

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

DEPARTMENT:

AGENDA DATE:

PUBLIC HEARING DATE:

CONTACT PERSON NAME:

PHONE NUMBER:

2nd CONTACT PERSON NAME:

PHONE NUMBER:

DISTRICT(S) AFFECTED:

STRATEGIC GOAL:

SUBGOAL:

SUBJECT:

BACKGROUND / DISCUSSION:

COMMUNITY AND STAKEHOLDER OUTREACH:

PRIOR COUNCIL ACTION:

AMOUNT AND SOURCE OF FUNDING:

REPORTING OF CONTRIBUTION OR DONATION TO CITY COUNCIL:

NAME	AMOUNT (\$)

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

DEPARTMENT HEAD: _____

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

RESOLUTION

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

That the City Manager, or designee, be authorized to sign a Fuel Site Lease between the City of El Paso and El Paso Fuel Facilities, LLC for the following parcel of land:

All of Lots 31 and 32, and the West 60 feet of Lot 33, Block 4, El Paso International Airport Tracts, Unit One, City of El Paso, El Paso County, Texas, consisting of approximately 42,640 square feet/ 0.979 acre, more or less, of land and commonly known as 7619 Boeing Drive, El Paso, Texas.

APPROVED this _____ day of _____ 2025.

CITY OF EL PASO:

Renard U. Johnson
Mayor

ATTEST:

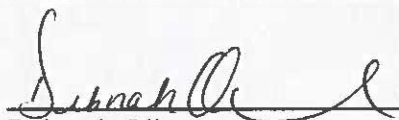
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Ignacio Troncoso
Assistant City Attorney

APPROVED AS TO CONTENT:



Deborah Olivas
Aviation Business & Finance Assistant
Director

FUEL SITE LEASE

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

**EL PASO FUEL FACILITIES LLC
Lessee**

April 1, 2025

Effective Date

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FUEL SITE LEASE

THIS FUEL SITE LEASE AGREEMENT (“Lease”) is made this ____ day of _____ 2025, by and between the **City of El Paso** (the “Lessor”) and **El Paso Fuel Facilities LLC**, a Delaware limited liability company (the “Lessee”).

WITNESSETH:

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

WHEREAS, the Lessor and Southwest Airlines Co. (“Southwest”) entered into a Fuel Site Lease with an effective date of August 1, 1999, for that certain property located at 7619 Boeing Dr., El Paso, Texas (“SW Leased Premises”), which was amended by a First Amendment with an effective date of June 1, 2001, to add 24,600 square feet to the SW Leased Premises, by a Second Amendment with an effective date of July 9, 2019, and by a Third Amendment with an effective date of August 18, 2020 (collectively referenced as the “SWA Lease”); 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, including, without limitation, the right to use and operate the fuel receipt, storage and delivery systems located thereon; 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 has indicated a willingness and ability to properly keep, maintain and operate said ground in accordance with standards established by Lessor if granted a lease of sufficient term on said ground area;

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

ARTICLE I PREMISES AND PRIVILEGES

1.01 Description of Premises Demised.

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

All of Lots 31 and 32, and the West 60 feet of Lot 33, Block 4, El Paso International Airport Tracts, Unit One, City of El Paso, El Paso County, Texas, consisting of approximately 42,640 square feet 0.979 acre, more or less, of land and commonly known as 7619 Boeing Drive and more fully described on Exhibit "A" attached hereto and fully incorporated herein by reference.

1.02 Right of Ingress and Egress.

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

1.03 Right to Construct.

Lessee may construct permanent structures on the Premises after written request to and approval of Lessor, and said construction must be done in accordance with all applicable local, state and federal rules, regulations and City of El Paso ordinances. Lessee shall have the right, at the Lessee's sole cost and expense and with the prior written approval of the Director, to erect appropriate lighting on the Premises for the purposes of utilizing the Premises, subject to the rules, regulations, and ordinances of the City of El Paso, this Lease, and any applicable state or federal rules, regulations or laws.

1.04 Restrictions of Privileges, Uses and Rights.

Lessor hereby grants to Lessee the following general privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants hereinafter set forth and all of which shall be non-exclusive:

Lessee may use the Premises only for:

- (1) the operation of a Bulk Aviation Fuel Site Facility; the operation of a Bulk Aviation Fuel Site Facility is defined as the receipt, sale, purchase, storage and dispensing of aircraft and vehicle fuels, propellants, and lubricants of sufficient ratings, grades, quality, and quantity to meet reasonable demand;
- (2) the operation of a maintenance facility for the maintenance of Lessee's and/or its agents' ground service equipment used in conjunction with the operation of the Bulk Aviation Fuel Site; and
- (3) other related uses, as approved by the Director.

The use of the Premises as provided herein above shall be subject to compliance with the Rules and Regulations and Land Use Requirements attached hereto and incorporated herein for all purposes as Exhibit "B", as they may be from time to time modified, as well as compliance with

all the terms and conditions of this Lease. All uses of the Premises not specifically permitted herein are expressly prohibited.

