

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

**DEPARTMENT:** Aviation

**AGENDA DATE:** August 4, 2015

**CONTACT PERSON NAME AND PHONE NUMBER:** Monica Lombraña, 780-4724

**DISTRICT(S) AFFECTED:** All Districts

**SUBJECT:**

**APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.**

This item is a Resolution to authorize the City Manager to sign the First Amended and Restated Hotel Site Lease by and between the City of El Paso ("Lessor") and EP Vida, LLC ("Lessee") for the following described property:

376,174.23 square feet, more or less, being Lots 1, 2, and 3, Block 5A, and Lots 1, 2, and 3, Block 5B, El Paso International Airport Tracts, Replat of Unit 3, Replat "B", City of El Paso, El Paso County, Texas ("Premises").

The Premises shall consist of a Hotel Site, the Commercial/Retail Parcels, an Open Space Site, and a Private Street.

**BACKGROUND / DISCUSSION:**

**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?**

The Department of Aviation is requesting approval of this First Amendment and Restated Hotel Site Lease to allow EP Vida, LLC to continue development of a four-star hotel and a specialty retail center on the property at the corner of Airway and Boeing pending resolution of litigation against the Lessee and the City.

The Lessee has thus far secured approval of Replat B from the City Plan Commission on July 17, 2014, and its subdivision plan was subsequently approved on March 4, 2015. This First Amended and Restated Lease is required as the Lessee replatted the site to accommodate needed changes to the design of the Hotel and Specialty Retail Center. As such, the lines and dimensions of the lots changed to meet Smart Code requirements.

The amendments to the Lease are as follows:

- One of the streets was replatted and will remain private to allow for flexibility in development and use; in lieu of a rental fee for this street, the Lessee will maintain the private street to the standards developed and detailed in the corresponding exhibit;
- Addition of an Open Space Area consisting of approximately 28,059 square feet to be developed and used as a Park Pond; in lieu of rental fees, the Lessee will maintain this area to the standards included on the corresponding exhibit;
- Addition of a period of time to begin construction to allow for litigation of the pending lawsuit pertaining to the Lease; and,
- Addition of a requirement for Lessee's counsel to submit a report on the progress of the litigation to the City for review at twenty-four (24) months after the effective date of this amendment.

Although the timeframes for construction of the hotel, retail center, streets, and park pond are being amended to be aligned with the resolution of litigation, the abatement of base rent is not changing. The Lessee will begin to pay rent on the hotel and commercial/retail sites as of May 28, 2016. However, the initial rental fees changed based on the new dimensions of the replatted lots and are as follows:

Site	SF	Annual rental rate	Annual Rent
Open Space*	28,059.16	\$ -	\$ -
Hotel	129,966.25	\$ 0.49	\$ 63,683.46
Commercial/Retail	196,716.61	\$ 0.49	\$ 96,391.14
Private Street*	21,432.21	\$ -	\$ -
<b>Leasehold Area</b>	<b>376,174.23</b>		<b>\$ 160,074.60</b>

\* Rent abated in lieu of construction and maintenance of these areas for the term of the lease.

The timeframe for the abatement of percentage revenue for the hotel site is not proposed to be changed. It will terminate on May 28, 2028, regardless of what date the hotel opens for business.

With the exception of the terms listed above amended, the Hotel Site Lease terms and conditions remain in effect.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

May 28, 2013 – Approval of Hotel Site Lease between EP Vida, LLC and the City of El Paso for 325,762.58 square feet, more or less, being a portion of Lots 9A, 9B, 9C, 9D, 9E, 9F, and 9G, Block 5, El Paso International Airport Tracts, Replat of Unit 3, Replat "A," City of El Paso, El Paso County, Texas.

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

N/A – this is a revenue generating item

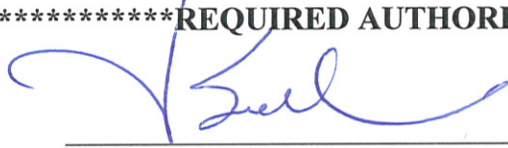
**BOARD / COMMISSION ACTION:**

**Enter appropriate comments or N/A**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

*Per:*   
**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*

CITY CLERK DEPT.  
2015 JUL 30 AM 10:38

## RESOLUTION

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

That the City Manager be authorized to sign the First Amended and Restated Hotel Site Lease by and between the City of El Paso ("Lessor") and EP VIDA, LLC ("Lessee") covering the following described property:

376,174.23 square feet, more or less, being Lots 1, 2, and 3, Block 5A, and Lots 1, 2, and 3, Block 5B, El Paso International Airport Tracts, Replat of Unit 3, Replat "B", City of El Paso, El Paso County, Texas ("Premises"). The Premises shall consist of a Hotel Site, the Commercial/Retail Parcels, an Open Space Site, and a Private Street

ADOPTED this the \_\_\_\_\_ day of \_\_\_\_\_ 2015.


THE CITY OF EL PASO

\_\_\_\_\_  
Oscar Leoser  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Marvin Foust  
Assistant City Attorney

APPROVED AS TO CONTENT

\_\_\_\_\_  
Monica Lombrana, A.A.E.,  
Director of Aviation

# **FIRST AMENDED AND RESTATED HOTEL SITE LEASE**

El Paso International Airport  
El Paso, Texas

\_\_\_\_\_, 2015  
Effective Date

**EP VIDA, LLC**  
Lessee



**HOTEL SITE LEASE  
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# HOTEL SITE LEASE

This **FIRST AMENDED AND RESTATED HOTEL SITE LEASE AGREEMENT** ("Lease") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the CITY OF EL PASO ("Lessor") and EP VIDA, LLC ("Lessee").

**WHEREAS**, Lessor owns and operates El Paso International Airport, located in the County of El Paso, State of Texas ("Airport");

**WHEREAS**, effective May 28, 2013 (herein "Original Effective Date"), the Lessor and Lessee entered into that certain Hotel Site Lease (the "Lease") covering the following described real property:

325,762.58 square feet, more or less, being portions of Lots 9A, 9B, 9C, 9D, 9E, 9F, and 9G, Block 5, El Paso International Airport Tracts, Replat of unit 3, Replat "A", City of El Paso, El Paso County, Texas (herein, the "Original Premises").

**WHEREAS**, litigation is pending in the County Court at Law Number 5 of El Paso County under Cause Number 2014DCV0727 (the "Litigation") against Lessor and Lessee, under which the plaintiffs therein are challenging the right of the Lessor to have executed the Lease and seeking a declaration that the Lease is void;

**WHEREAS**, during the pendency of the Litigation, certain performance by the Lessee of its duties and obligations under the Lease is rendered impossible and entirely beyond the control of Lessee;

**WHEREAS**, due to the Litigation, numerous timelines for the performance of certain obligations of the Lessor and Lessee in the Lease, and also in the accompanying Hotel and Convention Services Agreement between Lessor and Lessee (the "HCSA"), the Chapter 380 Economic Development Program Agreement between Lessor and Lessee (the "380 Agreement"), and the Chapter 381 Economic Development Program Agreement between El Paso County and the Lessee (the "381 Agreement"), are, or will be, unobtainable;

**WHEREAS**, the Original Premises has been replatted by Lessee to more accurately reflect the scope of the hotel project, which replat was approved by the El Paso City Plan Commission on July 17, 2014, and which replat necessitates the amendment of numerous provisions of the Lease, including the description of the Premises;

**WHEREAS**, the Lessor and Lessee desire to amend the Lease to address the modification of timeline obligations in the Lease due to the Litigation and to address various substantive matters in the Lease due to the replat;

**WHEREAS**, Lessee proposes to lease on a net basis from Lessor certain ground area and seeks to avail itself of certain privileges, rights and uses pertaining thereto including, but not limited to, the development, construction, and operation of a hotel and commercial and retail uses; 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;

**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.** 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:

376,174.23 square feet, more or less, being Lots 1, 2, and 3, Block 5A, and Lots 1, 2, and 3, Block 5B, El Paso International Airport Tracts, Replat of unit 3, Replat "B", City of El Paso, El Paso County, Texas, as more fully described on **EXHIBIT "A"**, which is attached hereto and fully incorporated herein by reference ("Premises"). The Premises shall consist of a Hotel Site, as more fully described in **EXHIBIT "B"**, the Commercial/Retail Parcels, as more fully described in **EXHIBIT "C"**, an Open Space Site, as more fully described in **EXHIBIT "C-1"**, and a Private Street, as more fully shown on **EXHIBIT "C-2"**, all of which are attached hereto and incorporated herein for all purposes.

