

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

DEPARTMENT: Aviation

AGENDA DATE: April 26, 2022

CONTACT PERSON NAME AND PHONE NUMBER: Sam Rodriguez, Director of Aviation, (915) 212-7301

DISTRICT(S) AFFECTED: District 2

CITY STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

Resolution that the City Manager be authorized to sign a Lease Agreement by and between the City of El Paso ("Lessor") and Halloran Family Joint Venture, LLC ("Lessee"), regarding real property described as, a 52,846.456 square foot parcel of land, more or less, being a portion of Tract 4A25, Block 2, Ascarate Grant, City of El Paso, El Paso County, Texas, (approximately 1.213 acres of land) and municipally known and numbered as 6901 Montana Ave., El Paso, Texas.

The initial term is 40-year beginning at 12:00:00 a.m. on May 1, 2022 ("Effective Date") for a monthly fee of \$4,179.27, plus one option to extend for 10 years.

BACKGROUND / DISCUSSION:

The Department of Aviation is requesting approval of this item to allow Halloran Family Joint Venture, LLC to continue to occupy the premises at 6901 Montana Avenue. The current lease agreement expires at 11:59:59 p.m. on April 30, 2022. The tenant failed to exercise the option

Term: Initial term of forty (40) years with one (1) option of ten (10) years.

Rental Fee: 52,846.456 square feet at \$0.9490 = \$50,150.93 per annum or \$4,179.27 per month.

PRIOR COUNCIL ACTION:

- March 31, 2015 - Lessor's Approval of Assignment to Halloran Family Joint Venture, LLC.
- May 12, 1987 - Lessor's Approval of Assignment to Halloran Family Joint Venture.
- April 30, 1987 - Lessor's Approval of Assignment to Richard N, Azar and Jerry M. Coleman, Co-owners dba Azar-Coleman Properties.
- February 1, 1986 - Industrial Site Lease between City of El Paso and Jerry M. Coleman.

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue generating item.

BOARD / COMMISSION ACTION:

N/A

DEPARTMENT HEAD:



Sam Rodriguez, P.E.
Chief Operations & Transportation Officer/Director of Aviation

RESOLUTION

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

That the City Manager is authorized to sign a Lease by and between the City of El Paso ("Lessor") and Halloran Family Joint Venture, LLC ("Lessee") regarding the following real property described as:

A 52,846.456 square foot parcel of land, more or less, being a portion of Tract 4A25, Block 2, Ascarate Grant, City of El Paso, El Paso County, Texas, (approximately 1.213 acres of land) and municipally known and numbered as 6901 Montana Ave., El Paso, Texas

with a 40 year initial term and one option to extend for ten years.

Dated this ____ day of _____ 2022.

CITY OF EL PASO

Oscar Leoser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

CROSSWINDS ENTERTAINMENT DISTRICT GROUND LEASE

El Paso International Airport
El Paso, Texas

Halloran Family Joint Venture, LLC.
Lessee

Effective Date

**CROSSWINDS ENTERTAINMENT DISTRICT LEASE
TABLE OF CONTENTS**

ARTICLE I - PREMISES AND PRIVILEGES.....	1
1.01 Description of Premises Demised.	1
1.02 Right to Construct.	1
1.03 Restriction of Privileges, Uses and Rights.	1
1.04 Conditions of Granting Lease.	2
1.05 Habendum and Title Warranty.	2
ARTICLE II - TERM OF LEASEHOLD	2
2.01 Term.....	2
2.02 Option to Extend.	2
2.03 Holding Over.	2
2.04 National Emergency.	3
ARTICLE III – RENT	3
3.01 Rent.....	3
3.02 Commencement of Rent and Time of Payment.....	3
3.03 Security Deposit.....	3
3.04 Readjustment of Rent.....	3
3.05 Unpaid Rent, Fees and Charges.....	5
3.06 Place of Payment.	5
ARTICLE IV - OBLIGATIONS OF LESSOR.....	6
4.01 Quiet Enjoyment.	6
ARTICLE V - OBLIGATIONS OF LESSEE	6
5.01 Net Lease.....	6
5.02 Condition of Premises.	6
5.03 Compliance with Laws.	6
5.04 Minimum Improvement Standard.....	10
5.05 Lessor's Approval of Plans.....	10
5.06 Landscaping and Maintenance of Improvements.	10
5.07 Utilities.	10
5.08 Trash, Garbage, and Other Refuse.....	11
5.10 Penalties Assessed by Federal Agencies.....	11
ARTICLE VI -	11

INSURANCE AND INDEMNIFICATION.....	11
6.01 Insurance.	11
6.02 Additional Insured.....	11
6.03 Fire and Other Risks Insurance.....	12
6.04 Payment and Performance Bonds.....	12
6.05 Authorized Insurance and Surety Companies.....	13
6.06 INDEMNIFICATION.....	13
ARTICLE VII - DESTRUCTION OF IMPROVEMENTS BY FIRE.....	14
OR OTHER CASUALTY.....	14
7.01 Obligations of Lessee.	14
7.02 Insurance Proceeds.....	15
7.03 Cancellation of Lease.....	15
ARTICLE VIII - CONDEMNATION.....	15
8.01 Definitions.	15
8.02 Notice of Condemnation.....	16
8.03 Rights of Parties during Condemnation Proceeding.....	17
8.04 Taking of Leasehold.	17
8.05 Total Taking.	17
8.06 Partial Taking.....	17
8.07 Obligations of Lessee under Partial Taking.	17
8.08 Taking of Temporary Use of Premises and Improvements.	18
ARTICLE IX - ENCUMBRANCES.....	18
9.01 Encumbrance.....	18
9.02 Mortgagee's Rights.....	18
9.03 Rights on Foreclosure.....	19
ARTICLE X - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER	19
10.01 Expiration.	19
10.02 Cancellation.	19
10.03 Repossessing and Reletting.	20
10.04 Assignment and Transfer.	21
10.05 Subleasing.	21
10.06 Rights Upon Expiration.....	21
10.07 Lessor's Lien.	22
ARTICLE XI - GENERAL PROVISIONS.....	23

11.01	Continuity of Deed Restrictions and Covenants.....	23
11.02	Right of Flight.....	23
11.03	Time Is of the Essence.	24
11.04	Notices.	24
11.05	Attorney's Fees.	24
11.06	Agreement Made in Texas.....	24
11.07	General Civil Rights Provision.....	24
11.08	Compliance with Nondiscrimination Requirements.	25
11.09	Affirmative Action.....	26
11.10	FAA Order 1400.11.	26
11.11	Cumulative Rights and Remedies.	28
11.12	Interpretation.	28
11.13	Agreement Made in Writing.	28
11.14	Paragraph Headings.....	28
11.15	Severability.	29
11.16	Successors and Assigns.....	29
11.17	Taxes and Other Charges.....	29
11.18	Waiver of Warranty of Suitability.....	29
11.19	Survival of Certain Provisions.	29
11.20	Restrictions and Reservations.	30
11.21	Force Majeure	30
11.22	Subordination of Lease.....	30
11.23	Authorization to Enter Lease.....	30
11.24	Effective Date/Memorandum.	30
11.25	Complete Agreement.....	31
	LESSOR’S SIGNATURE AND ACKNOWLEDGMENT	32
	LESSEE’S SIGNATURE AND ACKNOWLEDGMENT.....	33

ATTACHMENTS

EXHIBIT “A” - Property Description & Metes and Bounds of Premises
EXHIBIT “B” – Declaration of Restrictions and Covenants

CROSSWINDS ENTERTAINMENT DISTRICT LEASE

THIS LEASE AGREEMENT (“Lease”) is entered into as of _____, 2022, by and between the City of El Paso (“Lessor”) and **Halloran Family Joint Venture, LLC**. (“Lessee”).

