

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

DEPARTMENT: Aviation

AGENDA DATE: April 4, 2017

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

DISTRICT(S) AFFECTED: Districts 2 and 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 Lease Termination Agreement between the City of El Paso ("Landlord") and EAN Holdings, LLC, a Delaware limited liability company ("Tenant"), terminating the lease for the Premises described as follows:

Lot 1, Block 1B, El Paso International Airport Tracts, an Addition to the City of El Paso, El Paso County, Texas, and municipally known and numbered as a portion of 6500 Convair Road, El Paso, Texas (the "6500 Parcel"); and

Lot 3, Block 1B, El Paso International Airport Tracts, an Addition to the City of El Paso, El Paso County, Texas, and municipally known and numbered as 6400 Convair Road, El Paso, Texas (the "6400 Parcel")

The Department of Aviation also requests that the City Attorney's office be authorized to review and the City Manager to execute related documents to purchase improvements on the above parcels.

BACKGROUND / DISCUSSION:

The Department of Aviation is requesting approval of this item to allow for the early termination of two leases for two parcels currently leased by EAN Holdings, LLC, who operates the Enterprise, National and Alamo brand vehicle rental concessions at the El Paso International Airport (EPIA). EPIA completed construction of the Consolidated Rental Agency Complex (ConRAC) and vehicle rental concessionaires have been operating from the new facility since July 2016. Over the past 6 months, the old rental car service facilities in the area south of the ConRAC have been vacated and are in the process of being demolished as those leases have naturally terminated. The two above referenced leases have termination dates further into the future – 2018 ("6500 parcel") and 2031 ("6400 parcel").

EPIA and the Tenant have come to a mutual agreement to terminate the two leases for the above referenced parcels prior to their natural termination as well as for the Airport to purchase the improvements on the property. The "6500" parcel is a paved lot used for parking rental car vehicles, with no improvements; the "6400 parcel" was previously used as a rental car service facility and consists of an office/service building, carwash and paved lot.

The purchase price of \$206,835.00 is based on the unamortized value of the building on the "6400 parcel." Tenant will provide all environmental and other required documentation to complete the Airport purchase of the improvements on these two lots. This is one of several projects currently underway to revitalize and redevelop the area south of the ConRAC where the Concessionaires used to operate seven (7) separate service facilities, which are in the process of being demolished. In addition to the upcoming roadway, sidewalk, landscaping, street lighting, and other aesthetic improvements to Convair Road, which leads passengers from Airway into the Rental Car Center, EPIA will be looking to redevelop this prime area south of the terminal.

PRIOR COUNCIL ACTION:

- 6/22/2010 – Lessor's Approval of Assignment from Midwest Car Corporation to EAN Holdings, LLC for "6400 parcel."
- 8/31/2010 – Lessor's Approval of Assignment from Midwest Car Corporation to EAN Holdings, LLC for the "6500 parcel."

AMOUNT AND SOURCE OF FUNDING:

Airport Capital Improvement Fund: 562-62335-580270-3010-PAP00930

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

DEPARTMENT HEAD:



Monica Lombraña, A.A.E.
Director of Aviation

(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 the Lease Termination Agreement between the City of El Paso ("Landlord") and EAN Holdings, LLC, a Delaware limited liability company ("Tenant"), terminating the lease for the Premises described as follows:

Lot 1, Block 1B, El Paso International Airport Tracts, an Addition to the City of El Paso, El Paso County, Texas, and municipally known and numbered as a portion of 6500 Convair Road, El Paso, Texas (the "6500 Parcel"); and

Lot 3, Block 1B, El Paso International Airport Tracts, an Addition to the City of El Paso, El Paso County, Texas, and municipally known and numbered as 6400 Convair Road, El Paso, Texas (the "6400 Parcel")

and all other documents which may be necessary or convenient, in the opinion of the City Attorney's Office, to purchase improvements on the above parcels.

Dated this ____ day of April, 2017.

CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Marvin Foust

Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña, A.A.E.

Director of Aviation

2017 MAR 14 AM 11:01

LEASE TERMINATION AGREEMENT

THIS AGREEMENT ("Agreement") is entered into this ____ day of ____, 2017, by and between the City of El Paso ("Landlord") and EAN Holdings, LLC, a Delaware Limited Liability Company ("Tenant").

