

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

DEPARTMENT: El Paso International Airport

AGENDA DATE: April 3, 2018

CONTACT PERSON/PHONE: Monica Lombraña, Managing Director of Aviation & International Bridges, (915) 212-7301

DISTRICT(S) AFFECTED: 2 & 3

STRATEGIC GOAL: NO. #1: Create an Environment Conducive to Strong, Sustainable Economic Development

SUBJECT:

A resolution that the City Manager be authorized to sign a Fuel Farm Lease by and between the City of El Paso ("Lessor") and Franklin Mountain Aviation ELP, LLC ("Lessee") for the premises described as follows:

A portion of Block 4, El Paso International Airport Tracts, Unit 1, El Paso, El Paso County, Texas (the "Premises") to be used as a bulk aviation fuel farm.

Lease terms:

- Thirty (30 Years) with four (4) additional five year terms
- \$.2439 sq. ft., final lease area will be determined at completion and approval of site plan

Lease will run concurrently with the Fixed-base operator's lease to Franklin Mountain Aviation, LLC which was approved by City Council on March 6, 2018.

BACKGROUND / DISCUSSION:

This is a bulk aviation fuel farm site lease with Franklin Mountain Aviation ELP, LLC who will design and construct the fuel farm.

The land lease initial term will be thirty (30) years with four (4) additional five years at \$.2439 sq. ft. Final lease area will be determined at the completion and approval of the site plan.

This is line with the lease the Airport has with Atlantic Aviation, and in accordance with Federal Aviation Administration policy and guidelines.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

Revenue Generating

BOARD / COMMISSION ACTION: N/A

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

DEPARTMENT HEAD:



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

RESOLUTION

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

That the City Manager be authorized to sign a Fuel Farm Lease by and between the City of El Paso ("Lessor") and Franklin Mountain Aviation ELP, LLC ("Lessee") for the premises described as follows:

A portion of Block 4, El Paso International Airport Tracts, Unit 1, El Paso, El Paso County, Texas (the "Premises").

Dated 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

FUEL FARM LEASE

El Paso International Airport

El Paso, Texas

March __, 2018

Effective Date

FRANKLIN MOUNTAIN AVIATION ELP, LLC.

LESSEE

FUEL FARM LEASE

{9130.7/TJOH/06585247.5}16-1003-592/700286_2

17-1003-705/774196

Fuel Farm FBO Lease - Franklin Mountain Aviation ELP, LLC Francis Aviation

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[To be updated upon finalization of Lease]

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ATTACHMENTS

- EXHIBIT "A" - Depiction of General Site Location
- EXHIBIT "A-1" - Detailed sketch of Premises~~lot~~ to be leased.
- EXHIBIT "B" - Rules, Regulations, and Land Use Requirements

FUEL FARM LEASE

THIS FUEL FARM LEASE ("Lease") is made as of the Effective Date between the City of El Paso (the "Lessor") and FRANKLIN MOUNTAIN AVIATION ELP, LLC., a Texas limited liability company ("Lessee").

WHEREAS, Lessor owns and operates El Paso International Airport as depicted in the most current FAA approved Airport Layout Plan ("Airport") located in the County of El Paso, State of Texas said Airport being managed by the Director of Aviation and International Bridges or her successor ("Director"); and

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

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

WHEREAS, Lessee desires to construct certain facilities on the Airport for the conduct of permitted uses thereon, and

WHEREAS, Lessee has indicated a willingness and ability to properly keep, maintain and improve said ground in accordance with standards established by Lessor if granted a lease of sufficient term on said ground area.

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

ARTICLE I

PREMISES AND PRIVILEGES

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

—A portion of Block 4, El Paso International Airport Tracts, Unit 1, El Paso, El Paso County, Texas, consisting of approximately _____ square feet as generally depicted on Exhibit "A" attached hereto and incorporated herein for all purposes, which is municipally known and numbered as _____ Boeing Drive, El Paso, Texas and as described on Exhibit "A-1" as provided below (the "Premises").

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17-1003-705/774196

Fuel Farm FBO Lease - Franklin Mountain Aviation ELP, LLC/Francois Aviation

After the Effective Date, Lessee will prepare and submit to Lessor a proposed site plan for the Premises, including a proposed metes and bounds description for the Premises (the "Proposed Site Plan"). Lessor shall have fifteen (15) days after receipt to approve or disapprove the Proposed Site Plan, specifying in detail any reasons for disapproval. If the Proposed Site Plan is disapproved, Lessee shall consider Lessor's comments and resubmit the Proposed Site Plan to Lessor within fifteen (15) days or provide Lessor with the reasons why the requested revisions were declined. Lessor shall then have seven (7) days after receipt of the resubmitted Proposed Site Plan to approve or disapprove them, and, in the event of disapproval, the procedures set forth herein shall be repeated until Lessor and Lessee have approved the Proposed Site Plan. Upon approval of the Proposed Site Plan by Lessor, the Proposed Site Plan will be the "Approved Site Plan. Neither Lessor nor Lessee will unreasonably delay or withhold their approval of the site plan or metes and bounds descriptions for the Premises. Within thirty (30) days after agreement on the Approved Site Plan, the Director, as Lessor's authorized representative, and Lessee will execute an amendment to this Lease setting out the metes and bounds description and applicable square footage for the Premises as **Exhibit "A-1"**.

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

1.03 Right to Construct. In addition to the general privileges, uses, rights, and interests attaching to the Premises hereinbefore described and without limiting the generality thereof, Lessee shall have the right to provide for the location, construction, erection, and as applicable, the removal of any Lessee-installed or owned improvements, in any lawful manner, upon or in the Premises, for the purpose of carrying out the activities provided for herein, subject, however, to the conditions herein set forth. Lessee agrees that it will, within the Required Construction Date as defined in the FBO Lease, begin construction and promptly complete construction of an above ground fuel farm facility. Lessee shall perform the site preparation for the Premises prior to construction of the Lessee-owned improvements. Site preparation is defined as mobilization, rough grading and compaction, water and sanitary service laterals, silt fencing and erosion control, and any other incidentals necessary for site preparation. Said Site preparation shall be done in accordance with the Rules, Regulations, and Land Use Requirements attached hereto as **Exhibit "B"**.

