

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

DEPARTMENT: Aviation

AGENDA DATE: April 3, 2018

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, (915) 212-7301

DISTRICT(S) AFFECTED: District 3

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

SUBJECT:

This is a Resolution to authorize the City Manager to sign a Hotel Site Lease by and between the City of El Paso (Lessor) and CP El Paso, Ltd., a Kentucky limited partnership (Lessee) for the following described property:

A portion of Tract 4A25, Block 2, Ascarate Grant, El Paso County, Texas, containing approximately 376,568.841 square feet of land, municipally known and numbered as 1600 Airway Boulevard, El Paso, Texas.

BACKGROUND / DISCUSSION:

The Department of Aviation is requesting approval of this item to allow for the concurrent termination of the assigned Lease Agreement and approval of a new Hotel Site Lease for CP El Paso, Ltd. CP El Paso has been operating the Marriott El Paso Hotel since December 29, 1999, under a sublease with Host Hotels & Resorts, L.P. that was approved by City Council on that same day. Said Lease Agreement assignment from Host Hotels & Resorts to CP El Paso is being requested for approval via a separate agenda item. CP El Paso requested and the Department of Aviation agreed to negotiate a new Hotel Site Lease for the property to update the lease terms to today's standard.

Term:

- Initial term of 40 years
- One (1) option to extend the term of the lease by 10 years with 180 days' notice to Lessor

Rental Fees:

- Minimum annual guarantee (MAG) for calendar year 2018 = $\$376,568.841 \times \$1.2002/\text{SF}/\text{annum} = \$451,979.23$
- Plus percentage of revenues for room rentals (5%), alcoholic beverage sales (4%), food sales (2%), and miscellaneous sales and services (6%).
- Maximum annual rental fee of \$467,287.00 per Lease Year will be in place from the effective date through April 30, 2021. No maximum rental fee will be in place thereafter.

PRIOR COUNCIL ACTION:

4/3/2018 – Amendment and Lessor's Approval of Assignment from Host Hotels & Resorts, L.P.

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue generating item.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

DEPARTMENT HEAD:

Monica Lombraña, A.A.E.
Managing Director, Aviation and International Bridges

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

Information copy to appropriate Deputy City Manager

RESOLUTION

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

That the City Manager be authorized to sign a Hotel Site Lease by and between the City of El Paso ("Lessor") and CP El Paso, Ltd., a Kentucky limited partnership, ("Lessee") for the following described property:

A portion of Tract 4A25, Block 2, Ascarate Grant, El Paso County, Texas, containing approximately 376,586.841 square feet of land, and municipally known and numbered as 1600 Airway Blvd., El Paso Texas.

APPROVED this ____ day of _____ 2018.

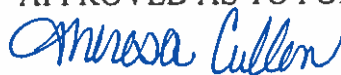
CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Managing Director of Aviation and
International Bridges

HOTEL SITE LEASE

El Paso International Airport
El Paso, Texas

CITY OF EL PASO
Lessor

CP EL PASO, LTD.
Lessee

1600 AIRWAY BLVD., EL PASO, TEXAS

Effective Date

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ATTACHMENTS

Schedule 1.04 – Lessee Representation

EXHIBIT “A” - Property Description of Premises

EXHIBIT “B” – Hotel Site Lease Restrictions and Covenants

EXHIBIT “C” –Full Service, Upscale Hotel Standards

EXHIBIT “D” - Sample Hotel Gross Revenues Reporting Form

HOTEL SITE LEASE

THIS HOTEL SITE LEASE AGREEMENT ("Lease") is entered into this ____ day of _____, 2018 by and between the **CITY OF EL PASO** ("Lessor") and **CP EL PASO, LTD.**, a Kentucky limited partnership ("Lessee").

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

WHEREAS, effective October 17, 1980, Lessor and the Marriott Corporation entered into an El Paso Airport Lease Agreement ("Original Lease") for the property located at 1600 Airway Blvd., El Paso, Texas; as amended by a First Amendment to El Paso Airport Lease Agreement dated March 17, 1981 and by a Second Amendment to El Paso Airport Lease Agreement dated to be effective as of December 29, 1999 ("Second Amendment") (collectively, the "Original Lease" or "Old Lease");

WHEREAS, Lessee subleased the real property and improvements subject to the Original Lease from Host Marriott, L.P. (successor to the original Lessee under the Original Lease (the "Original Lessee")) pursuant to a Ground Sublease Agreement dated as of December 29, 1999, as amended and restated by the Amended and Restated Ground Sublease Agreement dated as of July 11, 2003 (collectively, the "Sublease"); and

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

NOW THEREFORE, Lessor and Lessee agree as follows:

ARTICLE 1 – TERMINATION OF ORIGINAL LEASE AND SUBLEASE

1.01 Lease Termination. Lessor acknowledges that the Original Lease and Sublease will be terminated effective as of 11:59:59 PM on April 3, 2018 and be replaced with this Lease. However, Lessee acknowledges it retains liability for any previous acts or omissions of Lessee giving rise to liability under the Original Lease and Sublease.

1.02 Uninterrupted Possession. By signing this Lease, Lessee affirms that it has been in continuous possession and control of the Premises covered in the Original Lease and Sublease from December 29, 1999 through the date this Lease is signed.

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

1.04 Representation of Lessee. Lessee warrants and represents to Lessor that, except for any royalties due to a nationwide franchisor which permits Lessee to use a hotel-chain brand and flag and as otherwise disclosed in **Schedule 1.04 attached hereto and made a part hereof**, Lessee is the sole party with any economic interest in the Premises, the operation of a hotel on the Premises, or any business conducted on the Premises or with El Paso International Airport of the City of El Paso relating to the Premises. Any failure of the above warrantee and representation shall be an event of default under this Lease. Lessee shall indemnify Lessor from and against any and all demands, causes of action, and claims by any party claiming any right or interest in or to the Premises or the operation of the hotel and other economic activities on the Premises.

ARTICLE II - PREMISES AND PRIVILEGES

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

A portion of Tract 4A25, Block 2, Ascarate Grant, El Paso County, Texas, containing approximately 376,586.841 square feet of land, and municipally known and numbered as 1600 Airway Blvd., El Paso Texas and more fully described in **Exhibit "A"** attached here to and made a part hereof ("Premises"),

Lessor and Lessee acknowledge that Lessee shall own all improvements located on the Premises as of the effective date of this Lease or as may be constructed hereafter, as permitted in this Lease. Lessee agrees that these improvements will be subject to all terms and conditions of this Lease.

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

2.03 Restriction of Privileges, Uses and Rights. The rights and privileges granted Lessee hereunder are subject and expressly limited to the terms and conditions of the Hotel Site Lease Restrictions and Covenants attached hereto as **Exhibit "B"**, and fully incorporated herein by reference (the "Declarations").

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

- A. That no functional alteration of the Premises shown on **Exhibit "A"** or functional change in the uses of such Premises, except as reflected in the Declarations, shall be made without the prior written consent of Lessor.
- B. That the right to use the Premises shall be exercised only subject to and in

accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority and all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority, by law, or by Lessor.

- C. The Hotel shall be a full service, upscale hotel, as defined in **Exhibit "C"** Full Service, Upscale Hotel Minimum Standards.

ARTICLE III - TERM OF LEASEHOLD

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

3.02 Option to Extend. If an Event of Default has not then occurred and is continuing beyond any applicable grace or cure period, Lessee shall have the option to extend this Lease for one (1) additional term of ten (10) years by notifying Lessor in writing of Lessee's election not sooner than the twentieth (20th) anniversary of the Effective Date and not later than one hundred eighty (180) days prior to the expiration of the Initial Term.

3.03 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 subject to the terms and conditions of this Lease and one and one-half times the current monthly Minimum Annual Guarantee or Percentage Rental, whichever is greater, and Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

3.04 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 VI – FEES AND RENTAL

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

- A. **Minimum Annual Guarantee.** For the purpose of computing the Minimum Annual Guarantee, Lessor and Lessee agree that the Premises comprise 376,586.841 square feet of land. The Minimum Annual Guarantee for the first Lease Year shall be

calculated on the basis of 376,586.841 square feet at \$1.2002 per square foot or FOUR HUNDRED FIFTY-ONE THOUSAND NINE HUNDRED SEVENTY NINE and 53/100 DOLLARS (\$451,979.53). For the second Lease Year and each succeeding Lease Year thereafter, including any extension or Option Period of this Lease, the Minimum Annual Guarantee shall be equal to eighty percent (80%) of the immediately preceding Lease Year's Percentage Rental; however, in no event shall the Minimum Annual Guarantee be less than the Minimum Annual Guarantee set forth in the first Lease Year. Lease Year means the twelve (12) consecutive month period beginning on the first day of January of the first full year of this Lease and each twelve (12) consecutive month period thereafter throughout the term of the Lease and any extension thereof. Provided, however, that for the partial year from the Effective Date of this Lease until the first-occurring January 1st, Minimum Annual Guarantee shall be paid on a daily rate basis equal to \$1,238.30 per day. If the last year of this Lease or extensions thereof shall expire prior to December 31st, Minimum Annual Guarantee shall be paid thereon on a daily rate basis and percentage rent shall be paid as defined herein.