WHEREAS, Lessor owns and operates El Paso International Airport, located in the County of El Paso, State of Texas, (“Airport”), said Airport being managed by the Director of Aviation, as amended from time to time in terms of actual title (“Director”); and

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; and

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

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

NOW THEREFORE, Lessor and Lessee agree as follows:

ARTICLE I - PREMISES AND PRIVILEGES

1.01 Description of Premises Demised.

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

A 52,846.456 square foot parcel of land, more or less, being a portion of Tract 4A25, Block 2, Ascarate Grant, City of El Paso, El Paso County, Texas, and municipally known and numbered as 6901 Montana Ave., El Paso, Texas, further described in Exhibit "A", attached hereto and incorporated herein, (hereinafter referred to as the "Leased Premises").

1.02 Right to Construct.

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

1.03 Restriction of Privileges, Uses and Rights.

The rights and privileges granted Lessee hereunder are subject and expressly limited to the terms and conditions of the Declaration of Restrictions and Covenants attached hereto as Exhibit “B”, and fully incorporated herein by reference (the “Declaration”).

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 shown on Exhibit "A" or functional change in the uses of such Premises, except as reflected in the Declaration, shall be made without the prior written consent of Lessor.
- B. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority 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 and which rules, regulations and/or ordinances apply equally to all property within the Crosswinds Entertainment District.

1.05 Habendum and Title Warranty.

Lessor warrants that it owns the Leased Premises.

ARTICLE II - TERM OF LEASEHOLD

2.01 Term.

The "Term" of this Lease will be the Initial Term and any properly exercised Option Period, as provided below. This Lease shall be for an initial term of Forty (40) years ("Initial Term"), commencing on _____, 20__ ("Effective Date").

2.02 Option to Extend.

If the Lessee is not in default of any terms of this Lease, Lessee shall have the option to extend this Lease ("Option Period") for one additional term of ten (10) years by notifying Lessor in writing of Lessee's election at least one hundred eighty (180) days prior to the expiration of the Initial Term.

2.03 Holding Over.

It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent of one and one-half times the current monthly rent, unless the hold over is caused by the City staff not placing a new agreement with Lessee regarding the Premises at the end of the term of the present Agreement on the City Council Agenda on a timely basis in which case the monthly rental rate in effect prior to the hold over shall continue until the new agreement is executed. 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.

2.04 National Emergency.

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

ARTICLE III – RENT

3.01 Rent.

For the purpose of computing rent payments, Lessor and Lessee agree that the Premises comprise of 1.21 acres, or 52,846.456 square feet of land. The initial Rent will be calculated on the basis of 52,846.456 square feet at \$0.9490 per square foot per annum. The annual Rent for the first five (5) years of the Initial Term shall be \$50,151.29, or \$4,179.27 monthly. Readjustment of Rent is addressed in Section 3.04 below.

3.02 Commencement of Rent and Time of Payment.

Payment of Rent by Lessee to Lessor as aforesaid shall commence on the Effective Date of this Lease. The Rent shall be paid in twelve (12) equal monthly installments. Rent payments shall be paid in advance on or before the first day of each and every month during the term of this Lease.

3.03 Security Deposit.

As Tenant is a pre-existing tenant of Landlord and has met its security deposit obligations under the predecessor to this Lease, no security deposit shall be necessary under this Lease.

3.04 Readjustment of Rent.

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

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

In the event the CPI-U is not yet published or is otherwise unavailable for the month in which this Lease is effective, the price index used will be that price index for the closest preceding month for which the price index is

available. In the event that the CPI-U is no longer published by the Bureau of Labor Statistics, Department of Labor at a time when an adjustment is to be made, Lessor and Lessee agree to use the consumer price index published by the Department of Labor that replaces the CPI-U or, if no replacement is available, but a reasonably comparable consumer price index exists, to use the method set forth in paragraph B below to adjust rent.

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

- B. At the beginning of the forty-first year of Lessee's tenancy, the Rent shall be adjusted to a rate equal to eight percent (8%) of the then fair market value of the Premises, disregarding the value of any Lessee-owned improvements located on the Premises, established as set forth in this Lease. In no event however, shall the Rent for the Option Period be less than the Rent established at the beginning of the immediately preceding five (5) year period. The Rent shall become effective as of the Option Period, regardless of the date the actual adjustment is made.
- C. **Appraisal.** The fair market value of an identified parcel ("Parcel") shall be determined by either a current appraisal (less than three years old) of a similar property ("Current Appraisal") or a new appraisal of the Parcel. It shall be at the discretion of Lessor as to whether a Current Appraisal or a new appraisal shall be used. In the event a new appraisal is preferred, Lessor will select an appraiser from its list of qualified appraisers to establish the fair market value of the Parcel, disregarding the value of any Lessee-owned improvements located on the Parcel. This appraisal or the Current Appraisal shall be known as the "First Appraisal."

Upon completion of the First Appraisal, Lessor shall notify Lessee in writing of the rental rate, which shall be calculated as described in Section 3.04B. If Lessee agrees with the First Appraisal, or does not respond to Lessor in writing within fifteen (15) calendar days after receipt of the written notice as required herein, or it does not produce a Second Appraisal (as defined below) within 30 calendar days from Lessee's notice to proceed with said Second Appraisal, the First Appraisal and its resulting rent shall be deemed to be accepted by Lessee.

If Lessee disagrees with the rental rate resulting from the First Appraisal, Lessee, within fifteen (15) calendar days after receipt of said notice, shall notify Lessor in writing of Lessee's request for a qualified second appraisal ("Second Appraisal"). The second appraiser must be the next appraiser appearing on Lessor's list of qualified appraisers. The cost of the Second

Appraisal shall be paid by the Lessee. The rental rate resulting from the Second Appraisal shall be calculated as described in Section 3.04B.

After the Lessee provides Lessor with the Second Appraisal, both parties have a 15 business day review period to consider same. If, by the 15th day, either the Lessor or Lessee disagrees with the rental rate resulting from the Second Appraisal, and a third appraisal ("Third Appraisal") is necessary, the Lessor and Lessee shall agree to the next appraiser appearing on the Lessor's list of qualified appraisers. The cost of the Third Appraisal shall be paid equally by the Lessor and Lessee, and the Third Appraisal shall be the final determinant of the rental rate. There shall be no further appraisals beyond the Third Appraisal, regardless of whether either the Lessor or Lessee disagrees with the rental rate resulting from the Third Appraisal.

Lessee shall pay the Rent as determined by the First Appraisal under protest until there is a final determination of the fair market value for the Parcel for which the Rent is determined. Should the final determination of the fair market value of the Parcel be a lower rate than the fair market value of the Parcel determined by the First Appraisal, Lessee's account will be credited by Lessor accordingly.

3.05 Unpaid Rent, Fees and Charges.

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

3.06 Place of Payment.

All rent payments provided herein shall be paid to Lessor at the following address:

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

In lieu of payments being mailed to the above address, electronic payments may be made via any electronic payment system acceptable to Lessor.

ARTICLE IV - OBLIGATIONS OF LESSOR

4.01 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.