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

(9130.7/TJOH/06585247.5)17-1003-705/774196
Fuel Farm Lease – Franklin Mountain Aviation ELP, LLC
16-1003-592/700286-2
FBO Lease – Francis Aviation

Lessee may use the Premises only for:

- A. the operation of a Bulk Aviation Fuel Farm Facility; the operation of a Bulk Aviation Fuel Farm Facility is defined as the sale, purchase, storage and dispensing of aircraft fuels, propellants, and lubricants of sufficient ratings, grades, quality, and quantity to meet reasonable demand.
- B. the operation of a maintenance facility for the maintenance of Lessee's ground service equipment used in conjunction with the operation of the Bulk Aviation Fuel Farm; and
- C. other related uses, as approved by the Director of Aviation.

Lessor and Lessee have executed a Fixed Base Operators Lease and Operating Agreement effective March 6, 2018 (the "FBO Lease"). As a material consideration for the leasehold interest and other rights and privileges granted hereunder, Lessee agrees that Lessee will, for the entire Term of this Lease, maintain its status as a Lessee in a Fixed Base Operator ("FBO") under the FBO Lease, as the same may be amended from time to time, which is in full force and effect with Lessor. Should Lessee, at any time during the term of this Lease, fail to maintain an FBO Lease in full force and effect with Lessor, this Fuel Farm Lease, at Lessor's sole option, shall be null and void; provided, however, that any such FBO Lease shall contain the then current FBO minimum standards applicable to comparable FBO leases being offered by Lessor. Provided Lessee is not in default under the terms of this Lease beyond any applicable notice and cure period, in the event the FBO Lease is terminated, Lessee may terminate this Lease.

The use of the Premises as provided herein above shall be subject to compliance with **Exhibit "B"**, as well as compliance with all the terms and conditions of this Lease. All uses of the Premises not specifically permitted herein are expressly prohibited.

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

- A. That no functional alteration of the Premises shown on Exhibit "A" or change in the uses of such premises, except as reflected in Section 1.04 hereinabove, shall be made without the prior written consent of Lessor;
- B. That the right to use said public Airport facilities in common with others authorized to use such facilities shall be exercised subject to and in accordance with the laws of the United States of America and the State of Texas, and with all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law; and
- C. That Lessee will utilize only the roadways, taxi lanes, or other direction, path, route, or form of travel the Director may designate, from time to time,

for Lessee's transportation or delivery of fuel or services on or about the Airport.

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ARTICLE II

OBLIGATIONS OF LESSOR

2.01 Quiet Enjoyment. Lessor agrees that upon Lessee's paying Ground Rental and performing all of the covenants, conditions, and agreements set forth herein, Lessee shall and may peaceably and quietly have, hold and enjoy the Premises for the term hereby provided. Lessor has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder, and to do so throughout the Lease term and any renewals or extensions thereof.

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

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

ARTICLE III

OBLIGATIONS OF LESSEE

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

- A. Keep and maintain the Premises and improvements located thereon in a good state of repair at all times;
- B. Pay all taxes and governmental charges of any kind whatsoever that may be assessed against Lessee or Lessor in accordance with Section 3.12, of this Lease.
- C. Pay all casualty, bond, and liability insurance premiums required in accordance with this Lease; and

- D. Cover all ground area with concrete, asphalt or other comparable code compliant dust-free surfacing and shall fence the area with fence material approved by the Director.

3.02 Condition of Premises. Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon subject to Lessee's right to construct limited improvements under the terms of this Lease. 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.

3.03 Compliance With Laws. Lessee, at Lessee's expense, agrees that it will construct, operate and maintain improvements on the Premises in accordance with Exhibit "B", 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.

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

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

A. Definitions.

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

deal with the regulation or protection of the environment, including, but not limited to, the ambient air, ground water, surface water, and land use, including sub-strata land.

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

B. Compliance.

- (1) Except for the specific uses allowed in accordance with this Lease and all applicable laws, rules and regulations of the appropriate governmental agencies, Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its agents, employees, contractors, invitees, or a third parties under the control of Lessee (collectively "Lessee Parties") in violation of any Environmental Law; it being expressly understood and agreed that Lessee will have Hazardous Materials stored on the Premises and shall do so in accordance with this Lease and all applicable laws, rules and regulations of governmental agencies exercising jurisdiction. Without limiting the generality of any other indemnity clauses contained in this Lease, Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon by Lessee Parties. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any

action that occurred on the Premises or any improvements thereon by Lessee Parties. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises by Lessee Parties. 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 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 any surrounding property to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.
- (3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all available information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties, which is related to environmental contamination.
- (4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication from any governmental entity

regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.

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

C. Fuel Storage Tanks.

- (1) Lessee acknowledges that the Premises presently contains no fuel storage tanks. Lessee, during the term of this Lease plans to install, operate, and maintain above-ground fuel storage tanks, with appropriate spill containment measures, on the Premises. In connection with the operation and maintenance of such storage, pumping and dispensing facilities, Lessee will comply with all governmental regulations, laws, rules and ordinances, all industry standards and insurance requirements, all at Lessee's sole cost, expense and risk. Prior to the end of the term of the Lease, Lessee will remove all tanks, pumping and dispensing facilities and will perform all necessary clean up, testing and backfilling necessary to assure that the Premises are not contaminated beyond the Environmental Protection Agency (EPA) and the Texas Commission on Environmental Quality (TCEQ), or any successor agency's acceptable limits with any fuel, gasoline, petroleum product or hazardous material. Lessee will, without limiting the generality of the foregoing, test the ground under the tanks, once they are removed, and will deliver copies of the testing report showing no contamination beyond EPA and TCEQ acceptable limits on the site to Lessor. Without limiting the generality of any other indemnity clauses contained in this Lease, Lessee agrees to indemnify and hold Lessor harmless against any and all cost, expense and liability arising from the location, maintenance or operation of any gasoline, jet fuel, or other chemical or petroleum product storage, pumping and dispensing equipment on the Premises including, without limitation, any leaks therefrom or contamination of the Premises or adjacent property therefrom.
- (2) Without limiting the foregoing, if Lessee, at any time during the term of this Lease, installs any fuel storage tanks on the Premises, Lessee warrants that it will file all the appropriate forms with the TCEQ, or any successor agency, to show that Lessee is the owner of said tanks and, as such, accepts responsibility for the fuel storage tanks.

