto, curbs, walks, driveways, parking areas, etc.

- B. **Floor Plans:** Floor plans at a scale not smaller than one-sixteenth (1/16) inch equals one (1) foot.
- C. **Ground Cover Plans:** Ground cover plans, including landscaping, in accordance with the Airport Landscaping Standards.
- D. **Renderings:** A true architectural rendering of the proposed Buildings, including the proposed exterior color scheme, style, materials, and design and placement of signs.
- E. **Materials and Color Samples:** Samples, no smaller than one (1) foot square, of all materials and/or paint or other coating colors to be used on the exterior of all Improvements that are visible from any point on any Lot line. The Declarant reserves the right to approve all said materials and/or colors and further reserves the right to suggest alternative materials and/or colors that, in the sole opinion of the Declarant, shall be determined to be more compatible with the Declarant's objectives for the overall aesthetic character and quality of Improvements on the Airport.
- F. **Other Plans:** Any other plans, specifications, or design features that the Declarant or its authorized agent may deem necessary and request.

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

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

5.03 **CODES AND REGULATIONS:** All Improvements shall be planned and constructed in accordance with the rules and regulations established by the Declarant or its authorized agent, the laws and ordinances of the City, applicable building codes, and the rules and regulations of the FAA or any successor agencies, where applicable.

- 5.04 **REVIEW OF PLANS:** Plans and specifications for proposed Improvements submitted to the Declarant for approval by its authorized agent shall be reviewed by the Airport Architectural Review Committee.

The Airport Architectural Review Committee shall submit in writing to the Director of Aviation, as authorized agent of the Declarant, the Committee's recommendation with respect to the plans and specifications of the proposed Improvements within thirty (30) working days of the original date of submission to the Declarant. The Director of Aviation, shall within ten (10) days of receipt by him of the recommendations of the committee, approve or disapprove the plans and specifications. Any party dissatisfied with a decision of the Director of Aviation based on the recommendation of the Airport Architectural Review Committee shall have the right to appeal such decision to the City Council through the Airport Board. The Airport Architectural Review Committee shall also be responsible for inspecting and continuous monitoring of construction, signs, installation of landscaping and review of the as-built plans.

- 5.05 **BASIS FOR APPROVAL BY THE DECLARANT:** Approval by the Declarant or its authorized agent shall be based on the adequacy of site dimensions and on the general conformity of the plans and specifications to the intent of this Declaration and to the appearance and design of neighboring properties. The Declarant shall not arbitrarily, without written explanation, withhold approval of properly submitted plans and specifications.

Approval of any plans or specifications for use on any one Lot shall not be deemed a waiver of the discretionary right of the Declarant to disapprove the same plans or specifications if such plans or specifications are subsequently submitted for approval for use on any other Lot or Lots.

- 5.06 **FAILURE TO APPROVE:** If the Declarant fails to approve or disapprove plans and specifications within forty (40) working days after the same have been submitted, it shall be conclusively presumed that the Declarant has disapproved said plans and specifications.

- 5.07 **COMMITMENT TO CONSTRUCT:** Upon approval by the Declarant of plans for construction of any structure, a copy of the approved plans shall be deposited for permanent record with the Declarant and a copy of such plans bearing the written approval of the Declarant shall be returned to the Tenant of the Lot(s) on which such structure is or will be placed.

Approval of these plans by the Declarant shall constitute a commitment on the part of the Tenant to erect and maintain the Improvements as proposed and approved within the time schedule established in Paragraph 5.01.

5.08 **CONSTRUCTION WITHIN TIME SCHEDULE SPECIFIED:** Any approved construction shall be prosecuted diligently in accordance with the approved plans and specifications and shall be completed within the specified time schedule. Failure to complete such work in the specified time schedule shall cause such approval to be automatically withdrawn unless the Declarant or its authorized agent grants written extension of such approval.

After such automatic withdrawal of approval, the Tenant will be considered in default of its lease for such Lot(s), and the Declarant may terminate such lease in accordance with the provisions of that document.

5.09 **LANDSCAPING PLANS:** Trees, shrubs, fences, hedges, or other landscaping shall not be planted, placed, or maintained on any Lot until a complete plan thereof has been submitted to and approved by the Declarant or its authorized agent in writing. The landscaping plans shall be prepared in accordance with the Airport Landscaping Standards and shall be submitted at the same time as the other plans and specifications for proposed Improvements. The plans shall be reviewed by the Airport Architectural Review Committee in the same manner and time period as those required for architectural plans under Paragraph 5.04.

All plans for landscaping Improvements shall be prepared by registered or approved landscape architects. Final approval shall be by the Declarant or its authorized agent.