ARTICLE V - OBLIGATIONS OF LESSEE

5.01 Net Lease.

This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth in Article IV above and elsewhere in this Lease Agreement. Lessee shall:

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

5.02 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 relying on its own inspection and judgment. Lessor has not made any warranties expressed or implied with regard to the condition of the Premises or improvements or their suitability for a particular use. 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.

5.03 Compliance with Laws.

Lessee, at Lessee's expense, agrees that it will construct, operate and maintain improvements on the Premises in accordance with the Declaration 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. In addition, Lessee agrees, if required, it will remove all improvements, in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises.

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

A. Definitions.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
- (2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like.
- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

- (1) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its sublessees, agents, employees, contractors, invitees, licensees, or a third party in violation of any Environmental Law. **Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its officers, directors, employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage**

to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon caused by the act or omission of Lessee, its sublessees, agents, employees, contractors, licensees or invitees. 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 to the extent required under Environmental Laws. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work to the extent required by any federal, state or local governmental agency or political subdivision having authority to enforce Environmental Laws because of Hazardous Material located on the Premises or 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, or any surrounding property, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon or the surrounding property to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon or the surrounding property; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon or the surrounding property.
- (3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that

a cleanup should be undertaken on the Premises or in any improvements thereon or on surrounding property to comply with applicable Environmental Laws, 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 to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination of the Premises or the improvements thereon or the surrounding property.

- (4) Lessee shall immediately notify Lessor promptly after Lessee becomes aware of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (5) Lessee shall insert the provisions of this Section 4.03 in any lease, agreement, license, or contract by which it grants a right or privilege to any person, firm or corporation under this Lease, but only with respect to those leases, agreements, licenses or contracts executed after the Effective Date of this Lease.

C. Fuel Storage Tanks. Fuel storage tanks are not allowed on the Premises.

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

D. Reporting.

- (1) At any time that Lessee submits any filing or response pertaining to its property, operations, or presence on the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the FAA, the EPA or the TCEQ, or any successor agencies, Lessee shall provide duplicate copies to Lessor of such filing(s) or response(s) with any related documents at the time same are made.
- (2) Upon expiration, termination or cessation of this Lease for any reason, Lessee shall provide to Lessor a Phase I Environmental Site Assessment meeting ASTM standards of the Premises ("Lessee's Report"); and if, in the opinion of Lessor, if Lessee's Report indicates that the Premises is in violation of applicable Environmental Laws, then Lessee shall perform work as is necessary to cause the Premises to be in compliance with

applicable Environmental Laws.

5.04 Minimum Improvement Standard.

Lessee covenants and agrees that facilities constructed on the Premises, exclusive of paving and landscaping, shall cover a minimum of twenty percent (20%) of the Premises' land area, and a maximum of fifty percent (50%) of the Premises' land area. In the event such improvements are partially or totally destroyed by fire or other casualty, Lessee shall have the absolute right to restore or rebuild such improvements to the same size as existed prior to the casualty.

5.05 Lessor's Approval of Plans.

Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of improvements or any plans, specifications and working drawings for Lessee's removal of improvements shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities. It is specifically understood that the Department of Aviation is only one of numerous departments of the Lessor and that, in addition to obtaining approval of the Director, Lessee shall be required to obtain the approval of other City departments. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to the Director one (1) complete set of the Final Plans as approved by the governmental agencies exercising jurisdiction thereover, and copies of all issued permits. Upon completion of construction, Lessee shall deliver to Director a complete set of record (as-built) drawings of the construction signed and sealed by a professional engineer or architect licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises.

5.06 Landscaping and Maintenance of Improvements.

Lessee shall landscape the Premises and keep the improvements on the Premises in a good state of repair and condition and in a presentable condition comparable in appearance and character to similar improvements in Crosswinds Entertainment District. The exterior finish on the improvements shall be repainted and refinished as reasonably necessary to maintain the appearance of such improvements to a standard comparable to similar improvements in Crosswinds Entertainment District. Notwithstanding anything to the contrary in the Declaration, Lessor agrees that attractive, low water usage landscaping is a desirable goal and agrees to consider and approve appropriate low water usage landscaping plans as a part of the architectural review process.

Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform reasonable maintenance Lessor reasonably deems necessary in order to cause the exterior finish to be in a condition comparable to similar improvements in Crosswinds Entertainment District. If said maintenance is not commenced by Lessee within forty-five (45) days after receipt of written notice and if Lessee is unable to show that it has made diligent efforts to commence the work, 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.

5.07 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.

5.08 Trash, Garbage, and Other Refuse.

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

5.09 Permitted Uses.

Lessee will not enter into any business activity on the Premises other than those permitted in the Declaration.

5.10 Penalties Assessed by Federal Agencies.

Lessee understands and agrees that in the event any federal agency assesses a civil penalty against Lessor or the Airport for any violation, including but not limited to any security violation, as a result of or related to any act or failure to act on the part of Lessee, its sublessees, agents, employees, contractors, licensees or invitees, Lessee shall reimburse Lessor in the amount of the civil penalty assessed provided that Lessee was permitted to participate in the due process for administration of the violation. Failure to reimburse Lessor within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.

**ARTICLE VI -
INSURANCE AND INDEMNIFICATION**

6.01 Insurance.

Prior to the execution of this Agreement, Lessee shall obtain, provide proof of, and shall maintain for the term of this Agreement, the types and amounts of insurance coverage listed below, in amounts as reasonably set from time to time by the Director, but not less than:

Comprehensive General Liability Insurance in amounts not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence,

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

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

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.

6.02 Additional Insured.

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

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

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

6.03 Fire and Other Risks Insurance.

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

6.04 Payment and Performance Bonds.

Prior to commencement of any construction work on the Premises the total cost of which will exceed Fifty Thousand Dollars (\$50,000.00), Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

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

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

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

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

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

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

6.05 Authorized Insurance and Surety Companies.

All required policies of insurance and bonds shall be written by insurance and surety companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld. Certificates of insurance shall be delivered to Lessor at least ten (10) calendar days prior to the effective date of the insurance policy for which the certificate is issued and prior to the Effective Date of this Lease. Each insurance policy shall contain:

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

6.06 INDEMNIFICATION.

LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT

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

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

7.01 Obligations of Lessee.

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

- A. Prior to commencing such work, Lessee shall deliver to Lessor a set of the preliminary construction plans and specifications in accordance with the terms and provisions of the Declaration. In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto.
- B. Upon approval of the preliminary plans and specifications, as herein provided, Lessee shall prepare, or cause to be prepared, final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover and copies of all issued permits for the Premises. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.
- C. Prior to commencing construction, Lessor may require Lessee to furnish a performance and payment bond in accordance with Section 6.04 and, if requested, Builder's Risk Insurance.

- D. Upon compliance with the foregoing, Lessee's obligation to repair, replace or rebuild shall be subject to settlement occurring with the insurance company or companies and said proceeds of such insurance policy or policies having been paid to Lessee. After actual receipt of such insurance proceeds, Lessee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.
- E. Upon completion of the construction, Lessee shall deliver to Lessor, a complete set of record (as-built) drawings of the construction signed and sealed by a professional engineer licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises.

7.02 Insurance Proceeds.

Upon receipt by Lessee of the proceeds of the insurance policy or policies, Lessee shall disburse such proceeds during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Lessee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Lessee.