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

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

D. Reporting.

- (1) At any time that Lessee submits any filing pertaining to its property, operations, or presence of 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 EPA or the TCEQ, Lessee shall provide duplicate copies of the filing(s) and all related documents to Lessor.
- (2) Upon expiration, termination or cessation of this Lease for any reason, Lessee shall provide a current Phase I environmental site assessment of the Premises acceptable to Lessor; and if, in the Phase I environmental assessment of the Premises shall require environmental remediation, Lessee shall perform same; provided, Lessee will not be responsible for concerns and remediation of Hazardous Material or conditions not introduced by Lessee Parties.

E. Responsibility of Lessee. Notwithstanding the forgoing, Lessee will not be responsible for Hazardous Material that is not introduced by Lessee Parties.

3.04 Maintenance. Subject to casualty and condemnation, during the Term, Lessee shall, at its sole cost and expense, maintain the Premises and the buildings, improvements and appurtenances thereto, in a presentable condition consistent with good business practice. Lessee shall repair all damages to said Premises; shall maintain and repair all equipment thereon, including any drainage installations, paving, curbs, islands, buildings and improvements.

Lessor shall be the sole judge of the quality of repairs and maintenance performed by Lessee hereunder using reasonable standards applied to similar properties within the Airport in the same manner. Upon written notice by Lessor to Lessee, Lessee shall be required to commence performance of such repairs and maintenance deemed necessary by the Lessor in accordance with the Lease and standards required by this Lease. If said required repairs or maintenance is not commenced and thereafter diligently pursued to completion by the Lessee within ten (10) days after receipt of the written notice, Lessor shall have the right to enter on the Premises and perform the required repairs or

maintenance, the cost of which, plus ten percent (10%) overhead, shall be borne by Lessee. Except in the event of an emergency or safety or security issues, Lessor may not perform self-help if delays are the result of events that are not within Lessee's control, weather, permitting, laws, rules, regulations, approvals or delays caused by or attributable to Lessor (collectively "Force Majeure Events").

Lessee agrees not to paint, erect, or in any manner install any advertising on the exterior of the improvements or anywhere on the Premises, with the exception that Lessee may erect a sign displaying its name and business in accordance with Section 3.08 herein.

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

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

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

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

- A. **Permitted Sign.** Signs on Premises shall be limited to those identifying the uses conducted on the site and to those necessary for directional purposes. The content, size, design and location of all signs shall require the written approval of the Director prior to installation. Said written approval shall be at Director's sole discretion. Outdoor advertising, billboards or flashing lighting are not permitted.
- B. **Lighting and Construction.** All signs shall comply with all current or future building codes of the City of El Paso and with all current or future rules and regulations of the FAA and its successor agencies. Lessee is solely responsible for obtaining all applicable permits and licenses.
- C. **Approval of Plans.** Approval of any and all improvements, plans, signs, or documents by the Director does not constitute approval of the City or any other local, state, or federal agency. It is specifically understood that Aviation Department is only one City department and that, in addition to

obtaining approval of Director, Lessee shall be required to obtain approvals and permits as required by the El Paso City Code as amended.

3.09 Authorization to Enter Restricted Area. Lessee understands that all of its agents, employees, servants, subtenants, invitees or independent contractors must be authorized by the Lessor to enter restricted areas as defined in Title 14 of the El Paso City Code as amended. Lessee agrees that no person authorized to enter a restricted area by virtue of this Lease may permit any other person who is not otherwise authorized to enter a restricted area unless such person is, at all times while in the restricted area, in the company of an authorized person.

3.10 Security. Lessee is familiar with the restrictions imposed by 49 CFR 1540 as amended and agrees to assume responsibility for compliance with said regulations as they relate to security procedures on the Premises.

3.11 Penalties Assessed by Federal Agencies. Lessee understands and agrees that in the event any federal agency assesses a civil penalty against Lessor or the Airport for any violation, including but not limited to any security violation, as a result of or related to any act or failure to act on the part of Lessee, its agents, employees or independent contractors, 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. To the extent within Lessor's reasonable ability and control to provide, upon the occurrence of any event giving rise to liability of Lessee under this provision, Lessor shall give Lessee notice of such event and a copy of any communication or document received by Lessor with respect to each event. Nothing herein will prevent Lessee from contesting assessments and penalties imposed under this Section; provided, such contest will not prevent Lessee from making payments required hereunder during the period of contest unless otherwise excused or abated by the applicable authority.

3.12 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. 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.

3.13 Governmental Filings. In the event that Lessee submits any filing or response pertaining to its property, operations or presence at the Airport with any governmental entity (other than the Internal Revenue Service), by way of example and not in limitation the FAA, the EPA or the TCE or any successor agencies, Lessee shall provide duplicate copies to Lessor of such filing(s) or response(s) made at the time same are made.

ARTICLE IV

TERM OF LEASEHOLD

4.01 Term. The "Term" of this Lease will be the Initial Term and any properly exercised Renewal Term, as provided below.

The "Initial Term" of this Lease shall commence on the Effective Date and end thirty (30) years after the Fuel Farm Rent Commencement Date. It is the intent of Lessor and Lessee that the Initial Term of this Lease will expire on the same day as the FBO Lease.