- B. Percentage Rentals. Percentage Rentals shall be equal to the sum of five percent (5%) of Gross Revenues from room rentals, four percent (4%) of Gross Revenues from all alcoholic beverage sales, two percent (2%) of Gross Revenues from food sales and six percent (6%) of Gross Revenues from miscellaneous sales and services.
- C. Maximum Rental. Notwithstanding anything in Section 4.01(A), for the Period of the Lease term commencing on the effective date and ending on April 30, 2021, the rent hereunder shall be subject to a maximum of \$467,287 per Lease Year. The same maximum amount shall apply proportionately to any partial Lease Year.

4.02 Gross Revenues. Gross Revenues shall include, but not be limited to, all monies or other consideration paid or payable to Lessee for business conducted on the Premises, such as those derived from room rentals, conference or ballroom room rentals, vending machines, food sales, and beverage sales, whether for cash or credit and without any deduction for credit card discounts and whether the same shall be paid or unpaid. Gross Revenues from miscellaneous sales and services shall be all revenues received by Lessee from or related to the business conducted on the Premises from any source whatever (except room rentals, alcoholic beverage sales, and food sales), including but not limited to the gross revenues and receipts of Lessee (and all sublessees, licensees, concessionaires, permittees and others doing business on the Premises), from the sale of merchandise or rentals or services other than room rentals, beverage sales and food sales, by way of example and not in limitation, cell phone tower revenue, internet or Wi-Fi access, cable television, Automated Teller Machine ("ATM") devices, sales of sundries and similar items; provided that, in the case of miscellaneous sales and services by Lessee's sublessees, licensees, concessionaires, or permittees, only the net owed to Lessee from such sublessees, licensees, concessionaires or permittees shall be considered Gross Revenues from miscellaneous sales and services.

Excluded from Gross Revenues are:

- A. Amounts of any sales or similar taxes imposed by Federal, State, County or City laws which are separately stated to and paid by Lessee, whether currently levied or hereinafter levied or imposed, and directly payable to the taxing authority by Lessee. No deduction shall be allowed from Gross Revenues for the payment of franchise taxes or taxes levied on Lessee's activities, facilities, equipment or property, either real or personal;
- B. Amounts of gratuities paid or given by customers to Lessee's employees in conjunction with Lessee's business activities on the Premises;
- C. Receipts from the sale of fixtures, supplies or equipment of Lessee, its sublessees, licensee, and concessionaires used in the operation of business upon the Premises.
- D. The value of any goods, wares or merchandise transferred by Lessee from the Premises to any other hotel, motel or business operated by Lessee, or by a wholly-owned subsidiary of Lessee for its own use or use of a subsidiary; and
- E. Amounts which Lessee is unable to collect due to the filing of a bankruptcy petition by person or entity owing Lessee which results in the imposition of an automatic stay under the Bankruptcy Code. This uncollectible income shall not be included as Gross Revenues for the period of time during which the automatic stay is in effect and prevents Lessee from pursuing its collection efforts. However, immediately upon the removal of the automatic stay, Lessee shall include all income, which was excluded under this provision and which has not been deemed uncollectible by the Bankruptcy Court, as Gross Revenues for the month following the removal of the automatic stay. Lessee agrees that prior to excluding any amounts under this provision; Lessee shall provide the Director of Aviation ("Director") with documentation that an automatic stay has been imposed.

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

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

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

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

Within ninety (90) calendar days following the end of each Lease Year, a statement showing Gross Revenues for the preceding Lease Year shall be submitted and certified from Lessee's records by a certified public accountant. Such statement shall be signed and certified by the certified public accountant as an accurate report of Lessee's Gross Revenue for the preceding Lease Year as defined in Section 4.02 Gross Revenues. Such statement showing Gross Revenues for the preceding Lease Year is to be accompanied by Lessee's payment covering any deficiency between payment made during the preceding Lease Year and the payment due for such Lease Year as identified in the Gross Revenue statement. If the Gross Revenue statement indicates that the amount due to Lessor is less than the payments made for the preceding year, then Lessor will reimburse to Lessee the excess amount without interest.

If, after the submission of Lessee's annual Gross Revenue statement, Lessor reasonably questions the accuracy of such statement, Lessor may, at its sole option, require Lessee to submit at Lessee's own cost, a certified Gross Revenue statement prepared by an independent certified public accountant; provided, however, that request shall not be made more frequently than once a Lease Year. "Independent" shall mean a certified public accountant who is not affiliated in fact or appearance in any manner with Lessee or its parent company or any subsidiaries. Nothing contained herein shall affect or diminish the rights granted pursuant to Section 4.05 below. Any failure of Lessor to request a certified Gross Revenue statement by an independent certified public accountant in any Lease Year shall not operate to bar or destroy the right of Lessor to request such a certified Gross Revenue statement in any subsequent Lease Year. The submission of such Gross Revenue statement by Lessee shall not be construed to limit Lessor's right to request audits as set forth in this Lease. Lessee, at its own expense, shall supply all records in a type, style and form satisfactory to the Director. Lessee shall maintain monthly Gross Revenue statements, as required hereunder, for a minimum of one (1) year at a place of business accessible to Lessor in El Paso, Texas. Lessee shall maintain annual Gross Revenue statements, as required hereunder, at its

principal place of business, for a minimum of five (5) years, and shall forward same to Lessor during that time, if requested by Lessor.

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

In addition, Lessor shall have the right, during any one Lease Year of this Lease, to authorize up to two (2) audits of Lessee's records pertaining to the Lease. The cost of such audits shall be borne by Lessor, unless the results of such audits reveal a discrepancy of more than five percent (5%) between the Gross Revenues reported by Lessee and the Gross Revenues as determined by audit for any twelve (12) month period. In case of such discrepancy, the full cost of the audit shall be borne by Lessee.

Failure of Lessor to exercise its right to audit Lessee, as set forth herein, shall in no way be construed as a waiver of any right to payment by Lessor of any rental or other payments due Lessor under the terms of this Lease, and Lessor hereby expressly reserves its rights under common or statutory law, or otherwise, to enforce all terms of this Lease, including any right to payment hereunder.

4.06 Security Deposit. Due to the fact that Lessee has been in possession of the Premises and has performed under the terms and conditions of the Old Lease for a significant period of time, no security deposit shall be required.

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

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

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

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

Payment via electronic funds transfer is encouraged provided that it is made through a system approved by the Director.

ARTICLE V - OBLIGATIONS OF LESSOR

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

ARTICLE VI - OBLIGATIONS OF LESSEE

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

- A. Keep and maintain the Premises and improvements located thereon in a good state of repair at all times;
- B. Pay any and all taxes assessed against the Premises, improvements located on the Premises, Lessee's interest in the Premises and improvements, and all of Lessee's personal property located on the Premises; and
- C. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

6.02 Condition of Premises. Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Lessor has not made any warranties expressed or implied with regard to the condition of the Premises or improvements or their suitability for a particular use. Lessee acknowledges that Lessee has been in possession of the Premises for many years and is intimately familiar with the Premises and all of its peculiarities. Lessee accepts the Premises "As Is", with all faults, relying on Lessee's own inspection and judgment and not in reliance on any representations of Lessor. Lessor shall assume no

responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

6.03 Signs. Lessee shall not install any billboards or advertising signs on the Premises, provided, however, that Lessee may maintain on the exterior of any such buildings, its name(s) in accordance with the standards prescribed in **Exhibit "B"**. Lessor approves the signage at the Premises on the date hereof.

6.04 Right to Close for Repairs. Lessee may, from time to time, close the Premises or parts thereof only for such reasonable periods of time as may be required to make repairs, alterations, remodeling, or for any reasonably necessary reconstruction. Lessee shall provide Lessor with prior written notice of any such closing. In emergency situations, a verbal or electronic mail communication will suffice.

6.05 Operational Licenses and Permits. Lessee may apply for restaurant and alcoholic beverage licenses and other permits or licenses necessary for the operation of improvements on the Premises. The cost of obtaining any such licenses and permits shall be borne solely by Lessee. As fee owner of the Premises, Lessor agrees and understands that it may be required to provide assistance to Lessee in acquiring such permits or licenses, including the execution of certain applications. Lessor agrees to provide such assistance as may be reasonably necessary and appropriate, in Lessor's discretion; provided, however, that LESSEE SHALL INDEMNIFY AND HOLD LESSOR HARMLESS FROM ALL LIABILITIES, CLAIMS, COSTS AND EXPENSES WHICH LESSOR MAY INCUR BY REASON OF HAVING SIGNED ANY SUCH APPLICATION OR APPLICATIONS.