**1.02 Right of Ingress and Egress.** Lessor hereby grants to Lessee 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 Restrictions of Privileges, Uses and Rights.** The rights granted hereunder are expressly limited to the construction and operation of facilities in accordance with **EXHIBIT "D"**, Hotel and Retail Site Lease Covenants and Restrictions, which is attached hereto and fully incorporated herein by reference (referred to herein as the "Covenants") and whose terms are acknowledged to be material terms of this Lease.

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

- A. **Building Scale Plan.** Within ninety (90) calendar days of the Original Effective Date of this Lease, Lessee shall deliver to the Director of Aviation (the "Director") a final building scale plan, including preliminary schematic and development drawings, as required under Title 21 Smart Code, as amended. The

Director will have thirty (30) calendar days from the date of receipt of the final building scale plan to either (i) approve in writing, or (ii) request Lessee to make changes and submit a revised final building scale plan for initial review and comments by the appropriate City departments within thirty (30) calendar days of receipt of Director's comments. The final building scale plan will identify public rights of way to be dedicated by a subdivision replat.

- B. Final Building Scale Plan, Subdivision Replat, Improvement Plans and Building Permit Submittals.** Within sixty (60) calendar days upon receipt of comments from the appropriate City departments on the final building scale plan initial comments, Lessee will submit to the Director final building scale plan and subdivision replat with improvement plans. The Director will have thirty (30) calendar days from the date of receipt of the final building scale plan and subdivision replat with improvement plans to either (i) approve in writing, or (ii) request Lessee to make changes and submit revised final building scale plan and subdivision replat with improvement plans for initial review and comments by the appropriate City departments within thirty (30) calendar days of receipt of Director's comments. Following the Final Adjudication, Lessee will submit to the Director building permit plans for review in order to comply with the in order to comply with the construction schedules set forth in paragraph 3.09. The Director will have thirty (30) calendar days from the date of receipt of the building permit plans to either (i) approve in writing , or (ii) request Lessee to revise the building permit plans and submit to the appropriate City departments within thirty (30) calendar days of receipt of Director's comments.
- C. Upon completion of any construction, Lessee shall deliver to the Director, a complete set of record (as-built) drawings for any identified construction project signed and sealed by a professional engineer or architect licensed in Texas, and a copy of the applicable issued Certificate of Occupancy (CO).
- D. With respect to the Hotel Site plans, Lessor agrees its review will be reasonable and will not be unreasonably withheld provided plans conform to any of the prototype plans approved by Lessee's franchisor as of the date such approval is requested or if such plans have been approved by Lessee's franchisor.
- E. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas, the rules and regulations promulgated by their authority with reference to aviation and air navigation; and all reasonable and applicable rules, regulations and ordinances of Lessor, as all these laws, rules, and regulations, may be amended ("Laws").
- F. That, once initially agreed upon by all parties, no change of flag, a hotel re-branding or change in affiliation shall be made on the Hotel Site without prior written consent of Lessor, which consent shall not be unreasonably withheld.

- I. Notwithstanding anything to the contrary contained herein, Lessor acknowledges that Lessee's agreement to comply with the Laws does not equate to or require Lessee's waiver of any grandfathered or vested rights.

**1.05 Right of First Refusal.** Within ninety (90) calendar days following the Effective Date of this Lease, the parties agree to enter into a Right of First Refusal Agreement in a form mutually acceptable to both parties for the parcel depicted on **Exhibit "E"** which is attached hereto and incorporated herein for all purposes and whose terms and conditions are acknowledged to be material terms of this Lease.

**1.06 Modification of Certain Dates and Timelines.**

- A. For purposes of this Section 1.06, the following terms shall have the meanings set forth here.

"Twenty-Four Month Deferral Date" shall mean the date which is twenty-four (24) months after the date on which this First Amended and Restated Hotel Site Lease is executed by both parties and effective.

"Final Adjudication" shall mean the date on which it is known that there is a final, non-appealable judgment or other resolution in the Litigation, meaning all time periods for any possible review or challenges such as appeals or motions for new trial or rehearing have been exhausted, including any actions brought in substitution thereof, or incidental, ancillary, or related directly or indirectly thereto.

- B. In consideration for the City's agreement to enter into this First Amended and Restated Hotel Site Lease, following the execution of this First Amended and Restated Site Lease by both Lessee and Lessor, the law firm of Kemp Smith, LLP will undertake the defense of the City in the Litigation, at Lessee's expense. It is understood that Kemp Smith, LLP already represents Lessee in the Litigation, and will also represent the City, pursuant to the terms of the engagement letters between Kemp Smith, LLP and each of the City and the Lessee.

- C. Upon the Twenty-Four Month Deferral Date, if a Final Adjudication has not then been reached, Kemp Smith, LLP shall submit to Lessor and Lessee a written evaluation of the Litigation. If both Lessor and Lessee approve the evaluation report and determine to continue the litigation, the modification of certain dates and timelines in this Lease shall remain in force and be continued as the Lessor and Lessee then agree by subsequent amendment to this Lease, if necessary. However, if Lessor does not approve the evaluation report and seeks to conclude the litigation, Lessor may, in its sole discretion, terminate the Lease, and the HCSA and the 380 Agreement (together in this paragraph, the



“Three Agreements”) by written notice delivered to the Lessee within ninety (90) days after the date the written evaluation report on the Litigation has been submitted to them. If, and only if, Lessor so terminates the Lease, Lessor and Lessee agree that as of the effective date of such termination, they release each other of all obligations under the Three Agreements and from any further rights, duties, obligations, liabilities, and damages to each other arising from the Three Agreements and all their dealings and relationships with each other related to or arising from the Three Agreements. In such event, from the effective date of such termination, Lessor and Lessee shall bear their own attorneys’ fees, costs and expenses related to the Three Agreements, and all remaining proceedings in the Litigation and they covenant not to bring any suit or claims against each other arising from or related to the Three Agreements.

- D. Upon the occurrence of the Final Adjudication during the term of any deferral period set forth herein, or in any subsequent amendment hereto, those certain dates and timelines as modified by this First Amended and Restated Hotel Site Lease shall continue in effect and performance of obligations under the Lease by Lessor and Lessee shall be resumed as specifically set forth herein.
- E. Within sixty (60) days after the Final Adjudication, if Lessee has not sooner done so, Lessee shall provide Lessor with written evidence of an agreement between Lessee and a four star hotel chain for the hotel as described in the HCSA.
- F. Within sixty (60) days after the Final Adjudication, if Lessee has not sooner done so, Lessee shall provide Lessor with written evidence of a commitment for financing from a lender, such commitment being in an amount and on terms reasonably sufficient to provide for Lessee’s construction of the improvements to the Premises as set forth in Article III of this Lease.

## **ARTICLE II - OBLIGATIONS OF LESSOR**

**2.01 Quiet Enjoyment.** Lessor agrees that upon Lessee's paying rent and performing all of the covenants, conditions, and agreements herein set forth, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises hereby demised for the terms 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 Condition and Maintenance of Premises.** Lessee has specifically requested that the Premises be leased to it for use as a hotel site and for retail and restaurant uses as more fully

described herein. Except for Lessor's warranties and representations set forth herein, Lessee's request for such uses is based upon its own inspections and review of the Premises. Lessee therefore accepts the Premises "AS IS". Lessor assumes no responsibility as to the condition of the Premises or any improvements located thereon and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition. Lessor will not be responsible for any expenses incurred in connection with preparing the Premises for development, except as may be expressly identified within this Lease. Notwithstanding anything to the contrary contained herein, Lessor warrants and represents that it is not aware of any covenants and restrictions encumbering the Premises, except as described herein or may be filed of record.

**2.03. Site Development.** The Director will assist Lessee, at no cost to the Airport or Lessor, in Lessee's obtaining approval from Lessor of its final building scale plan, preliminary schematics and design development drawings and permit applications as required to pursue the development of the Hotel Site and Commercial/Retail Parcels, and will execute such applications as may be reasonably required in connection therewith.

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

### **ARTICLE III - OBLIGATIONS OF LESSEE**

**3.01 Net Lease.** This Lease, in every sense, shall be without cost to Lessor for the development, maintenance and improvement of the Premises. It shall be the sole responsibility of Lessee to develop, keep, maintain, repair and operate the entirety of the Premises and all improvements and facilities placed thereon at Lessee's sole cost and expense.

**3.02 Signs.** Lessee shall not install any billboards or off-premise advertising signs on the Premises. Lessee shall install and maintain signage for the hotel or any such other buildings or improvements in accordance with the standards prescribed in the Covenants.