Renewal Term and Renewal Terms will be as provided in Section 4.02.

4.02 Options To Extend. In the event that Lessee is then not in default of any terms of this Lease, Lessee shall have the option to extend this Lease for four (4) additional terms (individually the "Option" and collectively the "Options") of five (5) years each (individually a "Renewal Term" and collectively "Renewal Terms"). Lessee may exercise the option ("First Option Period") by notifying Lessor in writing at least one hundred and twenty (120) days prior to expiration of the Initial Term. In the event the election is so exercised, the Lease shall be extended for five (5) years on the same terms and conditions, except that the annual Ground Rental shall be adjusted to a rate equal to eight percent (8%) of the Fair Market Value of the Premises at the commencement of the First Option Period. In no event shall the adjusted annual Ground Rental for the First Option Period be less than the annual Ground Rental during the Initial Term.

In the event that Lessee is then in full compliance with terms of this Lease, as extended, Lessee may exercise the second 5-year option ("Second Option Period") by notifying Lessor in writing at least one hundred and twenty (120) days prior to the expiration of the First Option Period. In the event the election is so exercised, the Lease shall be extended for an additional five (5) years on the same terms and conditions, except that the annual Ground Rental for the Second Option Period shall be adjusted to a rate equal to eight percent (8%) of the Fair Market Value of the Premises at the commencement of the Second Option Period. In no event shall the adjusted annual Ground Rental during the Second Option Period be less than the annual Ground Rental established in the First Option Period.

In the event that Lessee is then in full compliance with terms of this Lease, as extended, Lessee may exercise the third 5-year option ("Third Option Period") by notifying Lessor in writing at least one hundred and twenty (120) days prior to the expiration of the Second Option Period. In the event the election is so exercised, the Lease shall be extended for an additional five (5) years on the same terms and conditions, except that the annual Ground Rental for the Third Option Period shall be adjusted to a rate equal to eight percent (8%) of the Fair Market Value of the Premises at the commencement of the Third Option Period. In no event shall the adjusted annual Ground Rental during the Third Option Period be less than the annual Ground Rental established in the Second Option Period.

In the event that Lessee is then in full compliance with terms of this Lease, as extended, Lessee may exercise the fourth 5-year option ("Fourth Option Period") by notifying Lessor in writing at least one hundred ~~and~~ twenty (120) days prior to the expiration of the Third Option Period. In the event the election is so exercised, the Lease shall be extended for an additional five (5) years on the same terms and conditions, except that the annual Ground Rental for the Fourth Option Period shall be adjusted to a rate equal to eight percent (8%) of the Fair Market Value of the Premises at the commencement of the Fourth Option Period. In no event shall the adjusted annual Ground Rental during the Fourth Option Period be less than the annual Ground Rental established in the Third Option Period.

Notwithstanding the foregoing, in the event Lessee fails to notify Lessee in of Lessee's desire to exercise its right to an Option within the time period required, Lessee's right to exercise the applicable Option will not expire until Lessor has provided Lessee at least thirty (30) days prior notice that Lessee has not exercised the applicable Option (the "Option Reminder"). Thereafter, Lessee will have thirty (30) days after receipt of the Option Reminder to exercise the applicable Option.

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, at a Ground Rental of one and one-half times the then-current monthly Ground Rental. 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, suit, or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

ARTICLE V

FEES AND GROUND RENTALS

5.01 Ground Rental. For the purpose of computing Ground Rental payments due, Lessor and Lessee agree to use the square footage of the Premises as set out in Exhibit "A-1" once approved. Beginning on the Fuel Farm Rent Commencement Date, the annual Ground Rental for the Premises will be calculated on the basis of \$0.24~~39~~ per square foot per annum for the land. At the end of the first five (5) years after the Fuel Farm Rent Commencement Date and on every 5th anniversary of the Fuel Farm Rent Commencement Date during the Term, the Ground Rental shall be adjusted in accordance with Section 5.03 below.

5.02 Commencement of Ground Rental. Payment of Ground Rental by Lessee to Lessor as aforesaid shall commence on the "Fuel Farm Rent Commencement Date", being the same as the Rent Commencement Date under the FBO Lease.

5.03 Readjustment of Ground Rental. For the purpose of computing adjustments to Ground Rental payments, Lessor and Lessee agree as follows:

Ground Rentals shall be adjusted on the fifth (5th) anniversary of the Fuel Farm Rent Commencement Date during the Initial Term. Lessor and Lessee agree, during the Initial Term, that percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U) shall govern the Ground Rental readjustment for these anniversary dates. The parties further agree that for the purposes of computing such percentage increase during the Initial Term, the Base Year CPI-U shall be established as that rate in place ninety (90) calendar days prior to the Fuel Farm Rent Commencement Date of this Lease. Ground Rentals shall be adjusted pursuant to the percentage increase in the CPI-U from the Base Year CPI-U to the rate in place ninety (90) days prior to the applicable date of readjustment (i.e. the fifth (5th) anniversary date of the Fuel Farm Rent Commencement Date). The Ground Rental readjustment shall be that amount equal to the percentage increase of the Consumer Price Index for all Urban Consumers from the Base Year CPI-U to that CPI-U in effect ninety (90) calendar days prior to the fifth (5th) anniversary date of the Fuel Farm Rent Commencement Date).

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

During the Renewal Term, annual Ground Rental will be adjusted on the fifth (5th) anniversary date of the Fuel Farm Rent Commencement Date by Fair Market Value, defined below:

The "Fair Market Value" of the Premises shall be determined by an appraisal of the Premises; however, if mutually agreeable to Lessor and Lessee, the appraisal to determine the Fair Market Value, may be foregone under either of the following conditions:

A. The Director ~~of Aviation~~ and Lessee mutually agree upon the fair market value of the Premises established by a recent appraisal of similar property located in the surrounding area which was performed within twelve (12) months of the lease anniversary date in question.