1.05 Conditions of Granting Lease.

The granting of this Lease and its acceptance by Lessee are conditioned upon the following covenants:

A. That no functional alteration of the Premises shown on Exhibit A (excluding repairs, refurbishments or maintenance to the Bulk Aviation Fuel Site Facility and maintenance facility) or change in the uses of such premises, except as reflected in Section 1.04 hereinabove, shall be made without the prior written consent of Lessor;

B. That the right to use public Airport facilities in common with others authorized to use such facilities shall be exercised subject to and in accordance with the laws of the United States of America and the State of Texas, and with 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

C. That Lessee will utilize only the roadways, taxiways, or other direction, path, route, or form of travel the Director may designate, from time to time, for Lessee’s transportation or delivery of fuel or services on or about the Airport.

**ARTICLE II
TERM OF LEASEHOLD**

2.01 Term.

The term of this Lease (the “Initial Term”) shall be for a period of thirty (30) years commencing on April 1, 2025 (the “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 two (2) additional terms of five (5) years each by notifying Lessor in writing of Lessee’s election at least one hundred eighty (180) days prior to the then current expiration date of this Lease.

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 (1.5) 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 Lease on the City Council Agenda on a timely basis in which case the monthly rental rate in effect at the end of the term of the present Lease shall continue until the new agreement is executed. 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 RENTALS

3.01 Ground Rental.

For the purpose of computing the rental payments, Lessor and Lessee agree that the Premises comprise 42,640 square feet, more or less. The annual ground rental for the Premises will be calculated on the basis of 42,640 square feet at \$0.24 per square foot per annum. Therefore, the annual rental shall be \$10,233.60 per year (the "Rent"). The covenant of Lessee to pay the Rent hereunder shall be an independent covenant, independent of all other covenants hereunder. The readjustment of rental is addressed in Section 3.04 below.

3.02 Commencement of Rental.

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. The Rent shall be paid in advance on or before the first day of each and every month during the term of this Lease.

3.03 Time of Payment.

All rental due hereunder shall be paid in twelve (12) equal monthly installments. Said monthly rental payments shall be paid in advance on or before the first day of each and every month during the term of this Lease and shall amount to \$852.80 per month.

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. Rentals shall be adjusted on 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 percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U) shall govern the rental 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. Rentals 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 such comparable price index.

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 rental be less than the rate in place immediately prior to such readjustment nor more than twenty percent (20%) more than the rental 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 non-Lessor-owned improvements located on the Premises. 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.**

Subject to paragraph B above, 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 disregarding the value of any improvements thereon ("Current Appraisal") or a new appraisal of the Parcel disregarding the value of any improvements thereon. 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 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 provide Lessee with a copy of such First Appraisal and 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 First Appraisal and the written notice as required herein, or it does not produce a Second Appraisal (as defined below) within 60 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 shall be selected by Lessee. 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 an appraiser to provide the Third Appraisal. 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, any fees, or other charges or monies accruing under any provisions of this Lease that are not received by the twentieth (20th) day of the month in which payment is due, shall bear interest at a rate equal to the lesser of eighteen percent (18%) per annum or the maximum allowed by law from the date when the same was due according to the terms of this Lease and shall accrue until actually paid by Lessee.

3.06 Place of Payment.

All payments required by Lessee 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 Operation as Public Airport.

Lessor covenants and agrees that during the term hereof, including any extensions thereto, it will operate and maintain the Airport as a public airport consistent with and pursuant to the Sponsor's Assurances given by Lessor to the United States Government under the Federal Airport Act.

4.02 Construction, Maintenance and Utilities.

Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

ARTICLE 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 this Lease. Lessee shall:

- A. Keep and maintain the Premises and improvements located thereon in a good state of repair at all times;
- B. Pay all taxes and governmental charges of any kind whatsoever that may be assessed against the Lessee or the Lessor, with respect to the Premises or any improvements or uses thereon, during the term of this Lease, including any extensions or option periods granted.

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

- C. Pay all casualty, bond, and liability insurance premiums required in accordance with this Lease; and
- D. Cover all ground area with concrete, asphalt or other comparable code compliant dust-free surfacing (such as millings), and shall fence the area with fence material approved by the Director.

5.02 Condition of Premises.

With the exception of Pre-Existing Conditions (as hereinafter defined), Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon subject to Lessee's right to construct limited improvements under the terms of this Lease. With the exception of the Pre-Existing Conditions, 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 or improvements and shall not assume

responsibility for maintenance, upkeep, or repair necessary to keep the Premises or improvements in a safe and serviceable condition.

To the extent the Premises are subject to any Pre-Existing Conditions, Southwest hereby acknowledges and agrees that it remains liable for such Pre-Existing Conditions to the extent provided in the SWA Lease.