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

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

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

A. Definitions.

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

B. Compliance.

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

ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon caused by the act or omission of Lessee, its sublessees, agents, employees, contractors, licensees or invitees in violation of Environmental Laws. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water to the extent required under Environmental Laws. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work to the extent required by any federal, state or local governmental agency or political subdivision having authority to enforce Environmental Laws because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Lessee results in any contamination of the Premises or any improvements thereon, or any surrounding property, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon or the surrounding property to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon or the surrounding property; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon or the surrounding property.
- (3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements

thereon or on surrounding property to comply with applicable Environmental Laws, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination of the Premises or the improvements thereon or the surrounding property.

- (4) Lessee shall promptly notify Lessor after Lessee becomes aware of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to materially change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (5) Lessee shall insert the substantive provisions of this Section 6.06 in any lease, agreement, license, or contract by which it grants a right or privilege to any person, firm or corporation under this Lease, but only with respect to those leases, agreements, licenses or contracts executed after the effective date of this Lease but excluding standard hotel room and banquet license agreements.

- C. In the event of an emergency (meaning a Release of Hazardous Materials in violation of Environmental Laws on the Premises that presents an immediate threat of injury to persons or property) or the expiration of cure periods provided for in Article XI, then notwithstanding any other provision in this Lease to the contrary, Lessor shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of any law on, under or about the Premises, the cost of which including attorneys' fees, shall be borne by Lessee. Lessor shall use its best efforts to notify Lessee prior to its exercise of such self-help rights.

Lessee's failure or the failure of its agents, employees, contractors, licensees, invitees, or a third party to comply with any of the requirements and obligations of this Section shall constitute a material default of this Lease and shall permit Lessor to pursue the remedies as set forth in Article XI herein below, 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.

At any time that Lessee submits any filing or communications pertaining to its property, operations, or presence at the Airport with any governmental entity (other

than the Internal Revenue Service) by way of example but not in limitation, the Federal Aviation Administration ("FAA"), the Environmental Protection Agency ("EPA") or the Texas Commission on Environmental Quality ("TCEQ") or their successors, or receives any filing, any response to filing, or communications, Lessee shall provide duplicate copies to Lessor of such filing(s) or response(s) related thereto, with all related documents, at the time same are made; provided, however that Lessee shall not thereby be required to file confidential information and provided further that ten (10) days after any such filing, Lessee shall notify Lessor, in writing, of any document containing confidential information and setting forth the reasons, with specificity, why Lessee views such documents to contain confidential information. Upon request, Lessee shall permit Lessor to review any such claimed confidential document, including the confidential portion, at Lessor's offices, to assure Lessor as to the claim, with Lessor's decision to be final and conclusive as to whether the information is confidential. Electronic filing with Lessor is encouraged.

Upon expiration, termination or cessation of this Lease for any reason, Lessee shall provide to Lessor a Phase I Environmental Site Assessment meeting ASTM standards of the Premises ("Lessee's Report") and prior thereto, a draft report allowing Lessor ten (10) days' notice to review and comment thereon; and if, in the opinion of Lessor, Lessee's Report indicates that the Premises is in violation of applicable Environmental Laws, then Lessee shall perform such work as is necessary to cause the Premises to be in compliance with applicable Environmental Laws.

6.07 Minimum Improvement Standard. Lessee covenants and agrees that facilities constructed on the Premises, exclusive of the paving and landscaping, shall cover a minimum of twenty percent (20%) of the Premises' area, and a maximum of fifty percent (50%) of the Premises' land area. Within thirty (30) days of the effective date of this Lease, Lessee shall submit an Improvement Survey prepared by a licensed Texas surveyor for any improvements existing as of the Effective Date of this Lease. The improvements in existence on the Premises as of the Effective Date of this Lease and identified on the submitted Improvement Survey are hereby deemed to be in compliance with the requirements of this section 6.07. In the event such improvements are partially or totally destroyed by fire or other casualty, Lessee shall have the absolute right to restore or rebuild such improvements to the same size as existed prior to the casualty.

6.08 Approval of Plans and Construction. Prior to commencing any construction or installation of any improvements on the Premises that requires a building permit, the Lessee shall submit plans, specifications, and layout and architectural renderings to the Director for approval. Construction shall not be commenced until such time as the Director has provided the Lessee with prior written approval, which will not be withheld unreasonably. The approval by the Director shall refer only to the conformity of said plans and specifications to the general architectural, aesthetic, and graphic standards for the Airport and shall not end the need for Lessee to obtain any

required building, construction, or any other permits or authorizations required from the City of El Paso or other applicable agencies. Any such improvements shall comply with all applicable federal, state, and municipal laws, codes, and regulations which are in effect or which may hereafter be in effect. All Lessee Improvements shall remain the property of Lessee and, at the expiration of this Lease, shall be removed from the Premises by Lessee pursuant to the terms and conditions of this Lease.

A. Review of Plans. Lessee agrees that nothing in the City's review or approval of Lessee's plans for improvements shall create any obligation, responsibility or liability on the part of the City for their completeness, design sufficiency, or compliance with any Legal Requirements, all of which shall be Lessee's sole responsibility. Nor shall such review or approval constitute a waiver by the City of the right thereafter to require Lessee to correct any failure by Lessee to comply with any Legal Requirements later discovered by the City.

B. Building Permits.

- 1) Initial Improvements: Lessor and Lessee acknowledge that there are existing improvements on the Premises which shall remain and no additional Initial Improvements shall be required.

No later than 60 (sixty) days after the effective date of this Lease, Lessee shall provide the Director with a full and complete set of "As Built" drawings of the Initial Lessee Improvements, as approved by the Director, in an electronic format, the latest version of CAD Autodesk, preferred.

- 2) Subsequent Improvements: Lessee shall apply for and obtain the appropriate permits to construct any subsequent improvements. The Lessee shall provide the Director with copies of all permits issued for the construction of its improvements prior to the start of any construction. Lessee shall provide to the City a copy of the Certificate of Occupancy issued under its permit to construct its improvements no later than sixty (60) days after a Certificate of Occupancy is issued.

No later than sixty (60) days after a Certificate of Occupancy is issued, Lessee shall provide to the City a full and complete set of "As Built" drawings for any subsequent Lessee Improvements, as approved by the Director, in an electronic format, the latest version of CAD Autodesk, preferred.

C. Payment and Performance Bonds. Lessor and Lessee acknowledge that there are existing improvements on the Premises which shall remain and no additional payment or performance bonds shall be required for Initial Improvements.

6.09 Maintenance. Lessee shall, at its sole cost and expense, maintain the Premises and all buildings, improvements and appurtenances thereto, in a presentable condition and with good business practice. In addition, Lessee shall at its sole cost and expense, maintain the Hotel Site in

a manner which will meet or exceed the minimum standards for the franchisor's hotel brand. Lessee shall repair all damages to the Premises caused by its employees, patrons or its operation thereon; shall maintain and repair all equipment thereon, including any drainage installations, paving, curbs, islands, buildings and improvements located on the Premises; and shall repaint its own buildings as necessary.

In the event Lessee shall fail to maintain the Premises as required hereunder, Lessor shall provide notice thereof to Lessee, and Lessee shall promptly cure the defective conditions noted. If said maintenance is not commenced within ten (10) by Lessee and completed within forty-five (45) calendar days after receipt of written notice, the Director shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which shall be borne by Lessee plus an administrative fee of ten percent (10%).

6.10 Utilities. Lessee shall pay for all costs or charges for utility services furnished to Lessee during the term hereof. Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense.

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

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

6.13 Hotel Flag. Lessee agrees that no change of flag, hotel rebranding, name change, or change in affiliation shall be made to the hotel on the Premises or any other business on the Premises without prior written notification to Lessor a minimum of 120 days prior to the change.

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

6.15 No Mechanic's Liens. Neither Lessee nor any mechanic or materialman providing services to Lessee shall be permitted to file any mechanic's, materialmen's or similar liens against any part of the Airport Premises. Should any such lien be filed and not discharged by Lessee within thirty (30) days after written notice from the City, such failure shall constitute an Event of Default

hereunder, and the City shall have the right to discharge such lien and charge Lessee for all cost of same, including an additional fifteen percent (15%) for attorney fees and other costs.

ARTICLE VII - INSURANCE AND INDEMNIFICATION

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

Comprehensive General Liability Insurance in amounts as reasonably set from time to time by Lessor, but not less than Two Million Dollars (\$2,000,000.00) for bodily injury to one person for each occurrence,

Four Million Dollars (\$4,000,000.00) for bodily injuries to more than one person arising out of each occurrence, and

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

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

7.02 Additional Insured. Lessor shall be named as an Additional Insured on all insurance policies in the policy itself and reflected on the certificate of insurance.