B. In the event Lessor and Lessee do not so mutually agree, the Lessor shall select a qualified appraiser ("First Appraiser") to establish the Fair Market Value of the Premises, disregarding the value of any Lessee-owned improvements located on the

(9130.7/TJOH/06585247.5); 17-1003-705/774196
Fuel Farm Lease – Franklin Mountain Aviation ELP, LLC
16-1003-592/700286-2
FBO Lease – Francis Aviation

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Premises. Lessor shall notify Lessee of such selection and, if Lessee is not satisfied with the selection of the First Appraiser, Lessee, within fifteen (15) days after receipt of said notice, shall notify Lessor of Lessee's selection of a qualified second appraiser ("Second Appraiser"). If Lessee does not so select a Second Appraiser, the First Appraiser shall proceed to establish the Fair Market Value of the Premises. If the Second Appraiser is so selected and Lessor is satisfied with such selection, the Second Appraiser shall proceed to determine the fair market value of the Premises.

If Lessor is not satisfied with the selection of the Second Appraiser and Lessor and Lessee cannot mutually agree on the selection of one appraiser, then both the First Appraiser and the Second Appraiser will proceed to independently determine the fair market value of the Premises. If the fair market value determined in the two appraisals differs by ten percent (10%) or less, then the Fair Market Value of the Premises shall be established by the lower of the Fair Market Value identified in the two appraisals. If the Fair Market Value determined by the two appraisals differ by more than ten percent (10%) and Lessor and Lessee cannot mutually agree as to a Fair Market Value, the Fair Market Value of the Premises shall be established by the averaging of the Fair Market Value of the Premises determined in the appraisal by the First Appraiser and the Fair Market Value identified in the Second Appraisal.

In any case, the fees and expenses of any appraisals shall be borne equally by the Lessor and Lessee and the Ground Rental established by the determination of the Fair Market Value shall be effective as of the anniversary date for which the adjustment of the Ground Rental is being determined. Furthermore, any appraiser designated to serve in accordance with the provisions of this Lease shall be an unbiased and disinterested party and shall be qualified to appraise real estate of the type covered by this Lease situated in El Paso County, Texas, and shall have been actively engaged in the appraisal of real estate similar to the Premises and located in El Paso County, Texas for a period of not less than five (5) consecutive years immediately preceding his appointment.

5.04 Time of Payment. All Ground Rentals due hereunder shall be paid in twelve (12) equal monthly installments. Said monthly Ground Rental payments shall be paid in advance on or before the first day of each and every month during the Term of this Lease

5.05 Unpaid Ground Rental, Fees and Charges. Any installment of Ground Rental, any fees, or other charges or monies accruing under any provisions of this Lease that are not received by Lessor by the twentieth (20th) day of the month in which payment is due, shall bear interest at the rate equal to the lesser of the highest maximum rate by applicable law or eighteen percent (18%) per annum from the date the same was due according to the terms of this Lease and shall accrue until actually paid by Lessee.

5.06 FBO Lease. Nothing herein shall be construed to relieve Lessee of its obligations to pay certain Ground Rentals and fees under the FBO lease.

5.07 Place of Payment. All payments required by Lessee herein shall be paid to Lessor at the following address:

(9130.7/TJOH/06585247.5) 17-1003-705/774196
Fuel Farm Lease - Franklin Mountain Aviation ELP, LLC
16-1003-592-700286-2
FBO Lease - Francis Aviation
— ii —

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

ARTICLE VI

INSURANCE AND INDEMNIFICATION

6.01 Fire and Other Risks Insurance. Lessee, at its sole cost and expense, shall throughout the Term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Premises insured 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 installed by Lessee, 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, Fair Market Value of the Lessee improvements on the Premises shall be used to determine the Full Insurable Value, as defined in this provision, and the resulting determination shall be conclusive between the parties for the purpose of this Section.

6.02 Liability Insurance. Lessee, at its sole cost and expense shall, throughout the Term of this Lease, provide and keep in force for the benefit of Lessor as an additional insured, comprehensive general liability insurance in the amount of TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) (or an amount current Ground Rental provided by Lessee, whichever is greater) with respect to each accident and occurrence of personal injury, wrongful death or damage to property. The Commercial General Liability and Property Damage coverage requirements may be satisfied through a combination of individual policy limits, umbrella and blanket coverages.

In addition, Lessee, at its sole cost and expense shall, throughout the Term of this Lease, provide and keep in force with Lessor as an additional insured, comprehensive pollution liability insurance in amounts as reasonably set from time to time by Lessor, but not less than Three Million Dollars (\$3,000,000).

6.03 Performance and Payment Bonds. 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 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.

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

- C. In accordance with Article 7.19-1 of the Texas Insurance Code, if a Performance or Payment bond is in amount of excess of ten percent (10%) of the surety's capital and surplus, Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed 10% of the reinsurer's capital and surplus.
- D. In lieu of the payment and performance bonds described in paragraphs A, B, and C, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable Letter of Credit 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 with offices in El Paso, El Paso County, Texas, 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 improvements contemplated by the construction contract.

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

- A. A statement of the coverage provided by the policy;
- B. A statement certifying Lessor listed as an additional insured in the liability policies;
- C. 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 cancelled without at least thirty (30) days' prior written notice to Lessor.