7.03 Cancellation of Lease.

Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty not caused directly or intentionally by Lessee but materially impairing Lessee's use of the Premises, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and Lessee shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessor, unless Lessor has elected to have the Premises returned to it clear of all improvements in accordance with Section 10.06 hereinbelow, in which case Lessee shall be entitled to such insurance proceeds. All rents payable under this Lease shall be prorated and paid to the date of such cancellation. The receipt of insurance proceeds by Lessor will relieve Lessee from any responsibility to restore the Premises to their former condition.

ARTICLE VIII - CONDEMNATION

8.01 Definitions.

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

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

pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.

- B. "Total Taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial Taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
 - 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;
 - 2. The conduct of Lessee's business on the Premises would be substantially prevented or impaired;
 - 3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Lease.
- D. "Partial Taking" means the taking of a fee title that is not either a Total or Substantial Taking.
- E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.
- F. "Notice of Intended Taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a written notice of intent to take containing a description or map reasonably defining the extent of the Taking.
- G. "Award" means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

8.02 Notice of Condemnation.

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

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

8.03 Rights of Parties during Condemnation Proceeding.

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

8.04 Taking of Leasehold.

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

8.05 Total Taking.

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

8.06 Partial Taking.

Upon a Partial Taking, all Awards shall be disbursed as follows:

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

8.07 Obligations of Lessee under Partial Taking.

Promptly after any such Partial Taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's

continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last two (2) years of the initial term or any renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect; provided however, that all sums awarded for Lessee owned improvements and the Leasehold estate shall be disbursed to Lessor.

8.08 Taking of Temporary Use of Premises and Improvements.

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

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

ARTICLE IX - ENCUMBRANCES

9.01 Encumbrance.

As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiaries under deeds of trust, whether one or more. Lessee may encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage. The Mortgagee of any such Mortgage may deliver to Lessor a written notice specifying:

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

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

9.02 Mortgagee's Rights.

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

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;
- C. If the default cannot be cured within one hundred and twenty (120) days, to commence performance within such one hundred twenty (120) day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.
- E. No notice of a default by Lessee hereunder given by Lessor shall be effective against a Mortgagee that has provided Lessor the information specified in Section 9.01 of this Lease unless Lessor has given a copy of it to such Mortgagee.
- F. No Mortgagee shall have any personal liability under this Lease unless and until it becomes Lessee under this Lease.
- G. The Director will, upon request by any Mortgagee, certify in writing that this Lease is in full force and effect, whether this Lease has been amended, that to Lessor's knowledge Lessee is not in default, and the date through which rent has been paid.
- H. If this Lease and the fee estate in the Premises are ever commonly held as a result of a default by Lessee, then they shall remain separate and distinct estates and shall not merge until such time as all cure periods for Mortgagee specified in this Lease have expired.
- I. This Lease may not be amended, modified, changed, cancelled, waived, or terminated without prior written notice to all Mortgagees. Lessor shall not accept a voluntary surrender of the Lease without consent by all Mortgagees.

9.03 Rights on Foreclosure.

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

ARTICLE X - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

10.01 Expiration.

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

10.02 Cancellation.

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

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of thirty (30) days after Lessor has notified Lessee in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property and such petition is not dismissed within ninety (90) days after filing;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises;
- E. Be in violation of any local, state, or federal rules and/or regulations or in default in the performance of any of the covenants and conditions required herein (except 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 ninety (90) days after the appointment of such receiver.

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

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

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

10.03 Repossessing and Reletting.

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

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

10.04 Assignment and Transfer.

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

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

10.05 Subleasing.

Lessee shall have the right to sublease all or any part of the Premises hereunder for the same purposes permitted under the terms and provisions of this Lease, including but not limited to the insurance and indemnity requirements. Any such sublease executed after the Effective Date of this Lease shall be subject to the same conditions, obligations and terms as set forth herein and Lessee shall be responsible for the observance by its sublessees of the terms and covenants contained in this Lease. On or before January 31st and July 31st of each year of the Initial Term or Option Period of this Lease, Lessee shall 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 along with a list of its sublessees and their contact information to the Director.

10.06 Rights Upon Expiration.

At the expiration of this Lease, Lessor may, at its option, take title to said improvements in lieu of removal by Lessee. Lessor will provide one hundred fifty (150) days written notice of its option to retention or removal of the improvements. Otherwise, Lessee shall return the Premises to Lessor clear of all improvements above and below ground level and to have the soil compacted to Lessor's specifications, with no subterranean uses.

Within one hundred twenty (120) days prior to the expiration of this Lease and prior to removing any improvements from the Premises, Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

- A. A contract surety bond in a sum equal to the full amount for the removal of improvements and the compaction of the soil.

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

- B. A payment bond with Lessee's contractor or contractors as principal, in a sum equal to the full amount of the removal and compaction contract awarded.

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

In accordance with Article 3503.004 of the Texas Insurance Code, if a performance bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas.

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

If Lessee fails to remove said improvements and compact the soil, to provide the required engineering report or an environmental assessment or to complete any required remediation of the Premises, Lessor may elect to perform the identified requirements and Lessee shall promptly reimburse Lessor for all its costs upon written notice from Lessor.

10.07 Lessor's Lien.

It is expressly agreed that in the event of default in the payment of Rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for Rent due and to

become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory Lessor'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 Lessor's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first to the necessary and proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

ARTICLE XI - GENERAL PROVISIONS

11.01 Continuity of Deed Restrictions and Covenants.

This Lease agreement is subject to the terms, covenants and conditions contained in the Declaration. Lessor reserves the right to revise the standards set forth in Exhibit "B" provided, however, that such revisions will not cause a substantial reduction in the value of Lessee's leasehold interest, result in a material cost or expense to Lessee, or be contradictory to the reasonable and prudent operation of property located within Crosswinds Entertainment District similar to the Premises. Lessor's right to revise the restrictions and covenants contained in the Declaration, is limited to the right to revise said document because of the development of new concepts or improved construction and architectural techniques and, in any event, such revisions shall be operative on a going forward basis only and shall not apply retroactively to any existing improvements.

11.02 Right of Flight.

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

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

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

11.03 Time Is of the Essence.

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

11.04 Notices.

All notices provided to be given under this Lease shall be given by a) expedited delivery service with proof of delivery, or b) United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the proper party at the following addresses:

LESSOR:	City Clerk City of El Paso P.O. Box 1890 El Paso, Texas 79950-1890	Director of Aviation El Paso International Airport 6701 Convair Rd. El Paso, Texas 79925-1099
LESSEE:	Halloran Family Joint Venture, LLC. Attn: Kristen Riley 8 Horseshoe Dr. Highland Village, Texas 75077 (972) 896-2023 With email copy to: treyburton@gmail.com	With a Copy to: Ryan Little 100 N. Stanton Ste. 1000 El Paso, Texas 79901 (915) 541-1526 Facsimile little@mgmsg.com

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

11.05 Attorney's Fees.

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

11.06 Agreement Made in Texas.

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

11.07 General Civil Rights Provision.

Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the transferor.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

11.08 Compliance with Nondiscrimination Requirements.

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (for purposes of this Section 11.08 hereinafter referred to as the “Contractor”), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Lessor (for purposes of this Section 11.08 hereinafter referred to as the “sponsor”) or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor’s noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

11.09 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 the City of El Paso, to insure that no person shall, on the grounds of race, color, sex, age, disability or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Lessee assures that it will require that its covered sub-organizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublessees) to the same effect.