5.03 Compliance with Laws.

Lessee, at Lessee's expense, agrees that it will operate and maintain improvements on the Premises in accordance with the attached Rules, Regulations and Land Use Requirements (and as they may be from time to time modified), and in accordance with all applicable 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 that impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act, as amended, and any other applicable 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, but not limited to, the ambient air, ground water, surface water, and land use, including sub-strata land.
- (2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic

under any Environmental Law and gasoline, oil, jet fuel, lubricants and all other petroleum products.

- (3) “Pre-Existing Conditions” shall mean any environmental conditions impacting the Premises as of the Effective Date including, without limitation, any Hazardous Materials located on or Released from the Premises on or before the Effective Date, and any environmental conditions identified in the environmental site assessment dated as of August 31, 2021 attached hereto as Exhibit “D”.
- (4) “Release” shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

(1) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its agents, employees, contractors, invitees, or a third party in violation of any Environmental Law; it being expressly understood and agreed that Lessee will have Hazardous Materials stored on the Premises and shall do so in accordance with this Lease and all applicable laws, rules and regulations of governmental agencies exercising jurisdiction.

WITHOUT LIMITING THE GENERALITY OF ANY OTHER INDEMNITY CLAUSES CONTAINED IN THIS LEASE, BUT SUBJECT TO PARAGRAPH 5.03B(5) BELOW, LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE “INDEMNIFIED PARTIES”), FROM ANY CLAIM, DEMAND, SUIT, OR OTHER ACTION MADE OR BROUGHT BY ANY PERSON OR ENTITY AGAINST THE LESSEE ARISING OUT OF OR CONCERNING THIS AGREEMENT, THE AIRPORT, OR THE PREMISES, 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 THAT 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 DURING THE TERM OF THE LEASE OR CAUSED BY LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS,

CONCESSIONAIRES OR LICENSEES.

This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action (i) that occurred on the Premises or any improvements thereon during the term of the Lease or (ii) undertaken by Lessee, its agents, contractors, employees, subtenants, concessionaires or licensees. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision in accordance with applicable law because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or groundwater 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, but subject to paragraph 5.03B(5) below, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon results in any contamination of the Premises or any improvements thereon or any surrounding property, Lessee shall promptly take all actions at Lessee's cost and expense, without any contribution from Lessor, as are necessary to place the Premises or any improvements thereon or any surrounding property in compliance with all applicable Environmental Laws; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions will result in the Premises and/or any surrounding property complying with applicable Environmental Laws and, provided further, that nothing herein shall prevent or limit Lessee from pursuing any claim(s) for damages, reimbursement or contribution with respect to any third party responsible for the Release of any such Hazardous Materials.
- (3) Subject to paragraph 5.03B(5) below, 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 applicable to the Premises. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Lessee shall, at Lessee's cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans; provided that

nothing herein shall prevent or limit Lessee from defending against any such Governmental claim or from pursuing any claim(s) for damages, reimbursement or contribution with respect to any third party responsible for any matters giving rise to any such site characterization, site assessment and/or cleanup on or about the Premises or in any improvements thereon. At no cost or expense to Lessor, Lessee shall promptly provide all available information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.

- (4) Lessee shall promptly notify Lessor of any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises.
- (5) Notwithstanding the foregoing or anything else to the contrary, in no event shall Lessee (i) have any obligation to indemnify, defend or hold harmless any of the Indemnified Parties from and against any liability, loss, damage, expense, penalties or legal and investigation fees or costs, arising from or related to any claim or action related to or arising from any Pre-Existing Conditions; (ii) be required to provide, undertake or otherwise pay for any environmental investigation or cleanup plan regarding any Pre-Existing Conditions, carry out any approved plan to the extent relating to the Pre-Existing Conditions and/or otherwise remediate, mitigate or cleanup Pre-Existing Conditions; or (iii) be required to provide, undertake or otherwise pay for any environmental investigation or cleanup plan regarding any Release resulting from the negligence or willful misconduct of any of the Indemnified Parties (a "Lessor Release"), carry out any approved plan to the extent relating to a Lessor Release and/or otherwise remediate, mitigate or cleanup any Lessor Release. This paragraph 5.03B(5) shall survive any expiration or termination of this Lease.

C. Fuel Storage Tanks.

- (1) Lessee acknowledges that the Premises presently contains two (2) above ground fuel storage tanks (AST) as identified in Exhibit "C" attached hereto and incorporated herein for all purposes. Lessee, during the term of this Lease plans to operate and maintain said fuel storage tanks on the Premises. In connection with the operation and maintenance of such storage, pumping and dispensing facilities, Lessee will comply with all applicable governmental regulations, laws, rules and ordinances, and all industry standards and insurance requirements, all at Lessee's cost, expense and risk, without contribution from Lessor.