6.05 Indemnification.

- A. **INDEMNITY.** LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES", FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER ("CLAIMS), TO THE FULL EXTENT ARISING OUT OF (A) ANY BREACH OF THIS LEASE BY LESSEE OR ITS AGENTS, EMPLOYEES, AFFILIATES, SUBTENANTS, OR CONTRACTORS, (COLLECTIVELY THE "LESSEE PARTIES"); (B) ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE LESSEE PARTIES HEREUNDER; OR (C) NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSEE PARTIES IN CONNECTION WITH THIS LEASE, THE CONSTRUCTION, DEVELOPMENT, OPERATION OR USE OF THE PREMISES, OR THE AIRPORT. NOTHING PROVIDED ABOVE SHALL BE CONSTRUED AS A REMEDY FOR BREACH OF CONTRACT CLAIM UNDER THIS LEASE. IT IS THE INTENTION OF THIS INDEMNITY SECTION THAT THE JOINT AND CONCURRING RESPONSIBILITY OF LESSOR AND LESSEE BE BORNE COMPARATIVELY IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO LESSOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THIS PROVISION SHALL NOT CREATE ANY CAUSE OF ACTION IN FAVOR OF ANY THIRD PARTY AGAINST LESSOR OR LESSEE NOR SHALL IT ENLARGE IN ANY WAY THE LIABILITY OF LESSOR OR LESSEE, THIS PROVISION BEING INTENDED SOLELY TO PROVIDE FOR INDEMNIFICATION OF LESSOR FROM LIABILITY FOR DAMAGE TO THIRD PERSONS OR PROPERTY AS SET FORTH IN THIS PARAGRAPH.

LESSEE SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. MAINTENANCE OF THE INSURANCE REQUIRED UNDER THIS AGREEMENT SHALL NOT AFFECT LESSEE'S INDEMNITY OBLIGATIONS. LESSEE MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF LESSOR OR LESSEE, AS LESSEE MAY IN

GOOD FAITH DEEM APPROPRIATE, PROVIDED THAT THE EXPENSES THEREOF SHALL BE PAID BY LESSEE. IN NO EVENT MAY LESSEE ADMIT LIABILITY ON THE PART OF LESSOR WITHOUT THE PRIOR WRITTEN CONSENT OF THE EL PASO CITY ATTORNEY.

- B. WAIVER OF CONSEQUENTIAL DAMAGES. EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES FROM THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR INCOME, CLAIMS OF LESSEE'S CUSTOMERS, SUBTENANTS, AND CONTRACTORS, AND OTHER SIMILAR CLAIMS OR DAMAGES.
- C. CLAIMS AGAINST LESSEE. IF ANY CLAIM, DEMAND, SUIT, OR OTHER ACTION IS MADE OR BROUGHT BY ANY PERSON OR ENTITY AGAINST THE LESSEE ARISING OUT OF OR CONCERNING THIS LEASE, THE AIRPORT, OR THE PREMISES, LESSEE SHALL GIVE WRITTEN NOTICE THEREOF TO LESSOR WITHIN TEN (10) BUSINESS DAYS AFTER BEING NOTIFIED OF SUCH CLAIM, DEMAND, SUIT, OR ACTION. SUCH NOTICE SHALL ENCLOSE A TRUE COPY OF ALL SUCH CLAIMS, AND IF THE CLAIM IS NOT WRITTEN OR THE INFORMATION IS NOT DISCERNABLE FROM THE WRITTEN CLAIM, THE WRITTEN NOTICE SHALL STATE THE DATE OF NOTIFICATION OF ANY SUCH CLAIM, DEMAND, SUIT, OR OTHER ACTION; THE NAMES AND ADDRESSES OF THE PERSON, FIRM, CORPORATION, OR OTHER ENTITY MAKING SUCH CLAIM OR THAT INSTITUTED OR THREATENED TO INSTITUTE ANY TYPE OF ACTION OR PROCEEDING; THE BASIS OF SUCH CLAIM, ACTION, OR PROCEEDING; AND THE NAME OF ANY PERSON AGAINST WHO SUCH CLAIM IS BEING MADE OR THREATENED. SUCH WRITTEN NOTICE SHALL BE DELIVERED EITHER PERSONALLY OR BY MAIL AND SHALL BE DIRECTLY SENT TO THE EL PASO CITY ATTORNEY, **P.O. BOX 1890#2 CIVIC CENTER PLAZA, 9TH FLOOR**, EL PASO, TEXAS 7990**50-18904** OR TO SUCH REVISED ADDRESS AS NOTIFIED BY DIRECTOR.
- D. THOSE PROVISIONS OF THIS SECTION THAT APPLY TO THE LESSEE SHALL ALSO APPLY TO ANY PARTY HOLDING BY, THROUGH, OR UNDER THE LESSEE.

ARTICLE VII

DESTRUCTION OF IMPROVEMENTS

BY FIRE OR OTHER CASUALTY

7.01 Obligations of Lessee. During the Term hereof, except as provided in Section 7.02 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 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 Rules, Regulations and Land Use Requirements attached as Exhibit "B". In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto.
- B. Upon approval of the preliminary plans and specifications, as herein provided, Lessee shall prepare or cause to be prepared final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.
- C. Prior to commencing construction, Lessor may require Lessee to cause to be made, executed, and delivered to Lessor a payment bond and performance bond to insure the proper completion and payments required of any construction per this Article.
- D. Upon compliance with the foregoing, and after settlement shall have been made with the insurance company or companies and said proceeds of such insurance policy or policies shall have been paid to Lessee, Lessee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.

7.02 Insurance Proceeds. Upon receipt by Lessee of the proceeds of the insurance policy or policies, Lessee shall deposit same in an escrow account to pay for the cost of



Legend

Fuel Farm

Google Earth

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EXHIBIT “B”

RULES, REGULATIONS AND LAND USE REQUIREMENTS

El Paso International Airport

El Paso, Texas

RULES, REGULATIONS AND LAND USE REQUIREMENTS

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RULES, REGULATIONS AND LAND USE REQUIREMENTS

The City of El Paso hereby declares that the property, more particularly described hereinafter, is, and shall be, held and conveyed subject to the rules, regulations and requirements hereinafter set forth

ARTICLE I

PROPERTY

The real property and improvements, subject to these rules, regulations and land use requirements is situated on the El Paso International Airport and is more particularly described as:

A portion of Block 4, El Paso International Airport Tracts, Unit 1, El Paso, El Paso County, Texas as generally depicted on **Exhibit "A"** attached hereto and incorporated herein for all purposes and as described on **Exhibit "A-1"**, when attached to as provided below (the "Premises").