**3.03 Right to Close for Repairs.** Lessee may, from time to time, close the hotel or other buildings operated on the Premises only for such reasonable periods of time as may be required to make repairs, alterations, remodeling, or for any reasonably necessary reconstruction. Lessee shall provide Lessor with prior written notice of any such proposed closing.

**3.04 Operational Licenses and Permits.** Lessee and/or its sublessees may apply for restaurant and alcoholic beverage licenses and other permits or licenses necessary for the operation of improvements on the Premises. The cost of obtaining any such licenses and permits shall be borne solely by the Lessee or its sublessee. As fee owner of the Premises, Lessor agrees and understands that it may be required to provide assistance to the Lessee or its sublessees in acquiring such permits or licenses, including the execution of certain applications. Lessor agrees

to provide such assistance as may be necessary and appropriate, in Lessor's discretion; provided, however, that LESSEE SHALL INDEMNIFY AND HOLD LESSOR HARMLESS FROM ALL LIABILITIES, CLAIMS, COSTS AND EXPENSES WHICH LESSOR MAY INCUR BY REASON OF HAVING SIGNED ANY SUCH APPLICATION OR APPLICATIONS.

**3.05 Right to Construct.** Lessee shall have the right and privilege to construct, maintain, and remove improvements upon the Premises subject to this Lease and the Covenants.

**3.06 Compliance With Laws.** Lessee, at Lessee's expense, agrees that it will construct, operate and maintain improvements on the Premises in accordance with the Covenants and in accordance with all applicable laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, as amended from time to time, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

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

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act, 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").

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

**A. Definitions.**

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

deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.

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

B. Compliance.

- (1) Lessee shall not cause or permit any hazardous material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. **Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its officers, directors, employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation by Lessee or its employees, sublessees, invitees, contractors or agents on or discharge from the Premises or any improvements thereon.** 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, save and except those incurred or assessed as a result of any activity, operation or use of the Premises by Lessor or its lessees, employees, contractors, invitees prior to this Lease or occurring on or as a result of the Lessor's or public's use of the public roads, streets, entryways, and alleys adjoining the Premises. 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. However, excluding any environmental conditions that occurred and existed prior to the effective date of this lease. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

- (2) Without limiting the foregoing, if the presence of any hazardous material on, under or about the Premises or in any improvements thereon or permitted by Lessee results in any contamination of the Premises, 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 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") pursuant to 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 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; or (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 sublease agreement or other contract by which Lessee grants a right or privilege to any person, firm or corporation pursuant to this Lease.

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

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

Notwithstanding anything to the contrary contained herein, Lessor acknowledges that Lessee's agreement to comply with the Environmental Laws does not equate to or require Lessee's waiver of any grandfathered or vested rights.

**3.07 Minimum Improvement Standard.** Lessee covenants and agrees that it shall develop the Premises and the public rights of way identified on the final building scale plans in compliance with Title 21 Smart Code of the El Paso City Code and any amendments thereto.

**3.08 Maintenance.** Lessee shall, at its sole cost and expense, maintain the Premises and all buildings, improvements and appurtenances thereto, in a presentable condition and with good business practice and equal in appearance and character to other similar improvements on the Airport. In addition, Lessee shall at its sole cost and expense, maintain the Hotel Site in a manner which will meet or exceed the both the standards identified in **Exhibit "F"**, which is attached hereto and incorporated herein for all purposes, and the minimum standards for the franchisor's four star or superior nationally recognized hotel brand. Lessee shall repair all damages to the Premises caused by its employees, patrons or its operation thereon; shall maintain and repair all equipment thereon, including any drainage installations, paving, curbs, islands, buildings and improvements located on the Premises; and shall repaint its own buildings as necessary.

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

**3.09 Time of Construction.**

- A. **Hotel Site and Commercial/Retail Parcels.** Lessee agrees to submit all construction documents required for the processing of a building permit application relative to the Hotel Site and the Commercial/Retail Parcels to the appropriate City departments within thirty (30) calendar days from the date of the Final Adjudication. Lessee shall deliver a signed contract with a qualified contractor who shall commence construction of the site work on the Hotel Site within forty five (45) days after the issuance of a building permit ("Construction Commencement Date") and shall complete construction within twenty four (24) months from the date of the Final Adjudication. Upon approval by such agencies and the issuance of permits for the commencement of construction of all improvements related to the Hotel Site and the Commercial/Retail Parcels, Lessee shall deliver to Lessor one (1) complete set of the final building scale plans, subdivision replat, improvement plans and building permit submittals as approved by the governmental agencies exercising jurisdiction thereover and copies of all issued permits.

In the event Lessee fails to submit the required documentation or shall fail to begin or complete construction within the specified time periods, Lessor may, after notice and cure period, recapture the undeveloped or partially developed parcel and this Lease may be terminated upon thirty (30) calendar days notice from Lessor to Lessee of such intention to cancel, unless the failure to meet these schedules is due to circumstances entirely beyond the Lessee's control; or, the failure is not promptly cured after notice from Lessor. In the event the construction of the Hotel Site improvements and the Commercial/Retail Parcel improvements are not complete within twenty-four (24) months from the Final Adjudication, Lessee shall be responsible for the payment of an increased rental rate, as more fully described within Paragraph 5.01 E.

- B. **Public Rights of Way.** Lessor grants Lessee a right of entry and construction easement on, over, and across that certain property containing approximately 56,428.94 square feet, more or less, being High Street and Sangrias Place, El Paso International Airport Tracts, Replat of Unit 3, Replat "A," City of El Paso, El Paso County, Texas, as more fully depicted on **EXHIBIT "G"**, which is attached hereto and fully incorporated herein by reference (the "ROW Property"). Lessee shall construct all subdivision infrastructure, including but not limited to all streets, curbs, sidewalks, medians and landscaping and the installation of utilities as identified on the Final Building Scale Plan and the approved schematics and design development drawings.

- (a) Entry on ROW Property. Any entry on the property identified in **EXHIBIT "G"** under subparagraph B. above is subject to the following terms and conditions:

- (i) **LESSEE AGREES TO RELEASE LESSOR, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, AGAINST AND**



**FROM ANY AND ALL LIABILITY, LOSS, COSTS AND EXPENSE OF WHATSOEVER NATURE GROWING OUT OF PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER, OR LOSS OR DESTRUCTION OF OR DAMAGE TO PROPERTY WHATSOEVER, REGARDLESS OF THE NEGLIGENCE OR FAULT, IN WHOLE OR IN PART, AND SAVE HARMLESS, WHERE SUCH PERSONAL INJURY, DEATH, LOSS, DESTRUCTION OR DAMAGE ARISES IN CONNECTION WITH OR INCIDENT TO THE OCCUPATION OR USE OF THE ROW PROPERTY OR THE PRESENCE THEREON OF LESSEE, ITS AGENTS, EMPLOYEES OR CONTRACTORS, BEFORE ACCEPTANCE OF THE ROW FOR MAINTENANCE BY LESSOR UNDER SUBPARAGRAPH B ABOVE;**

- (ii) Lessee covenants and agrees to pay in full for all materials joined or affixed to the ROW Property, and to pay in full all persons who perform labor upon such ROW Property, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against such ROW Property being acquired for any work done or materials furnished at the instance or request or on behalf of Lessee; and Lessee agrees to release Lessor from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished before acceptance of the ROW for maintenance;

- (b) Application. Lessee agrees to submit all documents required for the processing of a permit application for the development of the ROW Property to the appropriate City departments within thirty (30) calendar days from the date of Final Adjudication. Lessee further agrees to begin construction of the required infrastructure improvements on the ROW Property, as evidenced by the delivery of a signed contract to a qualified contractor, within forty five (45) days from the issuance of a permit ("Construction Commencement Date") and shall complete construction within twenty four (24) months from the date of Final Adjudication. Upon the issuance of permits for the commencement of the ROW Property construction, Lessee shall deliver to Lessor one (1) complete set of the final building scale plan and subdivision replat with improvement plans for the ROW Property as approved by the governmental agencies exercising jurisdiction thereover, together with copies of all issued permits. In the event Lessee fails to submit the required documentation or shall fail to begin or complete construction within the specified time periods, Lessor may, after notice and cure period, recapture the undeveloped or partially developed Hotel Site Parcel and Commercial/Retail Parcel and this Lease may be terminated upon thirty (30) calendar days notice of such intention to cancel from Lessor to

Lessee, unless the failure to meet these schedules is due to circumstances entirely beyond the Lessee's control; or, the failure is not promptly cured after notice from Lessor.