11.10 FAA Order 1400.11.

Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

I. A. Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in Pertinent List of Nondiscrimination Authorities (Federal Aviation Administration Order 1400.11, Appendix 4) as same may be amended from time to time (the "Acts and Regulations") such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix C]

2. A. The Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the listed acts and authorities appearing in the Acts and Regulations.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix D]

3. A. During the term of this Lease, Lessee for itself, its assignees, and successors in interest, as a part of the consideration hereof, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

- The Federal Aviation Administration's Non-discrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). Grantee shall take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 USC 1681 *et seq.*).

B. In the event of breach of any of the covenants in this section 3, Lessor shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E]

11.11 Cumulative Rights and Remedies.

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

11.12 Interpretation.

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

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

11.13 Agreement Made in Writing.

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

11.14 Paragraph Headings.

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

11.15 Severability.

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

11.16 Successors and Assigns.

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

11.17 Taxes and Other Charges.

Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against the Lessee or the Lessor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, or any improvements thereon, during the term of this Agreement including any extensions granted thereto (but excluding any income or similar taxes assessed by Lessor).

By March 1st of each year of this Lease and at no charge to Lessor, Lessee will provide written proof satisfactory to the Director that all real estate and ad valorem taxes due and payable with respect to the Premises have been paid in full.

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

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

11.18 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 NOR SHALL LESSOR BE RESPONSIBLE OR LIABLE FOR ANY CONDITION OF THE PREMISES WHICH SHALL SOLELY BE THE RESPONSIBILITY OF LESSEE.

11.19 Survival of Certain Provisions.

All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 5.03 and 6.06.

11.20 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 with 24-hour notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all the Environmental Laws and for the purpose of showing the Premises; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

11.21 Force Majeure.

It is expressly agreed and understood by the parties to this Agreement that if the performance of any obligations hereunder is delayed beyond such party's reasonable control by reason of war, civil commotion, acts of God, outbreak of hostilities, epidemic, acts of terrorism, strike, severe weather or other casualty or court injunction, the party so obligated or permitted shall be excused from doing or performing same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period of time such party was reasonably delayed.

11.22 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. Should Lessee cancel its lease pursuant to this paragraph, it can pursue any remedies available to it under the Section VIII of this Lease.

11.23 Authorization to Enter Lease.

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

11.24 Effective Date/Memorandum.

Regardless of the date signed, this Lease shall be effective as of the date indicated on the Title Page of this Lease. Subsequent to the full execution and delivery of this Lease, Lessor and Lessee may, upon request by Lessee, execute and acknowledge a memorandum of this Lease in a form

and substance reasonably acceptable to Lessor and Lessee. Lessee shall provide to Lessor a copy of the memorandum filed of record in the Real Property Records for El Paso County, Texas.

11.25 Complete Agreement.

This agreement, together with the attachment(s) attached hereto, constitutes the entire agreement among the parties relating to the terms and conditions of the agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this agreement confers not rights on any person or business entity that is not a party hereto. This agreement shall not be construed against or unfavorably to any part because of such party's involvement in the preparation or drafting of this agreement.

(Signatures begin on following page)


LESSOR'S SIGNATURE AND ACKNOWLEDGMENT

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this ____ day of _____, 202__.

LESSOR: CITY OF EL PASO

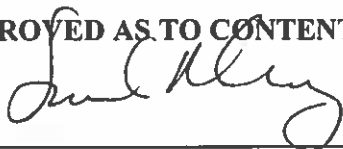
Tomás González
City Manager

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 202__, by Tomás González as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

LESSEE'S SIGNATURE AND ACKNOWLEDGMENT

LESSEE:

By: Halloran Family Joint Venture LLC

Kristen J Riley

Print Name: Kristen J Riley

Title: Member

ACKNOWLEDGMENT

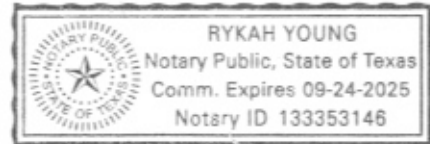
THE STATE OF Texas)

COUNTY OF Denton)

This instrument was acknowledged before me on this 19 day of April, 2022, by Kristen J Riley, its member of Halloran Family Joint Ventures (Lessee).
LLC

[Signature]
Notary Public, State of Texas

My Commission Expires:
9/24/25



(Exhibits on the following pages)

EXHIBIT "A"

PREPARED FOR: Richard Azar
Being a portion of Tract 4A25, Block 2
Ascarate Grant, City of El Paso, El Paso
County, Texas.

PROPERTY DESCRIPTION

Description of a parcel of land being a portion of Tract 4A25, Block 2, Ascarate Grant, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

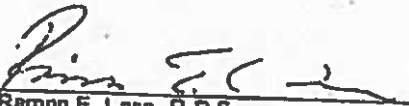
From a point, said point being the intersection of the centerline of Boeing Drive with the centerline of Sikorsky Drive; thence, South $08^{\circ} 49' 53''$ East and along the centerline of Sikorsky Drive a distance of 295.89 feet; thence, South $81^{\circ} 10' 07''$ West a distance of 291.32 feet to the POINT OF BEGINNING;

Thence, South $01^{\circ} 01' 53''$ East a distance of 205.00 feet to a point lying on the northerly right-of-way line of Montana Avenue;

Thence, South $81^{\circ} 10' 07''$ West along said right-of-way line a distance of 280.00 feet;

Thence, North $01^{\circ} 01' 53''$ West a distance of 205.00 feet;