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

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

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

reasonably acceptable to Lessor to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser Lessee selected be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee, unless the value claimed by Lessee is confirmed through such an appraisal, in which case the Lessor shall reimburse the Lessee for the cost of such appraisal.

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

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

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

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

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

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

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

representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvement contemplated by the construction contract.

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

- A. a statement of the coverage provided by the policy;
- B. a statement certifying the Lessor to be listed as an additional insured in the policy;
- C. a statement of the period during which the policy is in effect;
- D. a statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. an agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least ten (10) days' prior written notice to Lessor.

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

**ARTICLE VIII – DESTRUCTION OF IMPROVEMENTS BY FIRE
OR OTHER CASUALTY**

8.01 Obligations of Lessee. During the term hereof, except as provided in Section 8.03 below, should the improvements constructed by Lessee upon the Premises be damaged or destroyed in whole or in part by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessee, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessee as aforesaid and subject to and in accordance with the following terms and conditions:

- A. Prior to commencing such work, Lessee shall deliver to Lessor a set of the preliminary construction plans and specifications in accordance with the terms and provisions of the Declarations. In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto.
- B. Lessee shall prepare, or cause to be prepared, final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction there over and copies of all issued permits for the Premises. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.
- C. Prior to commencing construction, Lessor may require Lessee to furnish a performance and payment bond in accordance with Sections 7.03 (if applicable) and 7.04 and, if requested, Builder's Risk Insurance.
- D. Upon compliance with the foregoing, Lessee's obligation to repair, replace or rebuild shall be subject to settlement occurring with the insurance company or companies and said proceeds of such insurance policy or policies having been paid to Lessee. After actual receipt of such insurance proceeds, Lessee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.

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

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

8.03 Cancellation of Lease. Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty during the last five (5) years of the initial term or last five (5) years of any renewal term of this Lease, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and Lessee shall have the right to cancel this Lease by giving Lessor written notice of such election within sixty (60) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such notice and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessor, unless Lessor has elected to have the Premises returned to it clear of all improvements in accordance with Section 11.06 herein below, in which case Lessee shall be entitled to such insurance proceeds. All rents payable under this Lease shall be prorated and paid to the date of such cancellation. The receipt of insurance proceeds by Lessor will relieve Lessee from any responsibility to restore the Premises to their former condition.

ARTICLE IX - CONDEMNATION

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

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.
- B. "Total Taking" means the taking of the fee title to all of the Premises and improvements thereon.

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

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

- A. Notice of Intended Taking;

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

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

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

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

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

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

9.07 Obligations of Lessee Under Partial Taking. Promptly after any such Partial Taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last five (5) Lease Years of the Initial Term or any option period, Lessee

shall be relieved of the responsibility to so repair or reconstruct the improvements on the Premises as aforesaid by notifying Lessor of its intention to that effect; all awards shall be disbursed in accordance with the Partial Taking provision above.

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

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

ARTICLE X - ENCUMBRANCES

10.01 Encumbrance. Lessee (and each of Lessee's direct and indirect equity owners) shall have the right from time to time to mortgage, pledge, hypothecate, assign or otherwise encumber Lessee's or such equity owner's interest in this Lease (such encumbrance a "Mortgage") to a lender (such lender, and any successor, assign, designee or nominee of such lender, hereinafter a "Mortgagee"). The Mortgagee of any such Mortgage may deliver to Lessor a written notice specifying:

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

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

10.02 Mortgagee's Rights.

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

- A. To cure the default if it can be cured by the payment or expenditure of money;
 - B. To perform such other action as may be necessary to cure the default;
 - C. If the default cannot be cured within one hundred and twenty (120) days, to commence performance within such one hundred twenty (120) day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
 - D. To institute foreclosure proceedings and prosecute same diligently to conclusion.
- (b) Notwithstanding that Lessor may not be obligated by this Lease or applicable law to provide notice of default to Lessee, no default by Lessee hereunder given by Lessor shall be effective against a Mortgagee that has provided Lessor the information specified in Section 10.01 of this Lease unless Lessor has given a copy of such notice of a default by Lessee to such Mortgagee.
 - (c) Lessor shall accept performance by a Mortgagee of any covenant, condition or agreement on Lessee's part to be performed hereunder with the same force and effect as though performed by Lessee.
 - (d) Notwithstanding anything to the contrary herein contained, if the default is of such a nature that it is not susceptible of being cured by Mortgagee (for example, the bankruptcy of Lessee), Mortgagee shall in no event have any obligation to cure or pursue a cure of such default and upon completion of foreclosure by Mortgagee, such non-curable default shall be waived by Lessor.
 - (e) No Mortgagee shall have any personal liability under this Lease unless and until it becomes Lessee under this Lease and thereafter, Mortgagee's liability shall be limited to its interest in the Lease.
 - (f) The Director will, upon request by any Mortgagee, certify in writing that this Lease is in full force and effect, whether this Lease has been amended, that to Lessor's knowledge Lessee is not in default, and the date through which rent has been paid.
 - (g) Lessor shall not accept a voluntary surrender of the Lease without consent by all Mortgagees. This Lease shall not be cancelled, terminated or surrendered by Lessee, nor shall Lessor accept any such cancellation, termination or surrender of this Lease by Lessee, without the prior written consent of Mortgagee and (ii) Lessor shall not have the right to terminate this Lease in the event of a casualty or condemnation without the prior written consent of Mortgagee.
 - (h) If this Lease is terminated for any reason whatsoever, including by operation of law, or in

the event this Lease is rejected or disaffirmed pursuant to any bankruptcy, insolvency or other law affecting creditor's rights, Lessor shall give prompt notice thereof to each Mortgagee and Lessor, on written request of such Lender made any time within thirty (30) days after the giving of such notice by Lessor, shall promptly execute and deliver a new lease of the Property to the applicable Mortgagee, for the remainder of the term upon all the covenants, conditions, limitations and agreements herein contained (including, without limitation, options to extend the term of this Lease) except for such provisions which must be modified to reflect such termination, rejection or disaffirmance and the passage of time, provided that such Mortgagee (i) shall pay to Lessor, simultaneously with the delivery of such new lease, all unpaid rent due under this Lease up to and including the date of the commencement of the term of such new lease and all reasonable expenses, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred by Lessor in connection with the default by Lessee, the termination of this Lease and the preparation of the new lease, and (ii) shall cure all defaults existing under this Lease which are susceptible of being cured by such Mortgagee promptly and with due diligence after the delivery of such new lease and any defaults that are not reasonably susceptible of being cured by such Mortgagee promptly and with due diligence after the delivery of such new lease shall be deemed waived by Lessor.

- (i) Any new lease described in clause h above and the leasehold estate thereby created shall, subject to the same conditions contained in this Lease, continue to maintain the same priority as this Lease with regard to any Mortgage on the Premises or any part thereof or any leasehold interest therein or any other lien, charge or encumbrance thereon whether or not the same shall then be in existence.
- (j) The Lease may be assigned by Lessee to a Mortgagee or Mortgagee's nominee or other purchaser in a foreclosure, in connection with a foreclosure or deed-in-lieu of foreclosure with respect to a Mortgage and this Lease may be assigned by a Mortgagee or such nominee or purchaser of Mortgagee if and when it becomes Lessee thereunder each without the consent of the Lessor.
- (k) Mortgagee shall have the right to participate in the adjustment of losses with any insurance company with respect to any damage or destruction of the Premises or any improvements thereon and shall have the right to supervise and control the receipt and disbursements of all insurance proceeds related to the Premises and shall be entitled to all insurance proceeds related to the Premises which are not used to restore the Premises to be applied to the reduction of the debt secured by the Mortgage.
- (l) In the event of any taking of all or any part of the Premises, Mortgagee shall have the right to participate in any condemnation proceedings settlement discussions, shall have the right to supervise and control the receipt and disbursement of all condemnation awards related to the Premises to which Lessee may be entitled and shall be entitled to all condemnation awards related to the Property to which Lessee may be entitled which are

not used to restore the Property to be applied to the reduction of the debt secured by the Mortgage.

- (m) The right to extend or renew this Lease may be exercisable by Mortgagee and, before the expiration of any periods to exercise such a right, Lessee must provide to Mortgagee at least thirty (30) days prior written notice before the expiration of the right to so extend or renew in order to extinguish Mortgagee's right to so extend, renew or purchase.
- (n) If this Lease and the fee estate in the Premises are ever commonly held, then they shall remain separate and distinct estates and shall not merge as long as any portion of the debt secured by a Mortgage is outstanding.
- (o) Any mortgage or similar lien now or hereafter encumbering Lessor's interest in the Property shall be subordinate to the lien of this Lease and any Mortgage.