ARTICLE II

DEFINITIONS

Wherever used in this document, the following terms shall have the following meanings:

- A. "BUILDING"** shall include both the main portion of such building and all projections or extensions therefrom, including garages, outside platforms and docks, carports, canopies and porches. Ground cover shall not be included.
- B. "BUILDING SITE"** shall mean the entire lot or lots (if contiguous) leased by one Lessee and as shown as "leased premises" in Exhibit "A-1" of the Lease to which these Rules, Regulations and Requirements are attached.
- C. "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.
- D. "DIRECTOR OF AVIATION" or "DIRECTOR"** shall mean that Director of Aviation of The El Paso International Airport.
- E. "FRONT LOT LINE"** shall mean the property line which faces the street.

- F. **"LESSEE"** shall mean the party designated as Lessee in the Lease to which this document is attached.
- G. **"PROPERTY LINE"** shall mean those boundaries of the leased premises, as set out in Exhibit "A-1" of the Lease to which this document is attached.
- H. **"REAR LOT LINE"** shall mean the property line which does not abut a street, and which usually is opposite the "Front Lot Line".
- I. **"SETBACK"** shall mean the distance a building must be set back from the property line of the parcel.
- J. **"STREET"** shall mean any street, highway, or other thoroughfare shown on the map entitled "El Paso International Airport Tracts," as filed with the County Clerk, County of El Paso, Texas.

ARTICLE III

PERFORMANCE STANDARDS

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

Fire, explosive or other hazard;
Noise, vibration, or shock;
Smoke, dust, odor or other forms of air pollution;
Heat or glare;
Electrical or other disturbance;
Liquid or solid refuse or wastes;
Other substance, condition, or element in such manner or in such amount as to affect the surrounding area or adjoining premises.

- A. **Fire and Explosive Hazards.** No activity shall be undertaken involving fire or explosive hazard which shall endanger the property, improvements, or employees of any other property owner or Lessee.
- B. **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.
- C. **Air Pollution.** No activity of any type shall be conducted or permitted on the Leased Premises, which violates any applicable federal, state or local law, rule or regulation.
- D. **Dust Control.** All ground areas not covered by structures shall be landscaped or surfaced with concrete, asphaltic concrete, asphalt oil or other comparable dust-free surfacing; shall be maintained

in good condition, free of weeds, dust, trash, and other debris; and shall be properly drained and graded.

- E. Heat or Glare.** Any operation producing intense glare or heat shall be performed within an enclosed or screened area in such manner that the glare or heat emitted will not be discernible from the property line.
- F. Illumination.**
1. **Exterior Lighting.** The design and location of exterior lighting shall comply in all respects to the requirements of the City, the Federal Aviation Administration (FAA) or any successor agencies, and other governmental agencies having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from and around the Airport.
 2. **Interior Lighting.** The source of illumination of any kind within any building on the site shall not be visible at the property line except for normal installation of standard interior lighting fixtures within buildings.
- G. Signs.** The number, size, design, and location of all signs displayed for observation from outside a building whether displayed on, near, or within a building shall be subject to prior written approval by the Director of Aviation. All signs shall comply with any applicable sign ordinances and building codes of the City of El Paso and with all rules and regulations of the FAA and its successor. Signs on the Leased Premises shall be limited to those identifying the uses conducted on the site, to those necessary for directional purposes, and to those required for temporary advertising of the rental of the leased premises. Outdoor advertising, billboards or flashing lighting shall not be permitted.
- H. Refuse or Trash.** No refuse or trash shall be kept, stored or allowed to accumulate on any building site except in accordance with the terms and conditions of the Lease to which this document is attached.
- I. Storage.** All storage of every type, except of autos or aircraft, shall be within buildings or enclosures formed by a tight, painted board fence or rock walls. Storage of aircraft parts, service equipment or similar items shall be expressly prohibited outside buildings or such enclosures. Storage of motor vehicles, other than aircraft, is not permitted; provided, however, that motor vehicle parking for reasonable periods of time in designated areas for such, is permitted.
- J. Sewage Disposal Systems.** No cesspool, septic tank or other sewage disposal system or device shall be installed, maintained or used upon any parcel without the approval of the City of El Paso Health Department.

ARTICLE IV

DEVELOPMENT OF SITE

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

All parking areas shall be in rear setback areas and shall be paved to provide dust-free, all-weather surfaces.

Off-street parking facilities shall be provided generally in accordance with the El Paso City Code and any amendments or successor ordinances thereto and shall be sufficient for the parking of all automobiles necessary to the conduct of the business.

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

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

- C. **Setbacks.** All buildings shall be set back a minimum of twenty-five (25) feet from the front lot line and twenty-five (25) feet from the rear lot line. Side setbacks shall be a minimum of fifteen (15) feet.

One hundred percent (100%) of the required rear setback area shall be landscaped and planted, unless covered by paving.

- D. **Landscaping.** A reasonable amount of landscaping, including the planting of ground-covers, shrubs and trees, shall be required, such landscaping to be in accordance with standards established by the Airport.

In addition, paving or landscaping shall extend from the property line to the curb, such paving or landscaping to be compatible with treatment for this area on other lots in the same Block. All trees shall be limited to a height of thirty-five (35) feet above the curb line. The required landscaping shall be installed within 180 days of the effective date of the Lease to which this document is attached.

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

- F. Site Coverage.** All buildings and structures, or portions thereof, placed on the lot(s) shall not cover more than fifty percent (50%) of the total lot area.
- G. Type of Construction.** All buildings shall be framed with reinforced concrete or masonry, structural steel or structural aluminum. Siding shall be masonry, glass, or enameled steel. Concrete or masonry units shall be kept neatly painted, if used.
- All structures for the storage of gasoline, jet fuel, or other petroleum products shall be of a state of the art design and construction and shall conform to applicable laws, ordinances and regulations of the Environmental Protection Agency and the Texas Natural Resources Conservation Commission. All buildings shall conform to applicable laws, ordinances and building codes of the City of El Paso.
- H. Fencing.** Construction of fencing between buildings of all Lessees on all lots shall be required. The placement and design of such construction shall be in accordance with plans and specifications prescribed by the City, or its authorized agent, for the surrounding area and shall be uniform throughout the area.