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

WHEREAS, on March 1, 1968, R. E. Welch, Contractor, Inc. entered into that certain Industrial Site Lease with Landlord for Lot 1, Block 1B and to avail itself of certain privileges, rights and uses pertaining thereto under a new lease; and

WHEREAS, on March 1, 1968, R. E. Welch, Contractor, Inc. entered into that certain Industrial Site Lease with Landlord for Lot 1, Block 1B, El Paso International Airport Tracts, El Paso, El Paso County, Texas, municipally known as a portion of 6500 Convair Road, El Paso, Texas; and

WHEREAS, on July 1, 2001, Tenant, as successor to Enterprise Leasing Company - West entered into that certain Industrial Site Lease with Landlord for Lot 3, Block 1B, El Paso International Airport Tracts, El Paso, El Paso County, Texas, municipally known as 6400 Convair Road, El Paso, Texas; and

WHEREAS, through a series of assignments, EAN Holdings, LLC, has succeeded to the tenant's interest in the lease for 6500 Convair Road (the "6500 Lease") and the lease for 6400 Convair Road (the "6400 Lease"); and

WHEREAS, Landlord has developed a facility to consolidate all rental car agencies in one location at the Airport (the "CONRAC") and Tenant has moved all of its operations into the CONRAC; and

WHEREAS, Landlord and Tenant desire that Tenant vacate the Premises as further described herein, remove the improvements thereon as further described herein, and remediate any contamination thereon arising from Tenant's use; and that Landlord purchase Tenant's interest in the two leases so that Landlord may use those properties for other purposes and so that Tenant may cease making lease payments for properties which it no longer utilizes; and

WHEREAS, Landlord and Tenant desire to enter into this Agreement for the purpose of agreeing to terminate the Leases; establishing their relative rights, duties and obligations under the Leases up through and including the Termination Date; and establishing their relative rights, duties and obligations following the termination of the Leases.

NOW THEREFORE, Landlord and Tenant agree as follows:

ARTICLE I - PREMISES

1. **Premises.** The Premises is defined as the following two (2) parcels of real property located in El Paso County, Texas:

Lot 1, Block 1B, El Paso International Airport Tracts, an Addition to the City of El Paso, El Paso County, Texas, and municipally known and numbered as a portion of 6500 Convair Road, El Paso, Texas (the "6500 Parcel"); and

Lot 3, Block 1B, El Paso International Airport Tracts, an Addition to the City of El Paso, El Paso County, Texas, and municipally known and numbered as 6400 Convair Road, El Paso, Texas (the "6400 Parcel").

2. **RETURN OF PREMISES.** Subject to Paragraph 7 hereof, Tenant will surrender and return complete, permanent possession of the Premises to Landlord on or prior to the Closing Date: (i) free and clear of all of Tenant's Above Surface Tank and appurtenances such as fuel dispensers and piping above and below ground level, the "tiger teeth" security devices adjoining Alleghany Drive and DeHavilland Drive, all personal property, trash and other removable items and free and clear of any other leasehold occupants, (ii) with any environmental contamination remediated to the standards as required in the Leases for the Premises, and (iii) with the soil compacted to Landlord's specifications, all at Tenant's expense; the existing maintenance building, the paving, entrances, boundary walls, and gas, water, and electrical utilities to the maintenance building are to remain in place.

3. **LEASE TERMINATION.** Subject to Paragraph 7, Landlord and Tenant acknowledge and agree that the Leases and all of the Parties' right, title and interest under the Lease and any estate created thereby shall be deemed terminated effective on the Closing Date; subject, however, to certain Continuing Obligations as set out in this Agreement.

4. **INTERIM USE OF 6500 PARCEL.** Subject to Paragraph 7, Tenant shall remove the "tiger teeth" security device at the entrance from DeHavilland Drive into the 6500 Parcel, repair the spot where the device was located, and give possession of the 6500 Parcel to Landlord upon execution of this Agreement: (i) free and clear of all personal property, trash and other removable items and free and clear of any other leasehold occupants; upon the turnover of possession, Tenant's obligation to pay rent and to provide a rental bond under the 6500 Lease shall cease but all other tenant obligations of the 6500 Lease shall continue until closing of the transaction contemplate hereby.