- C. Open Space.** Lessee agrees to submit all construction documents required for the processing of a building permit application relative to the Open Space and its development as a park pond to the appropriate City departments within thirty (30) calendar days from the date of Final Adjudication. Lessee shall deliver a signed contract with a qualified contractor who shall commence construction of the Open Space, within forty five (45) calendar days from the issuance of a building permit ("Construction Commencement Date") and shall complete construction within twenty four (24) months from the date of Final Adjudication. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one (1) complete set of the final building scale plan, subdivision replat, improvement plans and building permit submittals as approved by the governmental agencies exercising jurisdiction thereover and copies of all issued permits.

In the event Lessee fails to submit the required documentation or shall fail to begin or complete construction within the specified time periods, Lessor may, after notice and cure period, recapture the undeveloped or partially developed parcel and this Lease may be terminated upon thirty (30) calendar days notice from Lessor to Lessee of such intention to cancel, unless the failure to meet these schedules is due to circumstances entirely beyond the Lessee's control; or, the failure is not promptly cured after notice from Lessor. In the event the construction of the Open Space improvements are not complete within twenty four (24) months from the date of the Final Adjudication, Lessee shall be responsible for the payment of an increased rental rate, as more fully described within Paragraph 5.01 E.

- D. Private Street.** Lessee agrees to submit all construction documents required for the processing of a building permit application for Acequia Park Court, a private street, to the appropriate City departments within thirty (30) calendar days from the date of Final Adjudication. Lessee shall deliver a signed contract with a qualified contractor who shall commence construction of Acequia Park Court improvements, within forty five (45) calendar days from the issuance of a building permit ("Construction Commencement Date") and shall complete construction within twenty four (24) months from the date of Final Adjudication. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one (1) complete set of the final building scale plan, subdivision replat, improvement plans and building permit submittals as approved by the governmental agencies exercising jurisdiction thereover and copies of all issued permits.

In the event Lessee fails to submit the required documentation or shall fail to begin or complete construction within the specified time periods, Lessor may, after notice and cure period, recapture the undeveloped or partially developed parcel and this Lease may be terminated upon thirty (30) calendar days notice from Lessor to Lessee of such intention to cancel, unless the failure to meet these schedules is due to circumstances entirely beyond Lessee's control; or, the failure is not promptly cured after notice from Lessor. In the event the construction of Acequia Park Court improvements are not complete within twenty four (24) months from the date of Final Adjudication, Lessee shall be responsible for the payment of an increased rental rate, as more fully described within Paragraph 5.01 E.

**3.10 Utilities.** Lessee, at its expense, shall have the right to connect any and all sewer, water and utility mainlines or cables necessary for the operation of the hotel and other uses permitted herein. Lessee shall pay for all service charges incurred for such connections. Lessee shall also pay for all meters and measuring devices installed by Lessee or a utility on the Premises and shall pay for all utilities consumed by Lessee.

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

**3.12 Permitted Uses.** Lessee shall not use the Premises for any other purpose other than the development, construction and operation of a hotel, including all uses commonly found in a hotel, and for retail and restaurant uses. The Hotel Site shall be a nationally recognized hotel brand with a minimum of two hundred (200) units and with full service amenities, such as a restaurant, pool, business center, lounge, meeting rooms, and conference facilities/ballrooms which minimum standards are identified in **EXHIBIT "F"**. Except for those changes that are entirely outside of the control of Lessee, a change of flag, a hotel re-branding or change in affiliation shall not be made without the prior written consent of the Lessor. By way of example, changes outside of Lessee's control shall include, but not be limited to, mergers and consolidations of hotel brands. Lessee covenants and agrees that in no event will it enter into any business activity or use of the Premises other than those specified in this Lease and the Covenants.

#### **ARTICLE IV - TERM OF LEASEHOLD**

**4.01 Term.** The term of this Lease shall be for a period of forty (40) years commencing on the Original Effective Date of this Lease ("Initial Term").

**4.02 Options to Extend.** So long as Lessee is not in default of the terms and conditions of this Lease, Lessee shall have the option to extend this Lease for an additional term of ten (10) years by notifying Lessor in writing of Lessee's election at least one hundred twenty (120) calendar days prior to the expiration of the Initial Term ("Lessee's Option Period"). In the event the option to extend is so exercised, the Lease shall be extended for ten (10) additional years under the same terms and conditions, subject to such escalations provided for herein.

**4.03 Holding Over.** It is agreed and understood that any holding over by Lessee of the Premises after the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month subject to the terms and condition of this Lease and at a rental of: (i) one and one-half (1.5) times the current monthly minimum annual guarantee or percentage rental, whichever is greater for the Hotel Site; and one and one-half (1.5) times the current monthly rental of the Commercial/Retail Parcel. Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

**4.04 National Emergency.** In the event the rights and privileges granted to Lessee hereunder are suspended by reason of war or other national emergency, the term of this Lease shall be extended by the amount of the period of such suspension.

## **ARTICLE V - FEES AND RENTALS**

**5.01 Rental.** Lessee shall pay to Lessor those rental amounts as set forth herein below. The term "Rental" as used herein shall include the collective amount of the Minimum Annual Guarantee or Percentage Rental and Commercial/Retail Parcel Rental amounts due.

A. Hotel Site Rentals. Amounts due by Lessee for the Hotel Site shall be a Minimum Annual Guarantee (the "MAG") or Hotel Percentage Revenue, whichever is greater, as more fully explained below.

(1) Minimum Annual Guarantee. For the purpose of computing the MAG, Lessor and Lessee agree that the Hotel Site contains 129,966.25 square feet of land. The MAG for the First Lease Year shall be calculated on the basis of \$0.49 per square foot for a total of \$63,683.46. Lease Year means the twelve (12) consecutive month period beginning on the Original Effective Date of this Lease and each twelve (12) consecutive month period thereafter throughout the term of the Lease and any option thereof, each such Lease Year commencing on May 28 of the applicable year.

- a. From the Original Effective Date of this Lease until the date the CO is issued or May 28, 2016, whichever comes first, Lessor agrees to abate the MAG at one hundred percent (100%).
- b. On May 28, 2016 and May 28, 2017, Lessee will pay the MAG identified for the First Lease Year (\$63,683.46) per annum, pursuant to the terms set forth in Section 5.04.
- c. On May 28, 2018 and May 28, 2023, the MAG shall be adjusted. Lessor and Lessee agree that percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U) shall govern the readjustment of the MAG for these anniversary dates. The parties further agree that for the purposes of computing such percentage increase for the Fifth (5<sup>th</sup>) and Tenth (10<sup>th</sup>) Anniversaries, the Base Year CPI-U shall be established as that rate in place ninety (90) calendar days prior to the Original Effective Date of this Lease. The MAG 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) calendar days prior to the applicable date of readjustment (i.e. the fifth (5<sup>th</sup>) anniversary and tenth (10<sup>th</sup>) date of the Original Effective Date). The MAG 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 (5<sup>th</sup>) and Tenth (10<sup>th</sup>) Anniversary of the Original Effective Date of this Lease.

All readjustments shall be effective as of May 28, 2018 and May 28, 2023 without regard to the date the actual adjustment is made; provided, however, that in no event shall the readjusted MAG be less than the rate in place immediately prior to such readjustment nor more than ten percent (10%) more than the MAG established at the beginning of the immediately preceding five-year period.

- d. Within ninety (90) calendar days prior to the May 28, 2028, the MAG shall be adjusted to a rate equal to eight percent (8%) of the then fair market value of the Hotel Site, disregarding the value of any Lessee-owned improvements located on the Hotel Site. The fair market value of the Hotel Site shall be determined by an appraisal process as identified in Paragraph 5.03 of this Lease. In no event however, shall this adjusted MAG be less than the MAG at the beginning of the immediately preceding five (5) year period nor more than twenty percent (20%) of the MAG established at the beginning of the immediately preceding five-year period.

The readjustment of MAG shall become effective as of May 28, 2028, regardless of the date the actual adjustment is made.

- B. Commercial/Retail Parcels Rentals.**

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- c. On May 28, 2018 and May 28, 2023, Commercial/Retail Rentals shall be adjusted. Lessor and Lessee agree that percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U) shall govern the readjustment of the Commercial/Retail Rentals for these anniversary dates. The parties further agree that for the purposes of computing such percentage increase for the Fifth (5<sup>th</sup>) and Tenth (10<sup>th</sup>) Anniversaries, the Base Year CPI-U shall be established as that rate in place ninety (90) calendar days prior to the Effective Date of this Lease. The Commercial/Retail 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) calendar days prior to the applicable date of readjustment (i.e. the fifth (5<sup>th</sup>) anniversary and tenth (10<sup>th</sup>) anniversary date of the Original Effective Date). The Commercial/Retail Rentals 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 (5<sup>th</sup>) and Tenth (10<sup>th</sup>) Anniversary of the Original Effective Date of this Lease.