5.10 **PLANS FOR ALTERATIONS IN IMPROVEMENTS:** All plans for alterations to the leased Lot(s), either for the construction of additional facilities or alterations to existing Buildings, shall be prepared, submitted, and approved as outlined in Paragraphs 5.01 through 5.09 and shall be subject to the same restrictions as herein provided. This paragraph shall apply only to exterior or structural changes; alterations to the interior of Buildings shall not be considered unless they affect the performance standards in Article 3.

5.11 **FEES:** The Declarant may charge and collect a reasonable fee, as determined every five years by the Declarant or its authorized agent, for architectural review and other reviews of plans submitted for approval. Such plans 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 Declarant or its authorized agent, shall be paid before further review.

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

## ARTICLE 6 - ENFORCEMENT

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

In the event of such construction without approval, the Tenant will be considered in default of the lease for such Lot, and the Declarant may terminate the lease in accordance with the provisions set forth in that document.

6.02 **ABATEMENT AND REMOVAL:** If the Declarant determines that this Declaration is being violated by any Tenant on a Lot or Lots, the Declarant shall have the right after giving notice as required by the lease to enter the Lot(s) of such Tenant to determine the exact cause, effect a cure, and abate or remove the violation from the Lot(s). All the expenses incurred in this action shall be payable by the Tenant or subtenant of the facility in which the violation occurred.

6.03 **SUIT:** The Declarant or the Tenants of facilities affected by a violation shall have the right to file suit against violators of this Declaration, to prevent a violation, effect a cure, abate or remove a violation, or recover damages for said violation.

6.04 **ATTORNEY'S FEES:** In any legal proceeding for the enforcement of this Declaration or prevention of a violation of this Declaration or any part hereof, the party against whom judgment is rendered shall bear the reasonable expense of attorneys' fees of the prevailing party in the amount to be specified by the Court.

6.05 **RIGHT OF ENTRY AND INSPECTION:** Any authorized agent of the Declarant, at any reasonable time and without notice, may enter on and inspect any Lot to ascertain whether the maintenance of such Lot, Improvements under construction, or alteration of structures thereon are in compliance with the provisions hereof. Neither the Declarant nor such authorized agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

6.06 **FAILURE TO ENFORCE A RESTRICTION:** The Declarant may fail to enforce any restriction herein specified on any Tenant on a Lot or Lots, but in no event

should this be deemed a waiver of this Declaration or the right to enforce any restriction at a later date.

## ARTICLE 7 - MISCELLANEOUS PROVISIONS

- 7.01 **ACCEPTANCE BY ALL TENANTS:** Every person, firm, or corporation who shall hereafter acquire any right, title, or interest in any Lot(s) or Buildings or portions thereof shall have consented and agreed to every covenant and restriction herein contained or implied even though this Declaration may not have been made reference to or part of the documents received as a part of leasing a Lot or Building or any portion thereof.
- 7.02 **ASSIGNMENT OF DECLARANT'S RIGHT AND DUTIES:** The Declarant has certain rights, powers, and reservations as herein established by this Declaration and may assign to any person, firm, or corporation these rights, powers, and duties evidencing its consent in writing to accept such an assignment and assume such duties. The person, firm or corporation having accepted the rights of the Declarant shall also be bound to the obligations in this Declaration.
- 7.03 **HOUSEKEEPING:** If accumulations of weeds, rubbish, or items of equipment or supplies are permitted to remain on a Lot more than ten (10) days after a request in writing from the Declarant or its authorized agent to have them removed, the Declarant or its authorized agent may enter on any Lot to remove same by whatever means it deems necessary. Such entry shall not be deemed a trespass, and the Declarant shall not be subject to any liability therefor. The cost of such work plus 10% shall be borne by the Tenant.
- 7.04 **MAINTENANCE OF LANDSCAPING:** The Declarant shall be the sole judge of the quality of maintenance of the landscaping. If landscaping areas are not maintained in accordance with the standards in the lease and those in this Declaration and the condition is not corrected within ten (10) days after written notice from the Declarant or its authorized agent, the Declarant or its authorized agent shall have the right to enter on any of the Lot(s) leased and plant or replant such areas, without being deemed guilty of trespass. The costs therefor, as determined by the Declarant, shall be paid by the Tenant.
- 7.05 **SIDEWALKS PROHIBITED:** The construction of sidewalks is prohibited except (1) between onsite parking areas and the Buildings they serve, (2) between Buildings involved in a single industrial activity for single Tenant, and (3) along

the east side of Airport Road. Any sidewalks to be constructed in said areas shall be depicted on the plot plans and shall be subject to approval by the Declarant.

7.06 USE PERMITS. Such use and occupancy permits as may be required by the Building Code of the City of El Paso shall be maintained in force at all times by each tenant.