WITHOUT LIMITING THE GENERALITY OF ANY OTHER INDEMNITY CLAUSES CONTAINED IN THIS LEASE, BUT

SUBJECT TO PARAGRAPH 5.03B(5), LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR HARMLESS AGAINST ANY CLAIM, DEMAND, SUIT, OR OTHER ACTION IS MADE OR BROUGHT BY ANY PERSON OR ENTITY AGAINST THE LESSEE ARISING OUT OF OR CONCERNING THIS AGREEMENT, THE AIRPORT, OR THE PREMISES, ALLEGING OR ARISING IN CONNECTION FROM THE LOCATION, CONTAINMENT, MAINTENANCE OR OPERATION OF ANY GASOLINE, JET FUEL, OR OTHER CHEMICAL OR PETROLEUM PRODUCT STORAGE, PUMPING AND DISPENSING EQUIPMENT ON THE PREMISES DURING THE TERM OF THE LEASE OR CAUSED BY LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES OR LICENSEES INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION OF THE PREMISES OR LEAKS FROM THE PREMISES MIGRATING TO ADJACENT PROPERTY DURING THE TERM OF THE LEASE OR CAUSED BY LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES OR LICENSEES.

- (2) Without limiting the foregoing, Lessee may not install any additional fuel storage tanks on the Premises without Lessor's written consent. Lessee warrants that it will file all the appropriate forms with the Texas Commission on Environmental Quality (TCEQ), or any successor agency, to show that Lessee is the owner of said tanks and, as such, accepts responsibility for such fuel storage tanks.

Notwithstanding any other provision in this Lease to the contrary, Lessor shall have the right of "self-help" or similar remedy upon thirty (30) days prior written notice to Lessee (provided that only reasonable notice shall be required in an emergency situation) in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of any law on, under or about the Premises.

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

Upon expiration, termination or cessation of this Lease for any reason and after the complete removal of improvements, Lessee shall conduct such environmental testing as is reasonably necessary to determine whether the Premises are in compliance with applicable Environmental Laws. Subject to paragraph 5.03(B)(5), if such testing discloses the Premises are not in compliance with applicable Environmental Laws, Lessee shall promptly take all actions at Lessee's cost and expense, without any contribution from Lessor, as are necessary to place the Premises in compliance with all applicable Environmental Laws; provided that Lessor's approval of such

actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions will result in the Premises and/or any surrounding property complying with applicable Environmental Laws and, provided further, that nothing herein shall prevent or limit Lessee from pursuing any claim(s) for damages, reimbursement or contribution with respect to any third party responsible for the Release of any such Hazardous Materials.

5.04 Maintenance.

Lessee shall, at its sole cost and expense, maintain the Premises and the buildings, improvements and appurtenances thereto, in a presentable condition consistent Industry Standards (as hereinafter defined). Subject to normal wear and tear, Lessee shall repair all damages to said Premises; shall maintain and repair all equipment thereon, including any drainage installations, paving, curbs, islands, buildings and improvements.

As used herein, "Industry Standards" shall mean industry-recognized standard management practices applicable to the management and operation of jet fuel storage and distribution systems at the majority of airports in the United States similar to the Airport, including, but not limited to, those issued by the National Fire Protection Association, Airlines for America, the American Petroleum Institute, the FAA, and the Texas Commission on Environmental Quality to the extent such management practices issued by such institutions are specifically applicable to jet fuel storage and distribution systems located at airports in the United States similar to the Airport.

Lessee agrees not to paint, erect, or in any manner install any advertising on the exterior of the improvements or anywhere on the Premises, with the exception that Lessee may erect a sign displaying its name and business in accordance with Section 5.08 herein.

A. Fuel Storage Tank Inspection and Testing

Lessee shall, at its sole cost, perform inspections of the jet fuel and gasoline storage tanks located on the Premises in accordance with all Industry Standards, including but not limited to API standards. Lessee shall promptly provide the results of any such inspections to Lessor upon Lessor's written request. Any and all resulting repairs and/or replacement of any portion of such storage tanks as a result of these inspections shall be performed in accordance with this Article VI at Lessee's sole cost.

B. Leak Detection and Monitoring

Lessee will perform a leak detection test in accordance with Industry Standards on the jet fuel storage tanks and associated receipt and delivery pipelines located on the Premises on an annual basis for the term of the Lease. Lessee shall promptly provide the results of any such leak detection tests to Lessor upon Lessor's written request.

If the jet fuel storage tanks and associated receipt and delivery pipelines, or any component thereof, does not receive a satisfactory leak rate result in connection with any such leak detection test, Lessee will re-test any and all components that

did not receive a satisfactory leak rate result as soon as reasonably possible and determine if the leak detection test failure represents a false positive, or if a release of fuel from the System may be occurring. If such subsequent leak testing does not achieve a passing result and a leak of Fuel from the System may be occurring, Lessee will promptly provide oral notification to Lessor, followed by prompt written notification of the test results used to identify the leak condition, the location of the leak, if known, and the plans for the repair of the leak. If the location of the leak is not known, Lessee will describe to Lessor how it plans to locate the leak, the process Lessee proposes to follow in repairing the leak, and how the repair will affect the operation of the Premises.