10.03 Estoppel Certificates. Upon request, Lessor, acting through the Director of Aviation, shall provide to Lessee or Lessee's Mortgagee, within thirty (30) days of written request therefor, an estoppel certificate containing the following information and no more: confirmation that Lessor remains owner of the Premises and lessor under this Lease; that this lease contains the full agreement between Lessor and Lessee with regard to the Premises; that Lessee is current in all of its obligations under this Lease as of a certain date; that, to the best knowledge of Lessor, Lessee is not in default under the terms of the Lease nor is Lessor aware of any condition which with notice or the passage of time would constitute default under this Lease if uncured; and the beginning date, expiration date, length of term and number and length of any option terms under this Lease, the amount of Minimum Annual Guarantee then payable by Lessee on an annual basis and the date to which rent was last paid by Lessee.

10.04 Equipment Leasing. Some of the equipment and furniture (collectively designated herein as "Trade Equipment"), now or hereafter to be installed by Lessee in and used upon the Premises, may or will be directly financed by a lender or owned by an equipment rental company ("Equipment Lessor") and leased to Lessee either directly from the Equipment Lessor or by way of equipment sublease or assignment of equipment lease from an Equipment sublessor, and Lessor hereby agrees to recognize the rights therein of any such lender or Equipment Lessor or sublessor (or assignee). Lessor agrees that all such items of financed or leased Trade Equipment installed or to be installed on the real property constituting the Premises shall be and remain personal property and not real property, notwithstanding the fact that the same may be nailed or screwed or otherwise attached or affixed to such real property, and further agrees to recognize the rights therein of any such lender or Equipment Lessor or sublessor (or assignee). Lessee shall have the right at any time to remove or replace any and all such financed or leased Trade Equipment regardless of whether annexed or attached to the Premises, and to the extent of their respective interests therein such lender or Equipment Lessor or sublessor (or assignee) shall also have such a right. Any damage to the Premises caused by such a removal shall be repaired by and at the expense of Lessee or other party removing it. Lessor waives any claim arising by reason of any Lessor's lien or otherwise with the respect to the financed or leased Trade Equipment or to Trade

Equipment upon which Lessee has granted a security interest to bona fide lender, and agrees that any such lender or Equipment Lessor or sublessor (as assignee) may remove and dispose of the same without reference to, and free and clear of, any or other demand of Lessor, provided that said disposal or sale shall not be made on the Premises. With respect to any Trade Equipment which is not leased, or subject to a security interest, Lessor agrees that as long as Lessee is not in default under the terms of the Lease, Lessee shall have the right to replace the same irrespective of whether annexed or attached to the Premises. Any damage to the Premises caused thereby shall be promptly and effectively repaired and at the expense of Lessee.

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

10.06 Encumbrancing by Lessor. Lessor hereby represents that Lessor's interest in the Premises is not currently subject to mortgage or deed of trust lien (a "Fee Mortgage"). Any future Fee Mortgage shall be, and shall state that it is, subject to and subordinate in all respects to this Lease.

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

ARTICLE XI - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

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

11.02 Events of Default and Cancellation. Subject to the provisions of Article X above, the following shall be events of default and this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property and such petition is not dismissed within ninety (90) days after filing;
- C. Make any general assignment for the benefit of creditors;
- D. Abandonment by Lessee of the Premises for more than sixty (60) days other than due to remodeling, casualty or condemnation;

- E. Be in violation of any local, state, or federal rules and/or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Lessee, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within ninety (90) days after the appointment of such receiver.
- H. Any representation or warranty to Lessor by Lessee shall prove to be materially inaccurate.

Each of the above events shall constitute an event of default of this Lease ("Event of Default") and shall allow Lessor to exercise any and all of the Lessor's rights granted to it under this Lease.

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

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

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

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

- A. Enter into and upon the Premises or any part thereof and repossess the same, change the locks on the Premises, install fences and gates, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and

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

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

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

11.05 Subleasing. Lessee shall not sublease all or any part of the Premises with the exception of the routine renting of rooms in conjunction with the operation of a hotel without the prior written consent of the Director, which consent may not be unreasonably withheld.

11.06 Rights Upon Expiration. At the expiration of this Lease, Lessor shall be entitled to have the Premises returned to Lessor clear of all improvements above and below ground level and to have the soil compacted to Lessor's specifications, with no subterranean uses. Within one hundred twenty (120) days prior to the expiration of this Lease and prior to removing any improvements from the Premises, Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

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

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

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

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

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

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

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 the Lessee's Report, together with a draft thereof, as identified in Paragraph 6.06C 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 Lessee's Report indicates that 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 the Lessee's Report and any required remediation of the Premises shall be subject to the rental due hereunder and provided further that Lessee shall continue to be bound by the terms and conditions of this Lease. Lessee and Lessor agree that this continued tenancy will not be continued as an extension or renewal of the lease term for other than the aforementioned one hundred eighty (180) days.

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

Lessor may, at its option, take title to the improvements in lieu of removal by or for Lessee at no additional consideration to Lessee. Lessor acknowledges and agrees that all of the improvements on the Premises as of the effective date of this Lease are the sole property of Lessee. Lessor shall notify Lessee of its election to require removal of the improvements or take possession of the improvements at least ninety (90) days prior to the beginning of the last year of this Lease; provided Lessee may request Lessor to make such election at least one hundred eighty (180) but not more than three hundred sixty (360) days before the beginning of the last year of this Lease, Option Period or any extension or renewal thereof. If Lessor exercises its option to take title to the improvements, Lessee will not be required to deliver to Lessor an instrument to guarantee the removal of all improvements from the Premises. However, Lessee shall execute all documents deemed necessary by Lessor to effectuate such transfer of title to Lessor.

11.07 Landlord's Lien. It is expressly agreed that upon a termination of this Lease in accordance with the terms hereof and subject to the rights of any Mortgagee pursuant to Section 10.02 hereof, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for all amounts due or to become due to Landlord, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein and subject to the rights of any Mortgagee pursuant to Section 10.02 hereof, Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may, subject to the rights of any Mortgagee pursuant to Section 10.02 hereof, take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first to the necessary and proper expense of removing, storing and selling such property, then to the payment of any amounts Rental due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

ARTICLE XII - GENERAL PROVISIONS

12.01 Continuity of Deed Restrictions and Covenants. This Lease agreement is subject to the terms, covenants and conditions contained in the Declarations. Lessor reserves the right to revise the standards set forth in **Exhibit "B"** provided, however, that such revisions will not cause a substantial reduction in the value of Lessee's leasehold interest. Lessor's right to revise the restrictions and covenants contained in the Declarations, is limited to the right to revise said document because of the development of new concepts or improved construction and architectural techniques and, in any event, such revisions shall be operative on a going forward basis only and shall not apply retroactively to any existing improvements.

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

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

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

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

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

LESSOR:	City Clerk City of El Paso P.O. Box 1890 El Paso, Texas 79950-1890	Director of Aviation El Paso International Airport 6701 Convair Rd. El Paso, Texas 79925-1099
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LESSEE: CP El Paso, Ltd.
740 Centre View Boulevard
Crestview Hills, Kentucky 41017
Attn: Derek J. Haught

With a copy to: Katz Teller LPA
255 East Fifth Street, Suite 2400
Cincinnati, Ohio 45202
Attn: Tedd H. Friedman

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. Delivery by overnight carrier such as Federal Express, UPS or other nation-wide delivery service which can provide proof of delivery shall also be acceptable.

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

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

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

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

- D. That Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- E. **Economic Discrimination.** To the extent that, under this Lease, Lessee furnishes goods or services to the public at the Airport, Lessee agrees that it shall:
1. Furnish each and every good and service on a fair, reasonable, and not unjustly discriminatory basis to all users of the Airport, and
 2. Charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers as otherwise permitted under the law.
- F. That, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Lease and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

12.08 Affirmative Action. Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from 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.

12.09 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. Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended

or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations set out in Federal Aviation Administration Order 1400.11, Appendix 4, as same may be amended from time to time (the "Acts and Regulations") such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

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

2. A. Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (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 Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.

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

3. A. During the term of this Lease, Lessee for itself, its successors in interest, and assigns, 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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 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 U.S.C. §§ 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 U.S.C. § 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 U.S.C. 1681 et seq).

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

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

12.11 Interpretation. Lessor and Lessee agree that this Lease has been freely negotiated by both

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

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

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

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

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

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

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

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

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

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

12.18 Amendment and Restatement. All provisions of the Old Lease and Sublease are hereby superseded by the provisions of this Lease.

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

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

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

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

12.22 Lessee's Investment. All improvements upon the Premises or alterations to such improvements made by Lessee shall be collectively referred to herein as "Lessee's Investment." Lessee's Investment is the property of Lessee. Lessee shall retain all rights to depreciation,

deductions and tax credits arising from ownership of Lessee's Investment and Lessee's Investment shall be included as part of Lessee's leasehold interest in the Premises.