All readjustments shall be effective as of May 28, 2018 and May 28, 2023, without regard to the date the actual adjustment is made; provided, however, that in no event shall the readjusted Commercial/Retail Rentals be more than ten percent (10%) more than the Commercial/Retail Rentals established at the beginning of the immediately preceding five-year period.

- d. Within ninety (90) calendar days prior to May 28, 2028, the Commercial/Retail Rentals shall be adjusted to a rate equal to eight percent (8%) of the then fair market value of the Commercial/Retail Parcels, disregarding the value of any Lessee-owned improvements located on the Commercial/Retail Parcels. The fair market value of the Commercial/Retail Parcels shall be determined by an appraisal process as identified in Paragraph 5.03 of this Lease. In no event however, shall this adjusted Commercial/Retail Rentals be more than twenty percent (20%) of the Commercial/Retail Rental established at the beginning of the immediately preceding five-year period.

The readjustment of the Commercial/Retail Rentals shall become effective as of May 28, 2028, regardless of the date the actual adjustment is made.

- e. On May 28 in each of the years 2033, 2038, 2043 and 2048, Commercial/Retail Rentals shall be adjusted. Lessor and Lessee agree, subject to the provisions of Paragraph 5.01 A.(1)d., that percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U) shall govern the readjustment of the Commercial/Retail Rentals for these anniversary dates. The parties



further agree that for the purposes of computing such percentage increase for the Twentieth (20<sup>th</sup>), Twenty-fifth (25<sup>th</sup>), Thirtieth (30<sup>th</sup>), and Thirty-fifth (35<sup>th</sup>) Anniversary, the Base Year CPI-U shall be established as that rate in place ninety (90) calendar days prior to the Original Effective Date of this Lease. The Commercial/Retail 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) calendar days prior to the applicable date of readjustment (i.e. the Twentieth (20<sup>th</sup>), Twenty-fifth (25<sup>th</sup>), Thirtieth (30<sup>th</sup>), and Thirty-fifth (35<sup>th</sup>) Anniversary date of the Original Effective Date). The Commercial/Retail Rental readjustments 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 Twentieth (20<sup>th</sup>), Twenty-fifth (25<sup>th</sup>), Thirtieth (30<sup>th</sup>), and Thirty-fifth (35<sup>th</sup>) Anniversary of the Original Effective Date of this Lease.

All readjustments shall be effective as of May 28 in each of the years 2033, 2038, 2043 and 2048, without regard to the date the actual adjustment is made; provided, however, that in no event shall the readjusted Commercial/Retail Rentals be more than twenty percent (20%) more than the Commercial/Retail Rentals established at the beginning of the immediately preceding five-year period.

- f. Within ninety (90) calendar days prior to the expiration of the Initial Term, the Commercial/Retail Rentals for the Option Period, if exercised, shall be adjusted to a rate equal to eight percent (8%) of the then fair market value of the Commercial/Retail Parcels, disregarding the value of any Lessee-owned improvements located on the Commercial/Retail Parcels. The fair market value of the Commercial/Retail Parcels shall be determined by an appraisal process as identified in Paragraph 5.03 of this Lease. In no event however, shall this adjusted Rent for the Option Period be less than the Rents established at the beginning of the immediately preceding five (5) year period. The readjustment of Rents shall become effective as of the First Option Period, regardless of the date the actual adjustment is made.

C. Open Space. Other than for any period set forth in Section 5.01.E(4), consideration, in lieu of rental payment, for the Open Space shall be the construction of park pond improvements and maintenance of the Open Space in accordance with the standards identified in **EXHIBIT "G-1"**, and any amendment to the standards.

D. Private Street. Other than for any period set forth in Section 5.01.E(5) consideration, in lieu of rental payment, for the Private Street Acequia Park Court, shall be the construction of the street improvements and maintenance of the street in accordance with the standards identified in **EXHIBIT "G-2"**, and any amendment to the standards.

E. Failure to Timely Construct.

- (1) Failure to Timely Construct Hotel. Notwithstanding any abatement of payments, in the event construction of the hotel contemplated herein is not completed as provided in Section 3.09, Lessee shall pay to Lessor a monthly rental of \$5,306.76 until the CO for the identified and approved hotel is issued. Lessee shall provide a copy of the issued CO for the Premises to the Director.
- (2) Failure to Timely Construct Commercial/Retail Parcels. Notwithstanding any abatement of payments, in the event construction of the Commercial/Retail Parcels is not completed as provided in Section 3.09, Lessee shall pay to Lessor a monthly rental of \$8,032.59 until the CO for the Commercial/Retail Parcels is issued. Lessee shall provide a copy of the issued CO for the Premises to the Director.
- (3) Failure to Timely Construct ROW Property. Notwithstanding any abatement of payments identified in this Lease, in the event construction of the ROW Property contemplated herein is not completed as provided in Section 3.09,, Lessee shall pay to Lessor a monthly rental of \$2,304.18 until the ROW Property is accepted for maintenance by Lessor. Lessee shall provide a copy of the issued CO for the Premises to the Director.
- (4) Failure to Timely Construct Open Space. Notwithstanding any abatement of payments or other consideration identified in this Lease, in the event construction of the Open Space Property contemplated herein is not completed as provided in Section 3.09, Lessee shall pay to Lessor a monthly rental of \$1,145.75 until the CO for the Open Space is issued. Lessee shall provide a copy of the issued CO for the Premises to the Director.
- (5) Failure to Timely Construct Private Street. Notwithstanding any abatement of payments or other consideration identified in this Lease, in the event construction of the Private Street Acequia Park Court contemplated herein is not completed as provided in Section 3.09, Lessee shall pay to Lessor a monthly rental of \$875.15 until the CO for the Private Street Acequia Park Court is issued. Lessee shall provide a copy of the issued CO for the Premises to the Director.

**5.02 Gross Revenues.** Gross Revenues shall include, but not be limited to, all monies or other consideration paid or payable to Lessee for business conducted on the Hotel Site of the Premises, such as those derived from room rentals, conference or ballroom room rentals, vending machines, food sales, and beverage sales, whether for cash or credit and without any deduction for credit card discounts and whether the same shall be paid or unpaid. Gross Revenues from miscellaneous sales and services shall include the gross revenues and receipts of Lessee (and all

subtenants, licensees, concessionaires, permittees and others doing business on the Hotel Site of the Premises), from the sale of merchandise or rentals or services other than room rentals, beverage sales and food sales; provided that, in the case of miscellaneous sales and services by Lessee's subtenants, licensees, concessionaires, or permittees, only the net owed to Lessee from such subtenants, licensees, concessionaires or permittees shall be considered Gross Revenues from miscellaneous sales and services.

**Excluded from Gross Revenues are:**

- A. Amounts of any sales or similar taxes imposed by Federal, State, County or City laws which are separately stated to and paid by the Lessee in relation to its use of the Hotel Site on the Premises, whether currently levied or hereinafter levied or imposed, and directly payable to the taxing authority by the Lessee. No deduction shall be allowed from Gross Revenues for the payment of franchise taxes or taxes levied on the Lessee's activities, facilities, equipment or property, either real or personal;
- B. Amounts of gratuities paid or given by customers to Lessee's employees in conjunction with Lessee's business activities on the Hotel Site of the Premises;
- C. Receipts from the sale of fixtures, supplies or equipment of Lessee, its subtenants, licensee, and concessionaires used in the operation of business upon the Hotel Site of the Premises;
- D. The value of any goods, wares or merchandise transferred by Lessee from the Hotel Site of the Premises to any other hotel, motel or business operated by Lessee, or by a wholly-owned subsidiary of Lessee for its own use or use of a subsidiary;
- E. Amounts which Lessee is unable to collect due to the filing of a bankruptcy petition by person or entity owing Lessee in relation to its use of the Hotel Site on the Premises which results in the imposition of an automatic stay under the Bankruptcy Code. This uncollectible income shall not be included as Gross Revenues for the period of time during which the automatic stay is in effect and prevents Lessee from pursuing its collection efforts. However, immediately upon the removal of the automatic stay, Lessee shall include all income, which was excluded under this provision and which has not been deemed uncollectible by the Bankruptcy Court, as Gross Revenues for the month following the removal of the automatic stay. Lessee agrees that prior to excluding any amounts under this provision, Lessee shall provide the Director with documentation that an automatic stay has been imposed; and
- F. Amounts that Lessee is unable to collect after reasonable efforts. Lessee shall be deemed to have pursued reasonable efforts to collect a debt after it has submitted the debt to a collection agency for a period of sixty (60) calendar days without receipt of payment; provided, however, that in the event collection is made

thereafter, whether in whole or in part, Lessor shall be entitled to a portion of such collected amount, in accordance with the requirements enumerated herein.