5.05 Utilities.

Lessee shall assume and pay for all costs or charges for utility services furnished to Lessee during the term hereof; provided, however, that Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; subject to approval by all appropriate departments of the City of El Paso and Lessee shall pay for any and all service charges incurred therefor.

5.06 Trash, Garbage, and Other Refuse.

Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Premises and the Airport, of all trash, garbage and other refuse caused as a result of the operation of its facility and activities. 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, is not permitted.

5.07 Permitted Uses.

Lessee covenants and agrees that in no event will it enter into any business activity on the Premises other than those specified in Section 1.04.

5.08 Signage.

The following regulations shall apply to all signs displayed for observation from outside any improvements on the Premises whether displayed on, near or within a building:

- A. Permitted Sign. Signs on Premises shall be limited to those that identify the uses conducted on the site and those that are necessary for directional or safety purposes. Lessee shall maintain such signs in accordance with Industry Standards. Any other signs shall require the written approval of the Director prior to installation. Said written approval shall be at Director's sole discretion. Outdoor advertising, billboards or flashing lighting are not permitted.
- B. Lighting and Construction. All signs shall comply with all current or future building codes of the City of El Paso and with all current or future rules and regulations of the Federal Aviation Administration and its successor agencies. Lessee is solely responsible for obtaining all necessary permits and licenses.

5.09 Approval of Plans.

Approval of any and all improvements, plans, signs, or documents by the Director does not constitute approval of the City or any other local, state, or federal agency. It is specifically understood that the Airport is only one of numerous departments of the City and that, in addition to obtaining approval of the Director, Lessee shall be required to obtain the approval of other City departments, as appropriate.

5.10 Authorization to Enter Restricted Area.

Lessee understands that all of its agents, employees, servants, subtenants, invitees or independent contractors must be authorized by the Lessor to enter restricted areas as defined in Section 14.16 of the El Paso City Code as amended. Lessee agrees that no person authorized to enter a restricted area by virtue of this Lease may permit any other person who is not otherwise authorized to enter a restricted area unless such person is, at all times while in the restricted area, in the company of an authorized person.

5.11 Security.

Lessee is familiar with the restrictions imposed by 49 CFR 1540.105 and agrees to assume responsibility for compliance with said regulations as they relate to security procedures on the Premises.

5.12 Penalties Assessed by Federal Agencies.

Lessee understands and agrees that in the event any federal agency assesses a civil penalty against the Lessor or the Airport for any security violation as a result of or related to any act or failure to act on the part of Lessee, its agents, employees or independent contractors, Lessee shall reimburse the Lessor in the amount of the civil penalty assessed. Failure to reimburse the Lessor within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.

5.13 Taxes.

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 Lease including any extensions granted thereto (but excluding any income or similar taxes assessed against Lessor). Within thirty (30) days of the due date thereof, and at no charge to Lessor, Lessee will provide written proof reasonably 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.

5.14 Governmental Filings.

In the event that Lessee submits any filing or response pertaining to its property, operations or presence at the Airport as allowed under this Lease with any governmental entity (other than the Internal Revenue Service), by way of example and not in limitation the Federal Aviation Administration (FAA), the Environmental Protection Agency (EPA) or the TCEQ or any successor agencies, Lessee shall provide duplicate copies to Lessor of such filing(s) or response(s) made at the time same are made.

ARTICLE VI INSURANCE AND INDEMNIFICATION

6.01 Fire and Other Risks Insurance.

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

6.02 Liability 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 not less than:

Aviation liability insurance and comprehensive form general liability insurance, covering bodily injury, personal injury, property damage, products/completed operations liability, premise liability, and contractual liability, with a liability limit of not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence;

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

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

6.03 Environmental Liability Insurance.

For the duration of this Lease, the Lessee will obtain insurance covering the release of fuel, fuel products, chemical solvents, hazardous materials, and/or hazardous waste, with a minimum limit

of \$3,000,000 per incident and \$5,000,000 in the aggregate. To the extent not provided by the policy described in the preceding sentence, the Lessee will obtain Pollution Legal Liability and Remediation coverage applicable to underground or above ground fuel storage tanks, fueling or refueling operations with a limit no less than \$3,000,000 per claim or occurrence and \$5,000,000 in the aggregate. Such policy shall include coverage for bodily injury, property damage, personal injury and environmental site restoration, including fines and penalties in accordance with applicable federal and state law and regulations.