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

12.24 Effective Date: Regardless of the date signed, this Lease shall be effective as shown on the title page of this Lease.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this ____ day of _____, 2018.

LESSOR: CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



for: Monica Lombraña, A.A.E.
Managing Director of Aviation and
International Bridges

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2018, by Tomás González as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

By: [Signature]
Printed Name: DEREK J. HAUGHT
Title: ICE PRESIDENT-FINANCE

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF Kenton)

Mary Sheanslang
Notary Public

MARY SHEANSHANG
Notary I.D. 551949
Notary Public, Kentucky State at Large
My Commission Expires March 23, 2020

SCHEDULE 1.04

Effective as of November 1, 2017, CP El Paso, LTD. entered into a Purchase and Sale Agreement pursuant to which it bought out the interests in the agreement (the "Royalty Agreement") dated August 12, 1980 between LANWARD DEVELOPMENT CORPORATION, a Texas corporation ("Lanward"), RICHARD N. AZAR, requiring payment to Lanward of two percent (2%) of the Hotel's "Gross Room Sales", which buy out was from (a) JAMES J. AYCOCK, as Trustee of the AZAR FAMILY TRUST for the benefit of ROBERT E. AZAR, which trust is a Successor-in-Interest to Lanward Development Corporation, a Texas corporation, (b) JAMES J. AYCOCK, as Trustee of the AZAR FAMILY TRUST for the benefit of GREGORY A. AZAR, which trust is a Successor-in-Interest to Lanward Development Corporation, a Texas corporation, and (c) RICHARD N. AZAR, II and MARY DIANNE AZAR. As a result of the foregoing, CP El Paso certifies that it continues to have the obligation to pay under the Royalty Agreement only to Michelle McCown, Trustee of Azar Family Trust for the benefit of Cheryl Azar McCown in, to and relating to the Royalty is limited to one-half of one percent (0.5%) of Gross Room Sales under the Royalty Agreement, which amounts shall be paid from and after the date hereof.

EXHIBIT "A"

Property Description

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

From a City monument located at the centerline intersection of Boeing Drive and American Drive, thence South $1^{\circ} 01' 53''$ East along the centerline of American Drive a distance of 53.30 feet, thence North $85^{\circ} 14' 15''$ West a distance of 34.17 feet to a point lying on the west right-of-way line of American Drive projected, said point being the POINT OF BEGINNING;

Thence along said projected right-of-way line, South $1^{\circ} 01' 53''$ East a distance of 407.04 feet;

Thence 143.47 feet along the arc of a curve to the right, whose radius is 100.00 feet, whose interior angle is $82^{\circ} 12'$, and whose chord bears South $40^{\circ} 04' 07''$ West a distance of 131.48 feet to the north right-of-way line of Montana Avenue;

Thence along the north right-of-way line of Montana Avenue, South $81^{\circ} 10' 07''$ West a distance of 426.02 feet;

Thence 211.04 feet along the arc of a curve to the right, whose radius is 123.64 feet, whose interior angle is $97^{\circ} 48'$, and whose chord bears North $49^{\circ} 55' 53''$ West a distance of 186.34 feet to the east right-of-way line of Airway Boulevard;

Thence along the east right-of-way line of Airway Boulevard, North $1^{\circ} 01' 53''$ West a distance of 446.58 feet;

Thence 102.10 feet along the arc of curve to the right, whose radius is 65.00 feet, whose interior angle is $90^{\circ} 00'$, and whose chord bears North $43^{\circ} 58' 07''$ East a distance of 91.92 feet to the south right-of-way line of Boeing Drive;

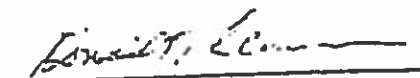
Thence along the south right-of-way line of Boeing Drive, North $88^{\circ} 58' 07''$ East a distance of 48.27 feet;

Thence continuing along the south right-of-way line of Boeing Drive, 225.42 feet along the arc of a curve to the right, whose radius is 1793.86 feet, whose interior angle is $7^{\circ} 12'$, and whose chord bears South $87^{\circ} 25' 53''$ East a distance of 225.27 feet;

Thence continuing along the south right-of-way line of Boeing Drive South $83^{\circ} 49' 53''$ East a distance of 238.32 feet;

Thence continuing along the south right-of-way line of Boeing Drive, 56.61 feet along the arc of a curve to the left, whose radius is 1781.06 feet, whose interior angle is $1^{\circ} 49' 16''$, and whose chord bears South $84^{\circ} 44' 31''$ East a distance of 56.61 feet;

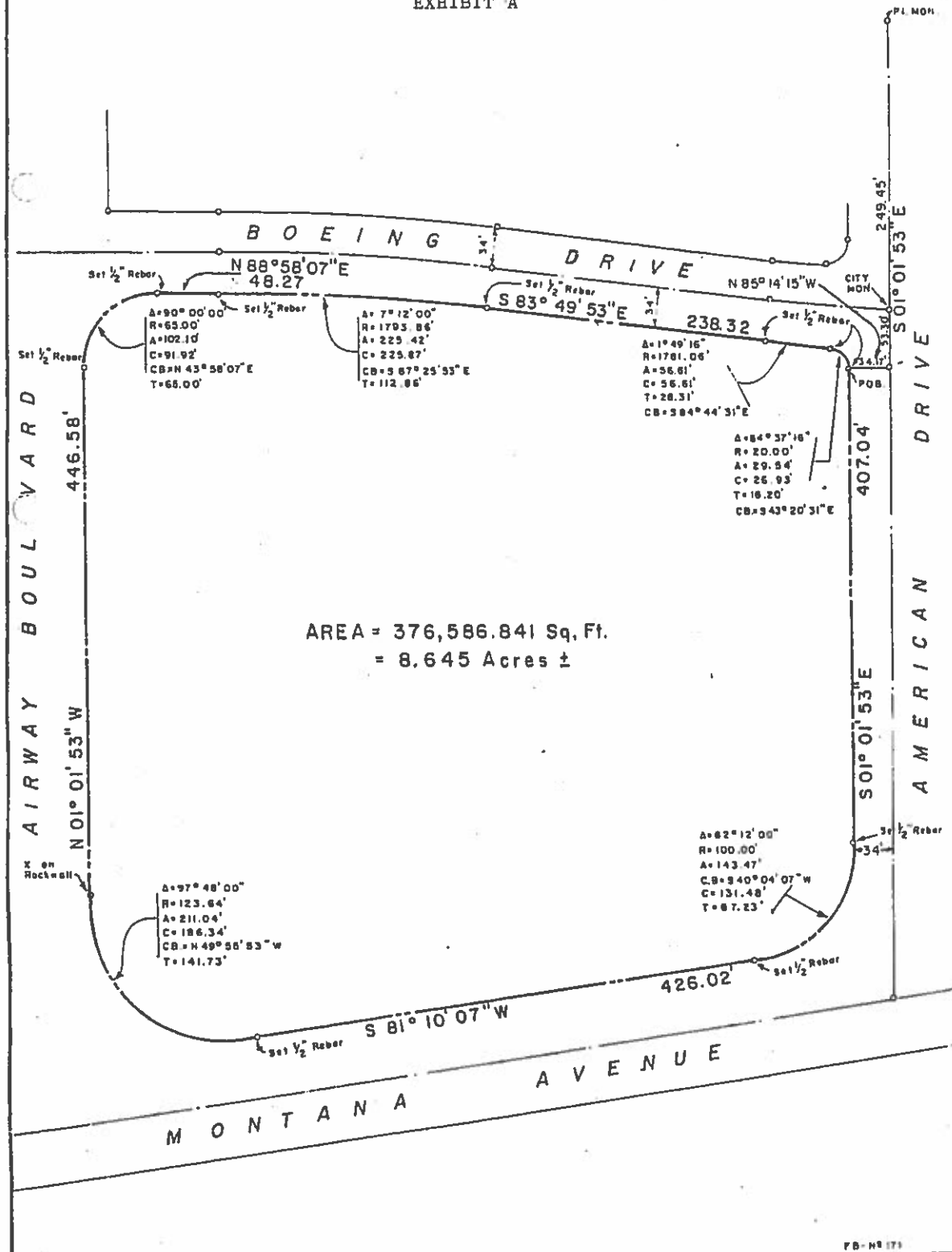
Thence 29.54 feet along the arc of a curve to the right, whose radius is 20.00 feet; whose interior angle is $84^{\circ} 37' 16''$, and whose chord bears South $43^{\circ} 20' 31''$ East a distance of 26.93 feet to THE POINT OF BEGINNING and containing 376, 586.841 square feet, or 8.645 acres of land, more or less; subject to all easements of record.



Donald T. Cremans, P.E.
CREMANS, INC.