**5.03 Appraisals.** The fair market value of an identified parcel ("Parcel") shall be determined by an appraisal of the parcel.

Lessor will select an appraiser ("First Appraiser") from its list of qualified appraisers to establish the fair market value of the Parcel, disregarding the value of any Lessee-owned improvements located on the Parcel. Lessor shall notify Lessee in writing of such selection and, if Lessee is not satisfied with the selection of the First Appraiser, Lessee, within fifteen (15) calendar days after receipt of said notice, shall notify Lessor in writing of Lessee's selection of a qualified second appraiser ("Second Appraiser"). The selection of the Second Appraiser must be from the Lessor's list of qualified appraisers. If Lessee does not respond within fifteen (15) calendar days after receipt of the written notice, or it does not select a Second Appraiser from Lessor's list of qualified appraisers and notify Lessor in writing as required herein, the First Appraiser shall proceed to establish the fair market value of the Parcel, disregarding the value of any Lessee-owned improvements located on the Parcel. This will be the First Appraisal and the fair market value determined by the First Appraiser will be the Rent.

However, if a Second Appraiser is selected and Lessor is satisfied with such selection, the Second Appraiser shall proceed to determine the fair market value of the Parcel. The fair market value determined by the Second Appraiser will be the Rent, and this value will become the First Appraisal.

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 the First Appraiser will proceed to independently determine the fair market value of the Parcel.

If either Lessor or Lessee protests the fair market value of the Parcel determined by the First Appraisal, the protesting party must notify the other party, in writing within fifteen (15) calendar days after receiving written notice of the fair market value of the Parcel identified in the First Appraisal. Lessee shall pay the Rent as determined by the First Appraisal under protest until there is a final determination of the fair market value for the Parcel for which the Rent is determined. Should the final determination of the fair market value of the Parcel be a lower rate than the fair market value of the Parcel determined by the First Appraisal, Lessee's account will be credited by Lessor accordingly.

The protesting party will select an appraiser ("Qualified Appraiser") from the Lessor's list of qualified appraisers to appraise the Parcel. The Qualified Appraiser must complete the appraisal within thirty (30) calendar days of a notice to proceed. If the fair market value of the Parcel determined in the appraisal by the Qualified Appraiser and the fair market value of the Parcel identified in the First Appraisal are within ten percent (10%) of each other, then the fair market value of the Parcel shall be the lower of the fair market values identified in the two appraisal reports. This amount will be the Rent.

If the fair market value of the Parcel determined by the Qualified Appraiser and the fair market value of the Parcel identified in the First Appraisal differ by fifteen percent (15%) or more, the

fair market value of the Parcel shall be established by the averaging of the fair market value of the Parcel determined in the appraisal by the Qualified Appraiser and the fair market value of the Parcel identified in the First Appraisal. This amount will be the Rent.

**5.04 Commencement of Rental.** Payment of the Rentals by Lessee shall commence on dates identified in Section 5.01 of this Lease.

- A. Hotel Site. The Minimum Annual Guarantee shall be paid in twelve (12) equal monthly installments in advance on or before the first day of each month throughout the term of the Lease, except during any rental abatement period. The portion (if any) of the Percentage Rentals due which exceeds the Minimum Annual Guarantee shall be paid no later than the twentieth (20<sup>th</sup>) day of the month immediately following the month for which the Percentage Rentals were due.
- B. Commercial/Retail Parcel. Rentals shall be paid in twelve (12) monthly installments in advance on or before the first day of each month throughout the term of the Lease, except during any rental abatement period.

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

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

With each payment of the Minimum Annual Guarantee and Percentage Rentals, Lessee shall submit to the Director a statement showing Lessee's Gross Revenues from the operation of its activities on the Hotel Site for the preceding calendar month. This report is due by the 20<sup>th</sup> day of the month immediately succeeding that in which the revenue was made. This report shall be submitted in a format similar to the form provided in Exhibit "H".

Within ninety (90) calendar days following the end of each Lease Year, a statement showing Gross Revenues for the preceding Lease Year shall be submitted and certified from the Lessee's records by a certified public accountant. Such statement shall be signed and certified by the certified public accountant as an accurate report of Lessee's Gross Revenue for the preceding Lease Year as defined in Section 5.02 Gross Revenues. Such statement showing

Gross Revenues for the preceding Lease Year is to be accompanied by Lessee's payment covering any deficiency between payment made during the preceding Lease Year and the payment due for such Lease Year as identified in the Gross Revenue statement. If the Gross Revenue statement indicates that the amount due to Lessor is less than the payments made for the preceding year, then Lessor will reimburse to Lessee the excess amount without interest.

If, after the submission of Lessee's annual Gross Revenue statement, Lessor reasonably questions the accuracy of such statement, Lessor may, at its sole option, require Lessee to submit at Lessee's own cost, a certified Gross Revenue statement prepared by an independent certified public accountant; provided, however, that request shall not be made more frequently than once a Lease Year. Independent shall mean a certified public accountant who is not affiliated in fact or appearance in any manner with Lessee, its parent company or any subsidiaries. Nothing contained herein shall affect or diminish the rights granted pursuant to Section 5.05 below. Any failure of Lessor to request a certified Gross Revenue statement by an independent certified public accountant in any Lease Year shall not operate to bar or destroy the right of Lessor to request such a certified Gross Revenue statement in any subsequent Lease Year. The submission of such Gross Revenue statement by Lessee shall not be construed to limit Lessor's right to request audits as set forth in this Lease. Lessee, at its own expense, shall supply all records in a type, style and form satisfactory to the Director. Lessee shall maintain monthly Gross Revenue statements, as required hereunder, for a minimum of one (1) year at a place of business accessible to Lessor in El Paso, Texas. Lessee shall maintain annual Gross Revenue statements, as required hereunder, at its principal place of business, for a minimum of five (5) years, and shall forward same to Lessor during that time, if requested by Lessor.

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

In addition, Lessor shall have the right, during any Lease Year of this Agreement, to authorize two (2) audits of Lessee's records pertaining to its activities, and any related business located on the Hotel Site. Such audits shall include full calendar months and shall be undertaken by a reputable firm of certified public accountants with offices in El Paso or by Lessor's Internal Audit Office staff. The cost of such audits shall be borne by Lessor, unless the results of such audits reveal a discrepancy shortage of more than five percent (5%) between the Gross Revenues reported by Lessee and the Gross Revenues as determined by audit for any Lease Year. In case of such discrepancy shortage, the full cost of the audit shall be borne by Lessee.

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

**5.07 Unpaid Rent, Fees and Charges.** Any installment of any Rentals, fees, or other charges or monies accruing under any provisions of this Lease that are not received by the twentieth

(20<sup>th</sup>) day of the month in which payment is due, shall bear interest at the rate equal to the maximum allowed by law from the date when the same was due according to the terms of this Lease until actually paid by Lessee.

**5.08 Place of Payment.** All Rental payments required by this Lease agreement shall be paid to Lessor at the following address:

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

## **ARTICLE VI - INSURANCE AND INDEMNIFICATION**

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

**A, Comprehensive General Liability Insurance** in amounts as reasonably set from time to time by Lessor, but not less than Ten Million Dollars (\$10,000,000.00) for bodily injury to one person for each occurrence,

Twenty Million Dollars (\$20,000,000.00) for bodily injuries to more than one person arising out of each occurrence,

Ten Million Dollars (\$10,000,000.00) for Property Damage arising out of each occurrence,

**B. Commercial Automobile Liability Insurance** endorsed for any auto with limits of One Million Dollars (\$1,000,000.00) combined single limit,

**C. All Risk Physical Damage Insurance** covering loss, damage, or destruction to the facility, including machinery coverage, and

**D, Builder's Risk Insurance,** in an amount equal to the full replacement value of any improvements.

**6.02 Additional Insured.** Lessor shall be named as an Additional Insured on all insurance policies except Worker's Compensation Insurance Coverage, either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

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



In addition Lessee, at its sole cost and expense, shall throughout the term of this Agreement provide and keep in force Worker's Compensation Insurance and Disability Benefits Liability Insurance as required by Texas State law covering all of the employees of Lessee.