6.04 Authorized Insurance Companies.

All such policies of insurance and payment bonds shall be written by insurance and surety companies authorized to do business in the State of Texas and shall be written by companies with an AM Best Rating of A-VII or better. Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the Effective Date of this Lease. Each such insurance certificate shall contain:

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

6.05 Indemnification.

- A. INDEMNITY. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER, TO THE FULL EXTENT ARISING OUT OF THIS AGREEMENT OR LESSEE'S USE OF THE PREMISES OR THE AIRPORT ("CLAIMS").**

IT IS THE INTENTION OF THIS INDEMNITY SECTION AND ALL INDEMNITY PROVISIONS IN THIS AGREEMENT THAT THE LESSEE'S INDEMNIFICATION OBLIGATIONS SET FORTH ABOVE SHALL INCLUDE CLAIMS RESULTING FROM THE NEGLIGENCE OF LESSOR OR THE INDEMNIFIED PARTIES, BUT EXCLUDING THE GROSS NEGLIGENCE OR RECKLESS MISCONDUCT OF LESSOR AND/OR THE INDEMNIFIED PARTIES. NOTHING HEREIN SHALL SERVE TO WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO LESSOR UNDER TEXAS LAW NOR ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THIS

PROVISION SHALL NOT CREATE ANY CAUSE OF ACTION IN FAVOR OF ANY THIRD PARTY AGAINST LESSOR OR LESSEE NOR SHALL IT ENLARGE IN ANY WAY THE LIABILITY OF LESSOR OR LESSEE, THIS PROVISION BEING INTENDED SOLELY TO PROVIDE FOR INDEMNIFICATION OF LESSOR FROM LIABILITY FOR DAMAGE TO THIRD PERSONS OR PROPERTY AS SET FORTH IN THIS PARAGRAPH.

LESSEE SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. MAINTENANCE OF THE INSURANCE REQUIRED UNDER THIS AGREEMENT SHALL NOT AFFECT LESSEE'S INDEMNITY OBLIGATIONS. LESSEE MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF LESSOR OR LESSEE, AS LESSEE MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THAT THE EXPENSES THEREOF SHALL BE PAID BY LESSEE¹. IN NO EVENT MAY LESSEE ADMIT LIABILITY ON THE PART OF LESSOR WITHOUT THE PRIOR WRITTEN CONSENT OF THE EL PASO CITY ATTORNEY.

- B. WAIVER OF CONSEQUENTIAL DAMAGES. EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES FROM THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR INCOME, CLAIMS OF LESSEE'S CUSTOMERS, SUBTENANTS, AND CONTRACTORS, AND OTHER SIMILAR CLAIMS OR DAMAGES.**

- C. CLAIMS AGAINST LESSEE. IF ANY WRITTEN CLAIM, DEMAND, SUIT, OR OTHER ACTION IS MADE OR BROUGHT BY ANY PERSON OR ENTITY AGAINST THE LESSEE ARISING OUT OF OR CONCERNING THIS AGREEMENT, THE AIRPORT, OR THE PREMISES, INCLUDING, NOT LIMITED TO CLAIMS, DEMANDS, SUITS OR OTHER ACTION RELATED TO SECTION 5.03, LESSEE SHALL GIVE WRITTEN NOTICE THEREOF TO LESSOR WITHIN TEN (10) BUSINESS DAYS AFTER BEING NOTIFIED OF SUCH CLAIM, DEMAND, SUIT, OR ACTION. SUCH NOTICE SHALL ENCLOSE A TRUE COPY OF ALL SUCH CLAIMS. SUCH WRITTEN NOTICE SHALL BE DELIVERED EITHER PERSONALLY OR BY MAIL AND SHALL BE DIRECTLY SENT TO THE EL PASO CITY ATTORNEY, P.O. BOX 1890, EL PASO, TEXAS 79950-1890 OR TO SUCH REVISED ADDRESS AS NOTIFIED BY DIRECTOR.**

- D. NOTHING IN THIS SECTION SHALL BE INTERPRETED TO LIMIT LESSOR'S ABILITY TO ADJUST RENTAL RATES AND OTHER FEES IN ACCORDANCE WITH THE OTHER TERMS AND CONDITIONS OF THIS AGREEMENT, AND APPLICABLE LAWS AND REGULATIONS. FURTHERMORE, NO PROVISION IN THIS AGREEMENT IS INTENDED TO LIMIT LESSOR'S ABILITY TO**

IMPOSE OTHER FEES IN ACCORDANCE WITH APPLICABLE LAWS AND REGULATIONS.

- E. THOSE PROVISIONS OF THIS SECTION THAT APPLY TO THE LESSEE SHALL ALSO APPLY TO ANY PARTY HOLDING BY, THROUGH, OR UNDER THE LESSEE.**

- F. LESSOR ASSUMES NO RESPONSIBILITY FOR ANY PROPERTY PLACED IN OR ON THE PREMISES OR ANY PART THEREOF, AND LESSOR IS HEREBY EXPRESSLY RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITY FOR ANY LOSS, INJURY OR DAMAGE TO PERSONS OR PROPERTY THAT MAY BE SUSTAINED BY REASON OF THE OCCUPANCY OF THE PREMISES UNDER THIS AGREEMENT, UNLESS SAME IS CAUSED BY THE NEGLIGENCE OR WILLFUL ACT OF LESSOR, ITS OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES.**

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

7.01 Cancellation of Lease.

Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty during the term of this Lease, Lessee may cancel this Lease by giving Lessor written notice within thirty (30) days after the date of any such damage or destruction. In such event, this Lease shall terminate and Lessee shall return the Premises to Lessor clear of all improvements in accordance with Article X, Section 10.06 hereinbelow. All Rents payable under this Lease shall be prorated and paid to the date of such termination. Should Lessee fail to provide such notice, the Lease shall not be canceled.