EXHIBIT "A"

EXHIBIT A



CERTIFICATION

I HEREBY CERTIFY THAT THE FOREGOING SURVEY WAS MADE BY, AND UNDER THE DIRECT SUPERVISION OF, RAMON E. LARA, REGISTERED PROFESSIONAL ENGINEER NO. 35849, AND THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

RAMON E. LARA, P.E. DATE JUNE 13, 1980



SCALE 1" = 100'

PLAT OF SURVEY

BEING A PORTION OF TRACT
 4A25 BLOCK 2, ASCARATE GRANT
 EL PASO COUNTY, TEXAS.

FIELD F.M.	DRAWN J.B.S.
CHECKED R.E.L.	APPROVED R.E. LARA
DRAWN No.	FILE No.

CREMANS, INC.
 Engineers-Planners
 EL PASO, TEXAS

EXHIBIT "B"

HOTEL SITE LEASE COVENANTS AND RESTRICTIONS

ARTICLE I - DEFINITIONS

Whenever used in this instrument or as used within the Lease to which this instrument is attached, the following terms shall have the following meanings:

- A. **"AIRPORT"** shall mean the El Paso International Airport as depicted on the Airport Layout Plan.
- B. **"BUILDING"** shall include all buildings and all projections or extensions therefrom, including any garages, outside platforms and docks, carports, canopies and porches, excluding ground cover.
- C. **"LOT COVERAGE"** shall mean the surface area of the Premises that may be covered by Buildings, expressed as a percentage of the total lot area.
- D. **"BUILDING SITE"** shall mean the entire Premises leased by Lessee and shown as "Premises" in **Exhibit "A"** of the Lease.
- E. **"CITY"** shall mean the City of El Paso, Texas, its duly elected Council, or any duly constituted agent/committee appointed through said Council to fulfill the obligations herein required.
- F. **"COVENANTS"** shall mean the lease restrictions and covenants expressed within this instrument, as attached and incorporated into the Lease.
- G. **"DIRECTOR OF AVIATION"** or **"DIRECTOR"** shall mean the Director of Aviation of the Airport.
- H. **"FAA"** shall mean the Federal Aviation Administration of the U. S. Government or any federal agencies succeeding to its jurisdiction.
- I. **"LESSEE"** shall mean CP El Paso, Ltd.
- J. **"LESSOR"** shall mean the City of El Paso.
- K. **"PERMITTED USES"** shall mean the uses, which may be engaged in upon the Premises.
- L. **"PREMISES"** the property as identified in Article I and more fully described in **Exhibit "A"** of the Lease.
- M. **"SETBACK"** shall mean the distance a building must be set back from the property line of the Premises.

- N. **“STREET”** shall mean any street, highway or other public thoroughfare recognized by the City.

ARTICLE II - PERMITTED USES AND PERFORMANCE STANDARDS

A. **Permitted Uses.** No building, structure or land provided to Lessee pursuant to the Lease shall be used by Lessee for any purpose other than for an upscale, full-service (as defined in Exhibit “C” as “Full Service”) hotel, including all uses commonly found in a hotel. Lessee shall not operate or permit others to operate an auto rental concession or business on the Premises, except that Lessee may allow an auto rental company to maintain a direct telephone line, information or rental desk in the hotel lobby for the convenience of hotel guests, provided such auto rental company has an appropriate contractual arrangement with Lessor permitting its operation on Airport property. Also, Lessee shall not operate or permit others to operate an auto parking concession or business on the Premises except to the extent necessary to provide parking for hotel guests and customers. Lessee may operate a Park and Stay Program with the written approval of the Director of Aviation. All uses not expressly granted in this section or otherwise expressly permitted by the Lease are prohibited.

B. **Performance Standards.** Subject to the limited exceptions arising related to the construction activities required for any improvements contemplated by the Lease and provided that such instances are the result of standard construction activities, the Premises shall not be used or occupied in any manner so as to create any dangerous, noxious, or otherwise objectionable conditions which may affect any other property, including, but not limited to:

- (i) Fire, explosive or other hazardous noise, vibration or shock;
- (ii) Smoke, dust, odor or other forms of air pollution;
- (iii) Heat;
- (iv) Glare;
- (v) Electrical or other disturbance; or
- (vi) Liquid or solid refuse wastes or other substances, conditions or elements in such a manner or in such an amount as to affect the surrounding area or adjoining properties.

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

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

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

F. **Dust Control.** All ground areas that will not be covered by structures shall be landscaped or surfaced with concrete, asphalt concrete, asphalt oil or other comparable dust free surfacing permitted by applicable City and State regulations, and shall be maintained in good condition, free of weeds, dust, trash and other debris; and shall be properly drained and graded.

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

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

I. Illumination/Exterior Lighting.

- (i) Exterior Lighting. The design and location of exterior lighting shall comply in all respects to the applicable requirements of the City, the FAA or successor agencies, and any other governmental agencies having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from, and around the Airport.
- (ii) Interior Lighting. The source of illumination of any kind within any Building on the Premises shall not be visible at the property line, except for normal installation of standard interior lighting fixtures within buildings.

J. Signs. The number, size, design, and location of all signs displayed for observation from outside a Building whether displayed on, near, or within a Building shall be subject to prior written approval by the Director. Further, all such signs shall comply with Title 21 Smart Code of the City of El Paso, as amended, all applicable sign ordinances and building codes of the City of El Paso, and with all rules and regulations of the FAA, or any successor agencies.

Signs on the Premises shall be limited to those identifying the uses conducted on the Premises and to those necessary for directional purposes. Notwithstanding anything to the contrary contained herein, the Director will not unreasonably withhold approval of signs that, when applicable, are consistent with the prototype design of a nationally/regionally recognized retail brand licensor/franchisor; provided, however, that no outdoor advertising, billboards or flashing lighting shall be permitted.

K. Refuse or Trash. No refuse or trash shall be kept, stored or allowed to accumulate on the Premises, except as expressly permitted by the Lease.

L. Storage. All storage of every type, except of automobiles or aircraft, shall be within approved Buildings or enclosures. Storage shall be expressly prohibited outside of approved Buildings or enclosures, including but not limited to the storage of parts, service equipment or similar items.

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

ARTICLE III - DEVELOPMENT OF SITE-REQUIRED IMPROVEMENTS

Improvements on the Premises (although such improvements were permitted and constructed prior to the rezoning under Title 21 Smart Code of the City of El Paso) are acknowledged to be satisfactory as of the date of this Lease, although not in compliance with the current Covenants and Restrictions. Should Lessee apply to modify any of these existing Improvements, the modification shall be subject to review under the legal non-conforming application process. Any additions to the existing improvements shall be subject to review and permitting under Title 21 Smart Code of the City of El Paso, or the then current planning and zoning requirements of the City of El Paso.

A. **Required Parking.** Parking facilities shall be provided in accordance with Title 21 Smart Code of the City of El Paso, or the then current planning and zoning requirements of the City of El Paso as amended, and all applicable City, State and Federal laws, rules and regulations, and shall be entirely sufficient for the parking of all vehicles necessary for the conduct of the hotel and other permitted uses of the Premises. Such parking facilities, both on-street and off-street parking, shall comply with all applicable City, State and Federal laws, including, but not limited to, the American with Disabilities Act. Each parking space shall be designated by white lines painted upon the paved surface.

B. **Vehicle Loading.** All provisions for the loading and maneuvering of vehicles incidental to the operation of the hotel and other permitted uses on the Premises shall comply with all applicable City, State and Federal laws, rules and regulations.

C. **Setbacks.** All Building setbacks shall comply with the then current planning and zoning requirements of the City of El Paso, as amended. This provision applies to the entirety of the Premises, unless the requirements of the City of El Paso, through its planning and zoning requirements or otherwise, shall be more restrictive, in which case the more restrictive requirements shall apply.

D. **Landscaping.** Every lot on the Premises for which a Building shall be constructed must be landscaped in accordance with the standards established by the then current planning and zoning requirements of the City of El Paso, as amended. This provision applies to the entirety of the Premises, unless the requirements of the City of El Paso, through its planning and zoning requirements or otherwise, shall be more restrictive, in which case the more restrictive requirements shall apply. Lessee is also encouraged to expand landscape development plans to include such elements as sculptures, rock arrangements and sheltered outdoor seating areas, all subject to design approval by the Director or authorized agent prior to installation.

E. **Building Heights.** All building heights shall conform to standards established by the then currently planning and zoning requirements of the City of El Paso, as amended; in addition to FAA rules and regulations and shall require prior written approval of the Director. The term "building height" shall include any Building equipment, structures or other extrusions from the roof.

F. **Lot Coverage.** All Buildings and structures, or portions thereof, excluding paving and landscaping, placed on the Premises shall be constructed in compliance with the then currently planning and zoning requirements the City of El Paso, as amended. This provision applies to each individual lot.