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

**6.03 Fire and Other Risks Insurance.** Lessee, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Premises insured for the mutual benefit of Lessor and Lessee against loss or damage by fire and against loss or damage by other risks embraced by extended coverage and against civil commotions, riots, vandalism and malicious mischief in an amount equal to the actual replacement cost of such improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (hereinafter called Full Insurable Value). In the event a dispute arises as to the Full Insurable Value which cannot be resolved by agreement of the Parties, an appraisal of the Premises and improvements thereon shall be made by an appraiser selected by Lessee and reasonably acceptable to Lessor to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Such appraisal shall not be requested more frequently than once in any five (5) Lease Year period. Should the appraiser Lessee selected be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee, unless the value claimed by Lessee is confirmed through such an appraisal, in which case the Lessor shall reimburse the Lessee for the cost of such appraisal.

**6.04 Payment and Performance Bonds.** Prior to commencement of any construction work on the Premises or under the real property identified in Exhibit "A", the cost of which will exceed Fifty Thousand Dollars (\$50,000.00), Lessee at its own cost and expense, shall cause to be made, executed and delivered to Lessor two (2) separate bonds, as follows:

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

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

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

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

- C. In accordance with Article 35.03.004 of the Texas Insurance Code, if a Performance or Payment bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed 10% of the reinsurer's capital and surplus.

**6.05 Authorized Insurance and Surety Companies.** All required policies of insurance and bonds shall be written by insurance and surety companies authorized to do business in the State of Texas with A.M. Best ratings of B++ or better. Such policies shall be delivered to Lessor at least ten (10) calendar days prior to the Effective Date of this Lease. Each insurance policy shall contain:

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

**6.06 Indemnification.** Lessee agrees to indemnify and hold Lessor harmless against any and all claims, demands, damages, costs, and expenses, including investigation expenses and reasonable attorney's fees for the defense of such claims and demands, arising out of or attributed directly, or indirectly to the operation, conduct or management of Lessee's business on the Premises, its use of the Premises, or from any breach on the part of Lessee of any terms of this Lease, or from any act or negligence of Lessee, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the Premises including claims and damages arising in whole, or in part, from the negligence of Lessor. In case of any action or proceeding brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, agrees to defend the action or proceeding by counsel acceptable to Lessor.

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

**7.01 Obligations of Lessee.** During the term hereof, except as provided in Section 7.03 below, should the improvements 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 and value as nearly as practical, to the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessee 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 Covenants. In the event the preliminary plans and specifications are not approved, 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 Lessee shall prepare or cause to be prepared final working plans and specifications in substantial conformity to the preliminary plans and specifications ("Final Plans"). Upon completion of the Final Plans, Lessee shall submit the same to appropriate governmental agencies for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one (1) complete set of the Final Plans as approved by the governmental agencies exercising jurisdiction thereover and copies of all issued permits. 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, Lessee shall provide to Lessor a performance and payment bond as required herein and, if requested, Builder's Risk Insurance.
- D. Upon compliance with the foregoing, and Section 7.02 below, 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 such repair, replacement or rebuilding. Such proceeds shall be disbursed by Lessee during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Lessee

shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Lessee.

**7.03 Cancellation of Lease.** Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty during the last five (5) Lease Years of either the Initial Term or any option period, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) calendar days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessor. All rents payable under this Lease shall be prorated and paid to the date of such cancellation. The receipt of insurance proceeds by Lessor will relieve Lessee from any responsibility to restore the Premises to their former condition.

## **ARTICLE VIII - CONDEMNATION**

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

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.
- B. "Total Taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial Taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
  - 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;
  - 2. The conduct of Lessee's business on the Premises would be substantially prevented or impaired;
  - 3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and

after performance of all covenants and conditions required of Lessee under this Lease;

4. Access to the Premises is denied;
  5. More than ten percent (10%) of the Premises comprised of pad sites is taken or enough parking is taken that the Premises would not meet requirements of the Covenants; or
  6. Lessee is deprived of use of more than fifteen percent (15%) of the Premises.
- D. "Partial Taking" means the taking of a fee title that is not either a Total Taking or Substantial Taking.
- E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.
- F. "Notice of Intended Taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a notice of hearing through condemnation petition on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the taking.
- G. "Award" means compensation paid for the taking, whether pursuant to award judgment, agreement or otherwise.
- H. "Date of Taking" means the date that Lessee is required to relinquish the Premises pursuant to a final order of possession through condemnation or agreement or any part of between the parties hereto.

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

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

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

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

**8.05 Taking of a Pad Site.** Lessor acknowledges that Lessee intends to develop the Premises as a Hotel Site and a Commercial/Retail Parcel (such Hotel Site and the Commercial/Retail Parcel are referred to herein separately as a "Pad Site"). Notwithstanding anything to the contrary contained herein, Lessor further acknowledges and agrees that a Partial Taking of a Pad Site that results in one or more of the conditions set forth in Section 8.01(C) above, may be deemed by Lessee as a Substantial Taking of a Pad Site. In the event that Lessee shall elect to deem the same as a Substantial Taking of a Pad Site, the Lease shall be amended to delete the square footage and rental associated with such Pad Site, effective on the Date of Taking. As soon as reasonably possible after such a Substantial Taking, the parties shall mutually agree and execute a written amendment of this Lease to reflect the same.

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

**8.07 Partial Taking.** Upon a Partial Taking, all awards shall be disbursed as follows:

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

**8.08 Obligations of Lessee Under Partial Taking.** Promptly after any such Partial Taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the

Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last five (5) Lease Years of the Initial Term or any option period, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on the Premises as aforesaid by notifying Lessor of its intention to that effect; all awards shall be disbursed in accordance with the Partial Taking provision above.

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

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

## **ARTICLE IX – ENCUMBRANCES**

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

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

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

**9.02 Mortgagee's Rights.** Upon receipt of a notice or demand in accordance with the preceding section, Mortgagee shall have one hundred twenty (120) calendar days after receipt of such notice within which, at Mortgagee's election, either:

- A. to cure the default if it can be cured by the payment or expenditure of money;

- B. to perform such other action as may be necessary to cure the default;
- C. to commence performance within such one-hundred-twenty (120) calendar day period and if a non-monetary default cannot be cured within one hundred twenty (120) calendar days, thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. to institute foreclosure proceedings and prosecute same diligently to conclusion.

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

**9.04 Mortgagee's Documents.** Lessor agrees to review any request from Lender for documentation from Lessor, including but not limited to, estoppels and nondisturbance agreements (collectively "Mortgagee Documents") and shall provide a response to such a request within ten (10) calendar days of receipt ("Document Review Period"). Further, if Lessor deems such request for documentation as reasonable and within the ability of Lessor to execute, Lessor will provide such documentation in a form acceptable to Lessor after review and approval of Lessor's legal counsel. Notwithstanding anything to the contrary contained herein, Lessor shall not be obligated to execute any Lender documents which conflict with the terms of the Lease or are otherwise found objectionable by Lessor's counsel.

## **ARTICLE X - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER**

**10.01 Expiration.** This Lease shall expire at the end of the Initial Term or any extension thereof.

### **10.02 Cancellation.**

- A. Subject to the provisions of the preceding Article, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:
  - 1. be in arrears in the payment of the whole or any part of the amounts agreed upon herein for a period of thirty (30) calendar days after Lessor has notified Lessee in writing that payment was not received when due;
  - 2. file in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;
  - 3. make any general assignment for the benefit of creditors;
  - 4. abandon the Premises;



5. except as otherwise noted, default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) calendar days after receipt of written notice from Lessor to cure such default, unless this Lease states otherwise or if during such period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
6. be adjudged bankrupt in involuntary bankruptcy proceedings;
7. be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) calendar days after the appointment of such receiver; or
8. be in material, uncured default under the terms of any of the HCSA, the 380 Agreement, or the 381 Agreement.

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

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

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

- B. Lessor, in its sole discretion, retains the right to cancel the Lease against the entire Premises or either the Hotel Site or Commercial/Retail Parcel in the event default arises under the terms of the Lease which is associated solely against either the Hotel Site or Commercial/Retail Parcel, including the payment of rent or the performance of any other covenant required to be performed by Lessee, after notice as provided herein. Upon exercise of such right to declare the lease cancelled against any such specific Site or Parcel, it is understood and agreed that the Lease remains in full force and effect against the remaining Site or Parcel not associated with the occurrence of any event or default. Lessee agrees to execute all documents deemed necessary by Lessor to effectuate such cancellation.

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

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

**10.04 Assignment and Transfer.** Lessee shall not assign or transfer this Lease, including but not limited to any internal transfers and assignments of Lessee's ownership interests without the prior written approval of Lessor, such approval to not be unreasonably withheld, conditioned or delayed. Lessor's approval shall not be required in the event of an assignment of this Lease by Lessee to the first leasehold Mortgagee.