**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 on the Date of Taking.

- B. “Total taking” means the taking of the fee title to all or substantially all of the Premises and improvements thereon.

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

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 substantial under the aforementioned definition, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives notice of the intended taking, elect to treat the taking as a total taking. If Lessee does not so notify Lessor, the taking shall be deemed a partial taking. Upon a partial taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

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 the 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 improvements but subject to the Lease.

8.07 Obligations of Lessee Under Partial Taking.

Upon any such partial taking, all of Lessee's obligations under the Lease with respect to the Premises subject to such partial taking shall terminate as of the date of such taking including, without limitation, any obligation to (a) repair or reconstruct the improvements on Premises subject to such partial taking or (b) pay rent with respect to the Premises subject to such parties taking.

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 less than any estate less than one month, 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 more than one month, the taking shall be treated under the foregoing provisions for total, substantial and partial takings.

ARTICLE IX ENCUMBRANCES

9.01 Encumbrance.

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

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

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

9.02 Mortgagee's Rights.

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

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;
- C. If the default cannot be cured within one hundred and twenty (120) days, to

commence performance within such one-hundred-twenty day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or

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

9.03 Rights on Foreclosure.

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

ARTICLE X EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

10.01 Expiration.

This Lease shall expire at the end of the term or upon thirty (30) days written notice from Lessee to Lessor that Lessee has identified other fueling facilities which have been approved by the Director.

10.02 Cancellation.

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

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises;
- E. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- G. Be made a party to any receivership proceeding in which a receiver is appointed for

the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

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

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

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

10.03 Repossessing and Reletting.

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

- A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary in accordance with Texas law; 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 may not assign or transfer this Lease; provided, however, that Lessor's approval shall not be required in the event of an assignment of this Lease by Lessee to the first leasehold Mortgagee.

Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, 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.

No Subleasing of the Premises is permitted.

10.06 Rights upon Expiration.

At the expiration of this Lease, Lessee shall return the Premises to Lessor clear of all improvements above and below ground level and have the soil compacted and restored to its original condition in accordance with Lessor's reasonable specifications, with no subterranean uses and must be in compliance with applicable Environmental Laws.

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 Section 3503.004 of the Texas Insurance Code, if a performance bond is in an amount in 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.

In addition, upon expiration of this Lease for any reason and no later than thirty (30) days after the complete removal of improvements, Lessee, shall provide Lessor with an engineering report on the compaction of the Premises and shall fulfill the requirements identified in Paragraph 5.03 of this Lease and if, in the opinion of Lessor, the engineering report on compaction indicates the soil has not been compacted in accordance with approved plans or if the Premises are in violation of applicable Environmental Laws, then Lessee shall perform work as is necessary to cause the Premises to be in compliance with approved plans and applicable Environmental Laws.

Lessee shall have one hundred and eighty (180) days after expiration in which to remove such improvements and compact the soil, at its sole cost and expense; provided that any occupancy by Lessee for the purposes of removing the improvements and compacting the soil and for completing any required remediation of the Premises shall be subject to the rent due hereunder and provided further that Lessee shall continue to be bound by the terms and conditions of this Lease. Lessee and Lessor agree that this continued tenancy will not be continued as an extension or renewal of the lease term for other than the aforementioned one hundred eighty (180) days.

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

Lessor acknowledges and agrees that all of the improvements on the Premises as of the Effective Date of this Lease and any improvements constructed during the Term of this Lease are the sole property of Lessee and Lessee must remove all such improvements at Lessee's sole cost.

10.07 Landlord's Lien.

It is expressly agreed that in the event of default in the payment of rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, tangible 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 landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's tangible 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 with the rules and regulations of the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's tangible personal 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 which 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 Rules, Regulations and Land Use Requirements.

This Lease is subject to the terms, covenants and conditions contained in the Rules, Regulations and Land Use Requirements attached hereto as Exhibit “B” and as they may be amended by Lessor from time to time. Lessor reserves the right to revise the standards set forth in Exhibit “B”; provided, however, that such revisions will not, in Lessor’s opinion, cause a substantial reduction in the value of Lessee’s leasehold interest. Lessor’s right to revise the restrictions and covenants contained in Exhibit “B” includes, but is not limited to, the right to revise said document because of the development of new concepts or improved construction and architectural techniques.

11.02 Right of Flight.

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

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

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

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 79901-1890

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

LESSEE: El Paso Fuel Facilities LLC
c/o Southwest Airlines
Attn: Dennis Wallace
2702 Love Field Drive, HDQ-4PF
Dallas, Texas 75235

COPY TO: Quarles & Brady LLP
Attn: Christopher DeMent
300 N. LaSalle Street, Suite 4000
Chicago, Illinois 60654

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 Lessor or Lessee 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.