ARTICLE V

PREPARATION AND SUBMISSION OF PLANS FOR IMPROVEMENTS

- A. General.** All plans for improvements or repairs shall be prepared by registered engineers and architects, shall require the prior written approval by the Director of Aviation, before any construction may begin. Said approval shall not eliminate Lessee's obligation to obtain the approval of the other City Departments, and other local, state and federal agencies.
- B. Initial Plans.** Lessee shall prepare and submit to the City and the Director of Aviation, Initial Plans for any proposed improvements consisting of the following:
1. A plot plan at a scale not smaller than 1 inch equals 100 feet showing the relationship of the proposed improvements to the building site and to the Leased Premises and to the improvements on adjacent lots, utilities and access thereto, curbs, walks, driveways, parking areas, etc.
 2. Preliminary schematic plans for the improvements showing typical, general layouts for all guest room areas, public spaces, back-of-house areas, and lounge and banquet areas.
 3. Ground cover plans, including landscaping.
 4. A true architectural rendering of the proposed Buildings, including the elevations, the proposed exterior color scheme, style, materials, and design and placement of signs.

5. Any other plans, specifications, or design features which the Director may deem necessary and request.

- C. **Codes and Regulations.** All improvements shall be planned and constructed in accordance with the laws and ordinances of the City, as amended, with applicable State and Federal laws, as amended, and all rules and regulations of the FAA or any successor agencies, where applicable.
- D. **Approval of Initial Plans.** The Director shall review the Initial Plans and, in his/her discretion, within thirty (30) days after submission either approve the Initial Plans, or advise Lessee in writing and with reasonable specificity the reason(s) for non-approval. In the latter event, Lessee, by its appropriate representative, shall proceed with due diligence and in good faith to meet and resolve outstanding issues so that the Initial Plans (as they may be revised) are approved. If such approval is not obtained within 120 days following the original submission date, Lessee may, at its option, terminate this Lease upon ten (10) days' written notice to Lessor, without further liability hereunder.
- E. **Approval of Plans.** Following approval of the Initial Plans, Lessee shall prepare and submit to the Director specifications for the construction of the improvements, and any subsequent alternations, 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 to which this document is attached. If the Director determines that the plans and specifications do not comply, they shall advise Lessee in writing, specifying in reasonable detail the areas of noncompliance, within thirty (30) days of the date said plans and specifications were submitted for approval. Approval of any and all improvements plans or documents by the Director does not constitute approval of the City or any other local, state, or federal agency. It is specifically understood that El Paso International Airport is only one of numerous departments of the City and that, in addition to obtaining approval of Director, Lessee shall be required to obtain the approval of other departments as well, such as Engineering, Public Works or Building Services.
- F. **Commitment to Construct.** Upon approval by the Director of plans for construction of any structure, a copy of the approved plans shall be deposited for permanent record with the Airport. Upon completion of Construction, a copy of as-built plans and specifications shall be deposited for permanent record with the Airport.

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

- G. Construction Within Time Specified.** Any approved construction shall be prosecuted diligently by Lessee in accordance with the approved plans and specifications and shall be completed within the time specified. Failure to complete such would in the time specified shall be considered in default and the City may terminate such Lease to which this document is attached.
- H. Plans for Alterations in Improvements.** All plans for alterations to the Leased Premises, either for the construction of additional facilities or alterations to existing buildings, including repairs, shall be prepared, submitted and approved, as outlined in Paragraph E above, and shall be subject to the same restrictions as herein provided.
- I. Construction without Approval.** If any structure shall be altered, erected, placed or maintained upon the Leased Premises other than in accordance with plans and specifications approved by the Director and the City, such alterations, erection and maintenance shall be deemed to have been undertaken without the approval required herein. This restriction shall be applicable to landscaping plans, as well as architectural plans.

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

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

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

- K. Right of Entry and Inspection.** Any authorized agent of the City may, at any reasonable time and without notice, enter upon the Leased Premises for the purpose of ascertaining whether the maintenance of such parcel and the maintenance, construction, or alteration of structures thereon are in compliance with the provisions hereof or for any other lawful reason; City shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

ARTICLE VII

GENERAL PROVISIONS

- A. Cutting and Filling.** The City or any authorized agent thereof may at any time make such cuts and fills upon any parcel or other part of the Leased Premises and do such grading and moving of earth

as, in its judgment, may be necessary to improve or maintain the streets in, or adjacent to, any property and to drain surface waters therefrom.

- B. Housekeeping.** If accumulations of weeds, rubbish, or items of equipment or supplies are permitted to remain on the Leased Premises more than ten (10) days after a request in writing from the City to have them removed, the City, or its authorized agent, may enter upon the Leased Premises for the purpose of removing same by whatever means it deems necessary. Such entry shall not be deemed a trespass and the City shall not be subject to any liability therefore. The cost of such work shall be borne by the Lessee and shall be paid to the City ten (10) days from the date Lessee is provided notice of such costs.
- C. Maintenance of Landscaping.** If landscaped areas are not maintained in accordance with the standards prescribed by the City and the condition is not corrected within ten (10) days after receipt of written notice from the City, the City, or its authorized agent, shall have the right to enter on the Leased Premises and plant or replant such areas, without being deemed guilty of trespass and without incurring any liability. The costs therefore, as determined by the City, shall be paid by the Lessee to the City within ten (10) days from Lessee's receipt of notice of such costs.
- D. Use Permits.** Such use and occupancy permits as may be required by the Building Code of the City of El Paso shall be maintained in force at all times by Lessee, at its sole cost.
- E. Failure to Enforce a Restriction.** The City or Airport may fail to enforce any restriction herein specified, but in no event should this be deemed a waiver of these Restrictions and Covenants or the right to enforce any restriction at a later date.