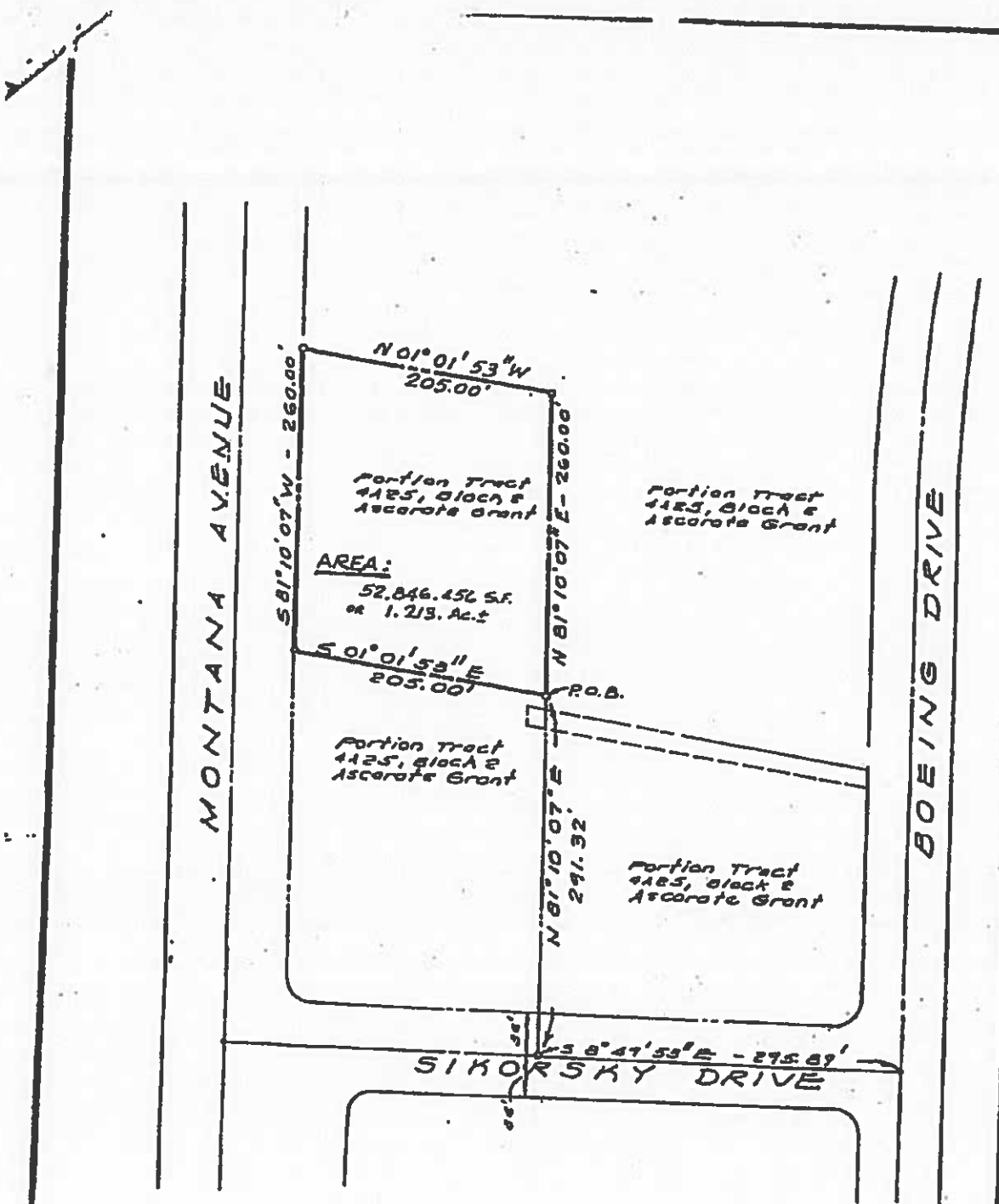
Thence, North $81^{\circ} 10' 07''$ East a distance of 280.00 feet to the POINT OF BEGINNING and containing in all 52,848.456 square feet or 1.213 acres of land, more or less.


Ramon E. Lara, R.P.S.
BOHANNAN-HUSTON, INC.

November 20, 1985

EXHIBIT "A"

Page 1 of 2



NOT A SURVEY

	PLAT	
	BEING A PORTION OF TRACT 4125, BLOCK 2, ASCARATE GRANT EL PASO COUNTY TEXAS	
FIELD BOOK No.:	DRAWN: HSD	DOHANNAN
ENGINEER: REL	APPROVED: REL	HUSTON
SCALE: 1" = 100'	DATE: 11-20-00	

EXHIBIT "B"

LEASE RESTRICTIONS AND COVENANTS

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

ARTICLE I

PROPERTY

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

The demised premises described in Article I, paragraph A of the attached lease.

ARTICLE II

DEFINITIONS

Whenever used in these Restrictions and Covenants, the following terms shall have the following meanings:

A. "PERMITTED USES" shall mean the uses which may be engaged in upon the demised premises under Article III, paragraph F of the attached lease.

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

C. "LOT" shall mean a parcel of land recognized by the City as an acceptable site for use or buildings.

D. "BUILDING SITE" shall mean the entire lot or lots (if contiguous) leased by one tenant.

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



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

G. "FRONT LOT LINE" shall mean the property line where a lot abuts a street.

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

I. "CITY" shall mean the City of El Paso, Texas, its duly elected Council, or any duly constituted agent/committee appointed through said Council to fulfill the obligations herein required.

ARTICLE III

PERMITTED USES

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

fire, explosive or other hazard

noise, vibration or shock

smoke, dust, odor or other forms of air pollution

heat

glare

electrical or other disturbance

liquid or solid refuse or wastes

other substance, condition or element in such manner or in such amount as to affect the surrounding area or adjoining premises.

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

B. Noise. At no point on any property line shall the sound pressure level of any individual operation (other than the operation of motor vehicles, aircraft, or other transportation facilities) exceed the decibel levels in the designated octave bands shown below:

<u>Octave Band Cycles Per Second</u>	<u>Maximum Permitted Sound Level in Decibels Re 0.0002 dynes/cm²</u>
0-300	75
300-1200	55
1200-4800	45
4800 and above	40

C. Air Pollution.

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. Visible emissions of smoke will not be permitted which exceed Ringlemann No. 1 on the Ringlemann Chart of the U. S. Bureau of Mines other than the exhausts emitted by motor vehicles or other transportation facilities. This requirement shall also be applicable to the disposal of trash and waste materials. Wind-borne dust, sprays and mists will not be permitted.

3. No operation shall discharge into the atmosphere toxic or noxious matter.

4. The emission of odors which are detectable at any point beyond the property line of any operation will not be permitted.

D. Dust Control. All developed ground areas not covered by structures shall be landscaped or surfaced with concrete, asphalt oil or other comparable dust-free surfacing; shall be

maintained in good condition, free of weeds, dust, trash, and other debris; and shall be properly drained and graded. Such development shall be accomplished before issuance of a certificate of occupancy.

E. 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.

F. Illumination.

1. Exterior Lighting. The design and location of exterior lighting shall comply in all respects to the requirements of the City, the Federal Aviation Administration or any 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.

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

G. Signs. The following regulations shall apply to all signs displayed for observation from outside a building whether displayed on, near or within a building:

1. Permitted Signs. Signs on the demised premises 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 Airport Manager prior to installation.

Outdoor advertising, billboards or flashing lighting shall not be permitted.

2. Lighting and 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 and its successor agencies.

H. Refuse or Trash. No refuse or trash shall be unreasonably kept, stored or allowed to accumulate on any parcel.

I. Storage. All storage of every type, except of autos or aircraft, shall be within the buildings or enclosures approved in writing by the Airport Manager. Storage of aircraft parts, service equipment or similar items shall be expressly prohibited outside buildings or such enclosures.

J. Sewage Disposal Systems. No cesspool, septic tank, or other sewage disposal system or device shall be installed, maintained, or used upon any parcel without the written approval of the Airport Manager.

ARTICLE V

DEVELOPMENT OF SITE-REQUIRED IMPROVEMENTS

A. Offstreet Parking. All provisions of automobile parking for employees and visitors of the tenant shall be placed on the lot(s) leased. No parking whatsoever shall be permitted on the streets.

Offstreet parking facilities shall be provided generally in accordance with The City of El Paso Offstreet Parking Ordinance No. 1653 and any amendments or successor ordinances thereto, and shall be sufficient for the parking of all automobiles necessary to the conduct of the business.

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

B. Vehicle Loading. All provisions for the loading and maneuvering of vehicles incidental to the operation of the business shall be placed on lot(s) leased; onstreet vehicle loading shall not be permitted.

C. Setbacks. All buildings shall be set back a minimum of twenty-five (25) feet from the lot line(s) facing the street; the area between the lot line(s) and setbacks shall be landscaped. If visitor parking is provided in the front setback, all buildings shall be setback a minimum of fifty feet (50) from the lot line. At least twenty percent (20%) of the required minimum front setback area and side setback areas facing the street shall be landscaped and planted. Side setbacks (not facing the street) shall be a minimum of fifteen (15) feet, and fifty percent (50%) of the required minimum setbacks shall be landscaped and planted. Rear setbacks shall be ten (10) feet from the lot line or utility easement line, provided such construction does not interfere with utility services.