5. **CONDITIONS OF CLOSING:** The obligation of Landlord to purchase the Lease and terminate the Leases is conditioned upon the following actions being taken and/or conditions being fulfilled:

- (a) Tenant has put the Premises in good condition as required herein;
- (b) Tenant has remediated any and all environmental contamination or conditions on the Premises to the standards as required in the Leases for the Premises;
- (c) Tenant has removed all Above Surface Storage tanks and related piping and equipment;
- (d) Tenant has obtained a draft Phase 1 environmental report investigating whether the Premises are free and clear of all environmental contamination to the standards as required in the Leases for the Premises has shared same with the Director of Aviation, and worked in good faith with the Department of Aviation to put the draft report in a condition acceptable to the Director of Aviation;
- (e) Tenant has obtained a Phase 1 environmental report showing that the Premises are free and clear of all environmental contamination arising out of Tenant's use of the Premises
- (f) Tenant has obtained a letter of compliance from the Texas Commission on Environmental Quality showing that the Premises are free and clear of all environmental contamination arising out of Tenant's use of Premises;
- (g) Tenant has provided proof that there are no liens or encumbrances arising out of Tenant's use of Premises, nor any lienholders or other parties who hold any claim against the Premises or the Leases and that the termination of the Leases and payment of the Lease Termination Fee shall result in Landlord receiving back the Premises fee and clear of any and all claims, liens, or rights of any parties whatsoever;
- (h) The representations of Tenant being true and accurate as of the Closing Date and no notice or condition which, with notice, would make any of Tenant's representations untrue or inaccurate.

Until the Closing Date, Landlord and Tenant shall continue to perform their respective duties and obligations under the Leases. Nothing herein waives or releases any of the Landlord's rights and remedies in the event of any default of Tenant under the Leases arising prior to the Closing Date other than the obligation to turn over possession and pay rent for the 6500 Parcel set out in section 4 above. Real estate taxes shall be prorated up through and including the Termination Date so that any taxes paid by the Tenant cease as of the day after Closing Date.

6. LEASE TERMINATION FEE: Subject to Paragraph 7, as consideration for Tenant's duties and obligations under this Agreement, Landlord shall pay to Tenant a Lease Termination Fee in the sum of \$206,835.00. The Lease Termination Fee is payable on the Closing Date upon

verification that the Conditions of Closing have been met. There are no security deposits on either Lease; security bonds are to be terminated upon closing the termination transaction.

Upon satisfaction of the Conditions of Closing and the payment of the Lease Termination Fee, the Leases and all of Tenant's rights shall be terminated and Landlord shall receive permanent possession of the Premises free and clear of any and all rights of any parties.

7. **CONTINUING OBLIGATIONS.** All provisions of each Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of the Leases shall not be released and shall survive the termination of the Leases, including without limitation:

- (a) Tenant's obligations to return the Premises in good condition as set forth herein;
- (b) Tenant's obligations to remediate and indemnify Landlord under the Compliance with Laws, Environmental Laws, and Hazardous Substances provisions of the Leases for all actions, events, or conditions arising prior to the Closing Date;
- (c) Tenant's obligations under the Leases to defend and indemnify Landlord under the liability and indemnification provisions of the Leases for all actions, events, or conditions arising prior to the Closing Date, e.g., personal injury claims;
- (d) Tenant's obligation to pay the rent, expenses, real estate taxes and other amounts due from Tenant under the Leases thru the Termination Date;
- (e) Tenant's obligation to pay any fine or assessment levied by any state, federal or local governmental agency related to the activities of Tenant under the Leases thru the Termination Date.

8. **REPRESENTATIONS OF TENANT:** Tenant warrants and represents to Landlord, upon which warranties and representations Landlord relies in agreeing to this Agreement, the following:

- (a) Tenant is a duly authorized and existing corporation or legal entity and is qualified to do business in the State of Texas, that Tenant has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Tenant is authorized to do so;
- (b) There are no liens or encumbrances on the Leases or the Premises;
- (c) There are no lienholders or other parties who hold any claim against the Premises or the Leases;

(d) The termination of the Leases and payment of the Lease Termination Fee shall result in Landlord receiving back the Premises free and clear of any and all claims, liens, or rights of any parties whatsoever arising out of Tenant's use of the Premises.