G. Type of Construction. All Buildings shall be constructed in compliance with the Architectural Design Standards defined in the then currently planning and zoning requirements of the City of El Paso, as amended. In addition, concrete or masonry units shall be kept neatly painted, if used. Pre-fabricated metal buildings are specifically prohibited. All Buildings shall conform to applicable laws, ordinances and building codes of the City.

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

No materials, supplies, or equipment, including Lessee-owned or Lessee-operated trucks, with the exception of the Hotel Shuttle Vehicle(s), shall be stored in an area on the Premises, except inside a closed Building, behind a barrier completely screening such areas from view of adjoining Lots or Streets.

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

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

ARTICLE IV - PREPARATION AND SUBMISSION OF PLANS FOR IMPROVEMENT

A. General. All plans for alterations to the Premises that requires a building permit in excess of Fifty Thousand Dollars (\$50,000.00) ("Material Amount"), either for the construction of additional facilities or alterations to existing Buildings, including repairs, shall be prepared, submitted and approved as outlined herein. This requirement shall be in addition to the requirements set forth in the Lease but shall not be applicable to alterations that are less than the Material Amount. All plans for improvements to each site shall be prepared by a registered engineer or architect and shall be affixed with their signature and official seal, and further, shall require the prior written approval by the Director before any construction may begin ("Plans"). Such approval from the Director shall not be unreasonably withheld. The architect or engineer who prepares Plans and other construction documents shall have full responsibility for complying with Texas Occupations Code, Chapter 1001 (Engineers) or Chapter 1051 (Architects), as applicable. Notwithstanding anything to the contrary contained herein, the Director will not withhold its approval of the Plans (including but not limited to the plans for repairs or alterations to existing Buildings) provided that, when applicable, such Plans are consistent with the prototype design of the hotel brand franchisor or the retail brand licensor/franchisor.

The Director shall provide written approval or disapproval of any submitted plans, within the timelines established below. The Plans for proposed improvements shall include the following:

- (i) A plot plan at a scale not smaller than one (1) inch equaling one hundred (100) feet showing the relationship of the proposed improvements to the Premises and to the

improvements on adjacent lots, utilities and access thereto, curbs, walks, driveways, parking areas, and other pertinent design information;

(ii) Preliminary schematic plans for the improvements showing typical, general layouts, including guest room areas, public spaces, back-of-house areas, and lounge and banquet areas for the hotel site and comparable plans for the other, non-hotel sites;

(iii) Ground cover plans, including landscaping;

(iv) A true architectural rendering of the proposed Buildings, including elevations, the proposed exterior color scheme, style, materials and design and placement of signs; and

(v) Any other plans, specifications or design features which the Director may reasonably deem necessary and request.

C. Codes and Regulations. All improvements shall be planned and constructed in accordance with Title 21 Smart Code of the City of El Paso or the then currently planning and zoning requirements of the City of El Paso, as amended, the laws and ordinances of the City, as amended, applicable building codes as amended, all applicable State and Federal laws as amended, and all rules and regulations of the FAA or any successor agencies; as amended. Notwithstanding anything to the contrary contained herein, Lessor acknowledges that Lessee's agreement to comply with the Codes and Regulations does not equate to or require Lessee's waiver of any grandfathered or vested rights.

D. Approval of Initial Plans. The Director shall review the Initial Plans and, in the Director's sole discretion, within fifteen (15) business days after submission of the Initial Plans for approval either: (i) approve the Initial Plans, or (ii) advise Lessee in writing and with reasonable specificity the reason(s) for disapproval. In the latter event, Lessee, by its appropriate representatives shall proceed with due diligence and good faith to meet and resolve outstanding issues so that the Initial Plans (as they may be revised) are approved.

E. Approval of Final Plans. Following approval of the Initial Plans, Lessee shall prepare and submit to the Director specifications for the construction of the improvements ("Construction Specifications"), and any subsequent alterations, renovations, additions, and improvements thereto, all in sufficient detail to allow the Director to determine that the proposed construction will comply with the requirements of Paragraph C above and otherwise comply with the provisions of the Lease. If the Director determines that the Construction Specifications do not so comply, the Director shall advise Lessee in writing, specifying in reasonable detail the areas of noncompliance, within fifteen (15) business days ("Approval Period") of the date said Construction Specifications were submitted for approval. In the event that Director and Lessee are not able to resolve outstanding issues with the Construction Specifications, Lessee may, at its option and sole cost, engage a mediator to provide assistance in the resolution of such dispute.

F. Commitment to Construct. Once the Director approves Construction Specifications for any structure, a copy of the approved plans shall be deposited for permanent record with the Airport. Approval of these plans by the Director shall constitute a commitment on the part of the Lessee to obtain all required permits and licenses and, to erect and maintain the improvements as proposed and approved, and to do so within the time period set forth in the Lease.

G. Construction Within Time Specified. Any approved construction shall be prosecuted diligently in accordance with the approved plans and specifications and shall be completed within the time specified, provided that in no event shall such construction period exceed those timelines established within the Lease. Failure to complete such construction in the time specified shall be considered a default as set forth within the Lease.

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

In the event of such construction without approval, Lessee will be considered in default of the Lease and the City may terminate said Lease, in accordance with the provisions set forth therein.

ARTICLE V - GENERAL PROVISIONS

A. Maintenance of Premises. Lessee shall, at its sole cost and expense, and at a minimum, provide for the maintenance of the Premises and the Buildings, improvements and appurtenances thereto, in a presentable condition consistent with good business practice as required by Lessee's franchise agreement.

B. Housekeeping. If accumulations of weeds, or rubbish are permitted to remain on the Premises more than ten (10) days after a request in writing from Lessor to have them removed, Lessor or its authorized agent may enter upon the Premises for the purpose of removing same by whatever means it deems necessary. Such entry shall not be deemed a trespass and Lessor shall not be subject to any liability therefore. The cost of such work shall be borne by the Lessee and shall be paid to Lessor within thirty (30) days from the date Lessee is provided notice of such costs.

C. Maintenance of Landscaping. If landscaped areas are not maintained in accordance with the standards prescribed under this Lease and these Covenants, and the condition is not corrected within ten (10) days after written notice from Lessor, the Director or authorized agent shall have the right to enter on the Premises and plant or replant such areas without being deemed guilty of trespass and without incurring any liability. The costs therefore, as determined by Lessor, shall be paid by Lessee to Lessor within thirty (30) days from Lessee's receipt of notice of such costs.

D. Use Permits. Such use and occupancy permits as may be required by the Building Code of the City shall be maintained in force at all time by Lessee, at its sole cost. To the extent legally permitted, Lessor shall cooperate with Lessee in obtaining any such required use and occupancy permits.

E. Failure to Enforce a Restriction. Lessor may fail to enforce any restriction herein specified, but in no event should such failure be deemed a waiver of that particular restriction or of these Covenants or the right to enforce any restriction at a later date.

[END OF COVENANTS]

EXHIBIT “C”

FULL SERVICE, UPSCALE HOTEL MINIMUM STANDARDS

200 rooms minimum

Standard rooms – 288 sq. ft. minimum

Suites

Presidential (1 required) – 1,000 sq. ft. minimum

Executive Suites (3 required) – 660 sq. ft. minimum

Room Features

In-room safe

Refreshment center

Illuminated make-up mirror

Hair dryer

Iron/ironing board

Coffee unit

Thermostat

Concierge Service (Lobby)

Concierge Lounge

Complimentary newspapers, soft drinks and snacks

Restaurant & Bar

3 Meals required

24 Hour room service required

Meeting Rooms

13,500 sq. ft. minimum not including pre function space

Minimum capacity – 300 people (banquet style)

Sundries Store

Complimentary Guest Shuttle

Fitness Room

(Continued on next page)

Pool

Interior Finishes and Standards

All interior finishes will be reflective of an upscale property. "Upscale" means, as an adjective herein, a manner of operation of the rights and privileges granted to the Lessee in the Hotel Site Lease, a standard of quality of materials and construction and a standard of quality of products, merchandise, amenities and services, as the context herein might be, comparable to those of similar high-quality airport and non-airport full-service hotels in compliance with brand standards of the Franchisor. Quality of the finishes will also be designed to endure usage and exhibit an elegant feel.

Franchise

Full-service Marriott brand or national brand of equal quality required

Notwithstanding the foregoing, these minimum standards shall be subject to modification in accordance with Franchisor's then current brand requirements, and Lessee shall provide written notice of any such change from Franchisor, with sixty (60) days thereafter.

EXHIBIT D

EL PASO INTERNATIONAL AIRPORT

Sample Hotel Site Lease Gross Revenues Reporting Form

Lessee Name: _____

Property Name: _____

Reporting Period: _____ (month/year)

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

* Percentage rental due for each revenue category as defined in Section 5.01 Rental.

** Exclusions from gross revenues as defined in Section 5.02 Gross Revenues.

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