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

Setback areas shall be landscaped to the minimum extent outlined in Paragraph D, above. In addition, paving or landscaping shall extend from the property line to the curb, such paving or landscaping to be compatible with treatment for this area on other lots 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.

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, before installation, by the Airport Board.

Within setback areas fronting on streets labeled "Fine Textured Plants," planting must be selected from the following list:

TREES:

Albizzia julibrissin
Cupressus arizonica
Juniperus scopulorum
Pinus halepensis
Elaeagnus angustifolia
Chilopsis linearis
Prosopis glandulosa
Parkinsonia aculeata
Punica granatum
Juniperus chinensis
Thuja orientalis
Gleditsia triacanthos inermis
Pinus pinea
Cupressus sempervirens glauca
Pinus nigra

LOW PLANTING:

Cotoneaster adpressa
Cotoneaster horizontalis
Juniperus varieties
Lavandula officinalis
Punica chico
Santolina chamaecyparissus
Yucca filamentosa
Gelsemium sempervirens
Liriope sp.
Rosamarinus prostrate varieties

SHRUBS:

Cortaderia selloana
Juniperus varieties
Thuja varieties
Caesalpinia quilliesi
Cotoneaster pannosa and p. nana
Pouquieria splendens
Leucophyllum frutescens
Spartium junceum
Tamarix sp.
Ruxus japonica
Dasyilirion texanum
Punica granatum nana
Rosmarinus officinalis

VINES:

Gelsemium

Within setback areas fronting on streets labeled "Medium Textured Plants" planting must be selected from the following list:

TREES:

Praxinus velutina
Lagerstroemia indica
Ulmus parvifolia
Carya illinoensis
Ulmus pumila
Malus in variety
Prunus cerasifera varieties
Prunus persica
Zizyphus jujuba
Melia azedarach
Koelreuteria paniculata

LOW PLANTING:

Chaenomeles japonica
Convolvulus cneorum
Plumbago capensis
Salvia coccinea
Euonymus fortunei
Lonicera sp.
Teucrium chamaedrys
Vinca major
Ajuga reptans

SHRUBS:

Ligustrum sp.
Vitex sp.
Sambucus glauca
Hibiscus syriacus
Lonicera sp.
Rosa multiflora and others
Xylosma japonica
Chaenomeles lagenaria
Cotoneaster parneyi
Elaeagnus fruitlandi
Euonymus japonicus
Forsythia intermedia
Jasminum hymile
Nandina domestica
Pyracantha in variety
Raphiolepis sp.
Spiraea van houltei
Abelia grandiflora
Jasminum floridum
Jasminum nudiflorum
Robinia hispida
Ternstroemia japonica

VINES:

Campsis radicans
Lonicera
Parthenocissus lowi
Rosa varieties
Trachelospermum asiaticum
Wisteria sp.
Polygonum auberti

Within setback areas fronting on streets labeled "Course Textured Plants", planting must be selected from the following list:

TREES:

Morus sibirica
Maclura pomifera
Photinia serrulata
Ailanthus altissima
Magnolia grandiflora
Phoenix canariensis
Washingtonia robusta
Ficus carica

SHRUBS:

Buddleia in variety
Eriobotrya japonica
Nerium oleander
Philadelphus virginialis
Pittosporum tobira
Viburnum sp.
Aucuba japonica in variety
Hex cornuta rotunda

LOW PLANTING:
Hedera helix

VINES:
Parthenocissus quinquefolia
Parthenocissus tricuspidata

E. Building Heights. All building heights shall conform to FAA rules and regulations. The term "building height" shall include any building equipment, extrusions, etc.

F. Site Coverage. All buildings and structures, or portions thereof, placed on the lot(s) shall not cover more of the total lot area than the Airport Board shall approve.

G. Type of Construction. All buildings shall be framed with reinforced concrete or masonry, structural steel or structural aluminum. Siding shall be masonry, glass or enameled steel. Concrete, or masonry units shall be kept neatly painted, if used.

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

H. Storage. All storage, except of autos or aircraft, shall be within buildings or an enclosure.

I. Pipes. No water pipe, sewer pipe or drainage pipe (other than those within structures) shall be installed or maintained upon any parcel above the surface or the ground, except hoses and movable pipes used for irrigation or similar purposes, as approved by the Airport Manager.

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

ARTICLE VI

PREPARATION AND SUBMISSION OF PLANS FOR IMPROVEMENTS

A. General. All plans for improvements shall be prepared by registered engineers and architects, shall be of a contemporary design, and shall require prior written approval by the Airport Board before any construction can take place.

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

The following plans shall be required for submission to the Airport Board within the time period determined:

1. 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.
2. Building plans and specifications of sufficient detail to permit the Airport Board to determine compliance with all applicable laws and ordinances and with the restrictions herein. These plans and specifications may be manufacturers' standard plans, if such are sufficient as aforesaid.
3. Ground cover plans, including landscaping.
4. A true architectural rendering of the proposed buildings, including the proposed exterior color scheme, style, materials and design and placement of signs.
5. Any other plans, specifications, or design features which the City or its authorized agent may deem necessary and request.

B. Form and Content of Plans. The Airport Board may promulgate rules governing the form and content of plans to be

submitted for its approval, and may issue statements of its policy with respect to approval or disapproval of architectural styles, details or other matters pertaining to the plans.

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

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

D. Approval of Plans. Approval of plans and specifications shall be at the sole discretion of the Airport Board.

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

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

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

F. Construction Within Time Specified. Any approved construction shall be prosecuted diligently in accordance with the approved plans and specifications and shall be completed within the time specified. Failure to complete such work in the time specified shall cause such approval to be automatically withdrawn unless the Airport Board grants written extension of such approval. After such automatic withdrawal of approval, the tenant will be considered in default of its lease for such property and the City may terminate such lease in accordance with the provisions set forth in that document.

G. Landscaping Plans. Trees, shrubs, fences, hedges or other landscaping shall not be planted, placed or maintained upon any parcel until a complete plan thereof has been submitted to and approved by the Airport Board in a manner similar to that required for architectural plans.

All plans for landscape improvements shall be prepared by registered or approved landscape architects. Approval shall be by the Airport Board.

H. 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 A through G above, and shall be subject to the same restrictions as herein provided. This paragraph shall apply only to exterior or structural changes; alterations to the interior of buildings shall not be considered unless they affect the performance standards set forth in Article IV

I. Construction Without Approval. If any structure shall be altered, erected, placed or maintained upon any parcel other than in accordance with plans and specifications approved by the Airport Board, such alterations, erections and maintenance shall be deemed to have been undertaken without the approval required herein. This restriction shall be applicable to landscaping plans, as well as architectural plans.

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

J. Fee For Examination of Plans and Specifications. The City may charge and collect a fee of not more than Two Hundred Fifty Dollars (\$250.00) for the examination of any plans and specifications submitted for approval pursuant to this article. Such fee shall be payable at the time such plans and specifications are submitted.

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

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

ARTICLE VII

GENERAL PROVISIONS

A. Cutting and Filling. The City or any authorized agent thereof may at any time make such cuts and fills upon any parcel or other part of said property and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the streets in or adjacent to any property and to drain surface waters therefrom; provided, however, that after the principal structure upon a parcel shall have been completed in accordance with approved plans, the rights of the City under this paragraph shall terminate with respect to such parcel, except that the City shall thereafter have the right to maintain existing streets and drainage structures.