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 FAA Requirements and Nondiscrimination Requirements.

Lessee shall comply with and shall cause its assignees, successors in interest, and any contractor, subcontractor, lower-tier subcontractor, or service provider of Lessee to comply with, to the extent required by applicable law, all provisions of **Exhibit E, Federal Aviation Administration Required Provisions**, as amended or interpreted by the FAA from time to time, which are incorporated as if fully set forth herein.

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:

1. A. Tenant 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, Landlord 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 Tenant 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 Tenant 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, Landlord 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, Tenant 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, Landlord 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.

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

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

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 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 Survival of Certain Provisions.

All provisions of this Lease which expressly or impliedly contemplate or require performance after the expiration or termination of this Lease hereunder shall survive such expiration or termination of this Lease, including without limitation, the indemnification provisions of Sections 5.03 and 6.04.

11.17 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.

11.18 Restrictions and Reservations.

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

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

11.19 Subordination of Lease.

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

11.20 Warranty of Suitability.

LESSOR DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY OTHERWISE HAVE ARISEN BY OPERATION OF LAW. LESSOR DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS IN THE FACILITIES THAT ARE VITAL TO LESSEE'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE NOR THAT THESE ESSENTIAL FACILITIES WILL REMAIN IN A SUITABLE CONDITION. EXCEPT WITH RESPECT TO ANY PRE-EXISTING CONDITIONS, LESSEE LEASES THE PREMISES "AS IS", WHETHER SUITABLE OR NOT, AND WAIVES THE IMPLIED WARRANTY OF SUITABILITY.

11.21 Authorization to Enter Lease.

Lessee warrants to Lessor that Lessee is a duly authorized and existing limited liability company, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Lease, that each and every person signing on behalf of Lessee is authorized to do so and that the Lease is fully binding upon Lessee in accordance with its terms. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

11.22 Independence of Agreement.

It is understood and agreed that nothing herein contained is intended or should be construed as in any way creating or establishing a partnership relationship between the parties hereto, or as constituting the Lessee as the agent, representative or employee of the Lessor for any purpose or in any manner whatsoever. Lessee is to be, and shall remain, an independent contractor with respect to all services performed hereunder.

11.23 Effective Date.

Regardless of the date signed, this Lease shall be effective as of the date indicated in the Term section of Lease. Lessor and Lessee shall, upon request by either party, execute and acknowledge a memorandum of this Lease in form and substance reasonably acceptable to Lessor and Lessee. Lessee shall provide to Lessor a copy of any memorandum filed of record in the Real Property Records for El Paso County, Texas.

[Signatures begin on following page]

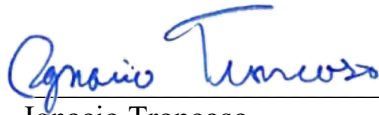
LESSOR’S SIGNATURE AND ACKNOWLEDGMENT

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

LESSOR: CITY OF EL PASO:

Dionne Mack
City Manager

APPROVED AS TO FORM:



Ignacio Troncoso
Assistant City Attorney

APPROVED AS TO CONTENT:



Deborah Olivas
Aviation Business & Finance Assistant
Director

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)

COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____ 2025,
by **Dionne Mack** as **City Manager** of the **City of El Paso, Texas (“Lessor”)**.

My Commission Expires:

Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

LESSEE'S SIGNATURE AND ACKNOWLEDGMENT

LESSEE: EL PASO FUEL FACILITIES LLC



Printed Name: DENNIS WALLACE

Title: EL PASO FUEL FACILITIES LLC CHAIR

ACKNOWLEDGMENT

STATE OF TEXAS)

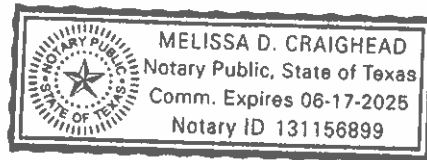
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 20TH day of JANUARY, 2025,
by DENNIS WALLACE CHAIR, of El Paso Fuel Facilities LLC ("Lessee").

My Commission Expires:

05-17-2025

Notary Public, State of Texas
Melissa D Craighead



SOUTHWEST SIGNATURE AND ACKNOWLEDGMENT WITH RESPECT TO ITS OBLIGATIONS UNDER SECTION 5.02 HEREOF

SOUTHWEST: SOUTHWEST AIRLINES CO.

[Signature]
Printed Name: GLENNIS WALLACE
Title: ASSOCIATE REGIONAL MANAGER
FUELS OPERATIONS

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 20TH day of JANUARY, 2025, by GLENNIS WALLACE, as ASSOCIATE REGIONAL, of Southwest Airlines Co. ("Southwest").
MANAGER OF FUELS OPERATIONS

Notary Public, State of Texas

[Signature: Melissa D. Craighead]

My Commission Expires:

05-17-2025