(e) Tenant warrants that it has not actually or purportedly assigned or transferred to any person or entity not a party to this Agreement all or any portion of its rights in connection with the Lease or Premises or any released matter. Tenant agrees to indemnify and hold harmless Landlord from and against any claim, damage, liability, or action arising from any such actual, claimed, or purported assignment or transfer of claims, including the payment of attorneys' fees and costs actually incurred, whether or not litigation is actually commenced.

9. **GENERAL PROVISIONS**

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

LANDLORD: City Clerk	Director of Aviation
City of El Paso	El Paso International Airport
P.O. Box 1890	6701 Convair Rd.
El Paso, Texas 79950-1890	El Paso, Texas 79925-1099
TENANT: EAN Holdings, LLC	Enterprise Holdings, Inc.
4740 Pan American NE	600 Corporate Park Drive
Albuquerque, NM 87109	St. Louis, MO 63105
Attn: John Wyatt	Attn: Airport Properties

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.

B. **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.

C. **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.

D. Interpretation. Landlord and Tenant 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.

E. Agreement Made in Writing. This Agreement 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.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement 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 Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

G. Successors and Assigns. All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon Landlord and Tenant and their successors, assigns, legal representatives, heirs, executors and administrators.

H. Taxes and Other Charges. Tenant shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against Tenant or Landlord, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Tenant's use and/or occupancy of the Premises, or the termination thereof. Upon request of Landlord and at no charge to Landlord, Tenant 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.

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

Tenant in good faith may contest any tax or governmental charge, provided that Tenant 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 Landlord, such action will not adversely affect any right or interest of Landlord.

I. Survival of Certain Provisions. All provisions of this Agreement and each Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of the Leases shall survive the termination of the Leases, including without limitation, those contemplating Tenant's indemnification of Landlord, Tenant's duty to defend any lawsuits, Tenant's obligation to ameliorate any environmental contamination, and the like.

J. Authorization To Enter Agreement. If Tenant signs this Agreement as a corporation or other legal entity, each of the persons executing this Agreement on behalf of Tenant warrants to

Landlord that Tenant is a duly authorized and existing corporation or legal entity, that Tenant is qualified to do business in the State of Texas, that Tenant has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Tenant is authorized to do so. Upon Landlord's request, Tenant will provide evidence satisfactory to Landlord confirming these representations.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this ____ day of _____, 2017.

LANDLORD: CITY OF EL PASO

Tomás González
City Manager

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marvin Foust
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Director of Aviation

Acknowledgment Begins on Next Page.

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2017,
by Tomás González as City Manager for the City of El Paso, Texas (Landlord).

My Commission Expires:

Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

CITY CLERK DEPT.
2017 MAR 14 AM 11:01

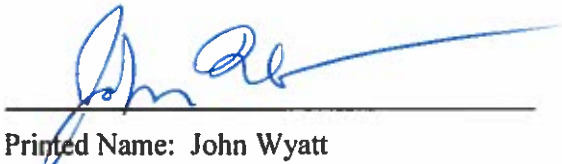
ATTEST:

TENANT:

EAN Holdings, LLC, a Delaware Limited Liability Company

Printed Name: _____

Title: _____



Printed Name: John Wyatt
Title: Vice President and General Manager


ACKNOWLEDGMENT

THE STATE OF New Mexico)

COUNTY OF Bernalillo)

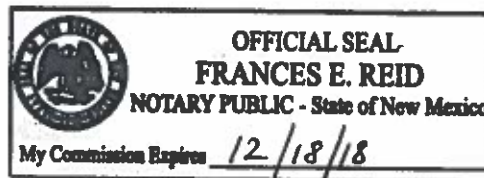
This instrument was acknowledged before me on this 6th day of February, 2017, by John Wyatt as Vice President and General Manager of EAN Holdings, LLC (Tenant), on behalf of said limited liability company.

My Commission Expires:



Notary Public, State of ~~Texas~~ New Mexico

12/18/18



 6400 Convair Road

 6500 Convair Road

6701 Convair R

Convair Rd

Convair

De
Hayland Dr

Terminal Dr

Terminal Dr N

Allegheny Dr

© 2016 Google

Terminal Dr S

Airway Blvd

1991

Imagery Date: 5/2/2014 31°47'51.90" N 106°23'51.55" W



6500 Convair Road

6400 Convair Rd

Allegheny Dr

© 2016 Google

Google

Imagery Date: 5/2/2014 31°47'47.87" N 106°23'57.65" W elev 3924 ft

1991