B. Housekeeping. If accumulations of weeds, rubbish, or items of equipment or supplies are permitted to remain on a parcel more than ten (10) days after a request in writing from the City to have them removed, the City or its authorized agent may enter upon any parcel for the purpose of removing same by whatever means it deems necessary. Such entry shall not be

deemed a trespass and the City shall not be subject to any liability therefor. The cost of such work shall be borne by the tenant.

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

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

IN WITNESS WHEREOF, THE CITY OF EL PASO, The City, has caused its name to be hereunto subscribed ^{at} this 16th day of December, 19 86.

ATTEST:

Carole Hunter
City Clerk

CITY OF EL PASO:

[Signature]
Mayor

APPROVED AS TO CONTENTS:

[Signature]
Airport Manager

APPROVED AS TO FORM:

[Signature]
Assistant City Attorney

LSISL/sys6.1

EXHIBIT C

RENTAL ON PORTION OF PREMISES USED FOR HOTEL OR MOTEL SITE

In the event any portion of the leased premises is used for or in conjunction with a hotel or motel, then Lessee shall pay to Lessor for such portion of the leased premises so used during each partial or full fiscal year commencing on the opening date of such facility and continuing so long as such use continues throughout the term of this lease, as the same may be extended; rent equal to the greater of (1) 35¢ per square foot per annum for such portion of the leased premises so used plus 2% per square foot per annum for every year, or portion thereof from June 1, 1982, or (2) percentage rental equal to five percent of the gross revenues from room rentals, four percent of the gross revenues from all alcoholic beverage sales, two percent of the gross revenues from food sales and six percent of the gross revenues from miscellaneous sales and services. Rental for the leased premises for the period prior to the hotel or motel opening date shall be at the established ground rental rate.

For the purpose of computing percentage rental hereunder gross revenues derived from room sales, beverage sales and food sales shall include the gross revenues and receipts, including both cash and credit transactions, of Lessee and all subtenants, licensees, concessionaires, permittees and others conducting business on the leased premises, derived from room rentals, food sales and beverage sales. Gross revenues from miscellaneous sales and services shall include the gross revenues and receipts of Lessee and of all subtenants, licensees, concessionaires, permittees for such miscellaneous sales and services and others

doing business on the leased premises from the sale of merchandise or rentals or services on the leased premises, other than room rentals, beverage sales and food sales; provided, however, that in the case of miscellaneous sales and services by Lessee's subtenants, licensees, concessionaires, or permittees, only the net revenues and receipts received by Lessee from such subtenants, licensees, concessionaires or permittees shall be considered gross revenues from miscellaneous sales and services. In every event, however, gross revenues shall not include:

- (1) Refunds, credits or allowances to customers of those operating the leased premises;
- (2) The amounts of any federal, state, county, municipal or other sales, excise, admission, entertainment, gross receipts or transaction taxes, however called, now or hereafter levied or imposed upon or requested to be paid or otherwise collected from customers by Lessee or those under it, and the amounts expended by any of them for federal, state, county or local revenue or excise stamps to be affixed to merchandise sold on the premises, or any like taxes, all irrespective of whether required to be or in fact collected from customers or absorbed by the seller. The excise and like taxes excluded in computing gross revenues do not include such taxes incurred while the merchandise was in the hands of the manufacturer, wholesaler, or other predecessor in title of Lessee (or its subtenant or concessionaire); although included in the price paid by Lessee (or its subtenant or concessionaire); but do include such taxes incurred while the merchandise is in the hands of Lessee (or its subtenant or concessionaire) or in connection with the sale to the guests or other customer and passed on to him;
- (3) Receipts from the sale of fixtures, supplies or equipment of Lessee or those under it, not constituting part of the regular stock of merchandise for sale in the ordinary course of business, receipts and charges by Lessee and those under it for sales to employees of theirs;
- (4) Interest in credit sales or past due accounts which may be collected by Lessee or others under it;
- (5) Monies repaid to Lessee or those operating under it by hotel guests solely in reimbursement for advancement or outlays of cash made by Lessee or those under it for guests,

for service gratuities, C.O.D. packages delivered to the hotel for said guests, or solely in reimbursement of Lessee for other actual advances or outlays of cash made as an accommodation to guests or customers;

(6) Receipts of sales from postage stamps, government postcards and stamped envelopes;

(7) The value of any goods, wares or merchandise transferred by Lessee from the leased premises to any other hotel, motel or business operated by Lessee, or by any subsidiary of Lessee for its own use or use of the subsidiary;

(8) Bad debt write-offs;

(9) The value of meals, uniforms and the like given to the hotel's employees in the course of their employment;

(10) Gratuities to hotel employees;

(11) Telephone, telex and similar charges and rentals collected by Lessee to the extent such charges and rentals are paid over by Lessee to the third party actually providing the equipment or services in question.

Lessee agrees that he will keep a true and accurate set of books, accounts and records for all leased property subject to percentage rent, and that on or before the twenty-eighth day of each calendar month he will furnish to Lessor a verified statement showing the gross revenues from room rentals, beverage sales and food sales, and the gross revenues from miscellaneous sales and services, for the month immediately preceding said statement, and enclose check for payment. Within ninety days following the close of each fiscal year after the opening date of a hotel or motel, Lessee will furnish the Lessor a statement, certified by a certified public accountant, certifying all gross revenues and deductions in accordance herewith, and such other facts as may be necessary to determine accurately the gross revenues of Lessee upon which the rentals are to be calculated, and covering the preceding year, and certifying the amount of the rentals due for the

preceding year over and above the minimum monthly rentals, and will accompany said statement with a check in payment of all excess rentals due by virtue of these provisions.

TIME AND PLACE OF PAYMENT

Said rental shall be paid to Lessor at the address set forth in Article XII, paragraph F, monthly in advance on the first day of each month in a sum equal to one-twelfth of the annual rental hereunder. In the case of percentage rental, the monthly installments shall be paid by the 28th day of each calendar month as provided for herein.

RECORDS, REPORTS OF SALES

Lessee covenants and agrees to keep at its principal business office records of the gross revenues of any hotel or motel for a period of not less than five years after the expiration of the fiscal year to which such records relate and to furnish Lessor true and accurate statements thereof. Lessee shall either keep, or make available at the hotel or motel, records sufficient to determine gross revenues for a period of at least one year. Within ninety days following the close of each fiscal year after the opening date, Lessee shall deliver to Lessor, a statement certified by a certified public accountant, certifying the hotel or motel's annual gross revenues for the partial fiscal year or the fiscal year ended. If Lessor desires at its own expense to audit the statement of such annual gross revenues and supporting records and data, Lessor shall cause such audit to commence within sixty days following delivery of such statement to Lessor and to be completed within ninety days following the commencement of said audit.

If the audit discloses an underpayment of rental, Lessee shall immediately pay Lessor the additional rent found to be due, and if such underpayment exceeds five percent of the partial rent payment, Lessee shall immediately pay any outside audit expense incurred by Lessor. However, if the audit discloses rental hereunder has been overpaid by Lessee, the excess shall be applied to any amounts then due Lessor by Lessee, and the balance, if any, shall be refunded to Lessee. All underpayments and overpayments of rent shall draw interest at the rate of twelve percent per annum. Lessor shall keep all information regarding gross revenues of the hotel or motel in strict confidence and shall not divulge said information to third parties, insofar as it is legally able to do so.