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

**10.05 Subleasing.** Lessee shall have the right to sublease all or any part of the Premises hereunder for the same purposes permitted under the terms and provisions of this Lease, including but not limited to the insurance and indemnity requirements. Any such sublease executed after the effective date of this Lease shall be subject to the same conditions, obligations and terms as set forth herein and Lessee shall be responsible for the observance by its sublessees of the terms and covenants contained in this Lease. Lessee shall promptly report to Lessor any subleases of the Premises, or any improvements thereon and, upon request of Lessor, Lessee shall furnish Lessor with a copy of the Sublease Agreement. In addition, Lessee shall provide a list of its sublessees and the sublessees contact information to the Director every year.

**10.06 Rights Upon Expiration or Early Termination.** At the expiration of this Lease, Lessor shall be entitled to have the Premises returned to Lessor clear of all improvements above and below ground level and to have the soil compacted to Lessor's specifications, with no subterranean uses.

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

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

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

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

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

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

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

In addition, upon expiration of this Lease for any reason and no later than thirty (30) calendar days after the complete removal of improvements, Lessee, shall provide Lessor with an engineering report on the compaction of the Premises and a Phase I Environmental Site Assessment meeting ASTM standards of the Premises ("the Lessee's Report") and if, in the opinion of Lessor, the engineering report on compaction indicates the soil has not been compacted in accordance with approved plans or if Lessee's Report indicates that the Premises are in violation of applicable Environmental Laws, then Lessee shall perform work as is

necessary to cause the Premises to be in compliance with approved plans and applicable Environmental Laws.

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

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

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

**10.07 Landlord's Lien.** It is expressly agreed that in the event of default in the payment of rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises

and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first to the necessary and proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee. Notwithstanding anything to the contrary in the preceding, Lessor acknowledges that any lien or security interest Lessor may claim pursuant to this section is subordinated to any lien or security interest now or subsequently held by any Mortgagee, when said Mortgagee is pursuing its rights under the Mortgage, as those terms are defined within this Agreement.

## **ARTICLE XI - GENERAL PROVISIONS**

**11.01 Continuity of the Covenants.** This Lease agreement is subject to the terms, covenants and conditions contained in the Covenants. Lessor reserves the right to revise the standards set forth in the Covenants provided, however, that such revisions will not, in Lessor's opinion, cause a substantial reduction in the value of Lessee's leasehold interest. Lessor's right to revise the Covenants includes, but is not limited to, the right to revise said document because of the development of new concepts or improved construction and architectural techniques.

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

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

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

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

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

LESSOR:      Director of Aviation  
                    El Paso International Airport

City of El Paso  
City Clerk's Office

6701 Convair Road  
El Paso, Texas 79925-1099

P.O. Box 1890  
El Paso, Texas 79950-1890

LESSEE: EP Vida, LLC  
8411 Lockheed Drive, Suite 7  
El Paso, Texas 79925

provided, that, no notice to Lessee shall be effective unless a copy of the same shall also be delivered concurrently to:

Sava Holdings, LLC  
2311 Texas Drive, Suite 105  
Irving, Texas 75062

Leonard I. Margolis, Esq.  
5300 Town & Country Blvd., Suite 170

Frisco, Texas 75034  
Phone: (972) 294-0200

Jack Chapman, Esq.  
Kemp Smith, LLP  
1123 N. Kansas, Suite 1700  
El Paso, Texas 79901  
Phone: 915-533-4424

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) calendar days prior written notice to all other parties in the manner set forth in this Section.

**11.05 Attorney's Fees.** If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees and all costs incurred, in addition to any other relief sought.

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

**11.07 Nondiscrimination Covenant.** Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, as follows:

- A. that in the event facilities are constructed, maintained, or otherwise operated on the Premises for the purpose for which Department of Transportation program or

activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended;

- B. that no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises;
- C. that in the construction of any improvements on, over, or under the Premises and the furnishing of goods or services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination;
- D. that Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P. L. 93-112) and 49 CFR Part 27;
- E. that to the extent Lessee furnishes goods or services to the public at the Airport, Lessee agrees that it shall:
  - 1. furnish each and every good and service on a fair, reasonable, and not unjustly discriminatory basis to all users of the Airport; and
  - 2. charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers as otherwise permitted under the law; and
- F. that, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Lease and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

**11.08 Affirmative Action.** Lessee assures that no person shall, on the grounds of race, color, sex, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from Lessor. Lessee assures that it will require that its covered suborganizations (sublessees) provide assurances to Lessor, as set forth herein, that they

similarly will undertake affirmative action programs, and that they will require assistance from their suborganizations (sublessees) to the same effect.

**11.09 Cooperation with Lender.** Lessor agrees to reasonably cooperate with any third party institutional lenders from whom Lessee seeks hotel and/or retail financing in a manner which shall be not inconsistent with this Lease.

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

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

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

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

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

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

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

**11.16 Taxes and Other Charges.** Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against the Lessee or the Lessor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, or any improvements thereon, during the term of this Lease including any extensions or option period granted thereto. By March 1 of each year during the term of this Lease and at no cost to Lessor, Lessee shall provide written proof satisfactory to the



Director that all taxes and governmental charges of any kind as described herein have been paid in full. Lessor is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from the Lessee's use of the property or possession of the Premises.

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

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

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

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

**11.19 Authorization To Enter Lease.** The signatory for the Lessee warrants to Lessor that Lessee is duly authorized to execute and has full right to enter into this Lease, is authorized to do business in the State of Texas and that this Lease is fully binding upon Lessee in accordance with its terms. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

**11.20 Survival of Certain Provisions.** All provisions of this Lease, which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, the Indemnification and Compliance with Law provisions.

**11.21 Effective Date.** Regardless of the date signed, this Lease shall be effective as of the date first noted on the Title Page, which shall be the date of formal approval by the Lessor.

**11.22 Waiver of Present Defaults.** Any default, whether with notice or otherwise, by Lessee in its obligations under the terms of the Lease or this First Amended and Restated Hotel Site Lease, existing as of the Effective Date, is hereby waived.

**IN WITNESS WHEREOF,** the parties have hereunto set their hands as of the dated noted above.

**LESSOR: CITY OF EL PASO**

\_\_\_\_\_  
Tomas Gonzalez  
City Manager

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Marvin Foust  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

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

#### ACKNOWLEDGMENT

THE STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO            )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2015,  
by Tomas Gonzalez as **City Manager** of the **City of El Paso** (Lessor).

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Texas

**[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]**

**LESSEE: EP VIDA, LLC**

By: \_\_\_\_\_  
Printed Name: William Correa  
Title: President

**ACKNOWLEDGMENT**

THE STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2015,  
by William Correa, as President of EP Vida, LLC (Lessee).

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:

\_\_\_\_\_

**[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]**

**LESSEE: EP VIDA, LLC**

By: \_\_\_\_\_  
Printed Name: Ajay Kothari  
Title: Vice President

**ACKNOWLEDGMENT**

THE STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2015, by  
\_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_ (Lessee).

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

## Exhibit A - Description of the Premises

Prepared for: The City of El Paso  
August 13, 2014

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being Lot 1, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B at time of recording in Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

**THE "TRUE POINT OF BEGINNING"** being a found chiseled x on the intersection of the westerly right of way line of Airway Boulevard with the southerly right of way line of Boeing Drive;

Thence along the southerly right of way line of Airway Boulevard, South  $01^{\circ}01'53''$  East a distance of 73.24 feet to a point;

Thence leaving said right of way line and along said easement, South  $88^{\circ}58'07''$  West a distance of 55.00 feet to a point;

Thence, South  $01^{\circ}01'53''$  East a distance of 176.42 feet to a point on the southerly line of Lots 1, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;


Thence along said line, South  $88^{\circ}58'07''$  West a distance of 357.20 feet to a point on the westerly line of Lot 1, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence along said line, North  $01^{\circ}01'53''$  West a distance of 271.42 feet to a point on the southerly right of way line of Boeing Drive;

Thence along said right of way line, North  $88^{\circ}58'07''$  East a distance of 348.20 feet to a point of curve;

Thence along said right of way line, 68.82 feet along the arc of a curve to the right which has a radius of 105.00 feet a central angle of  $37^{\circ}33'18''$  a chord which bears South  $72^{\circ}15'14''$  East a distance of 67.60 feet to the **TRUE POINT OF BEGINNING** and containing 101,735 Sq. Ft. or 2.336 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.

  
Ron R. Conde  
R.P.L.S. No. 5152  
Job No. 414-14



CONDE INC  
ENGINEERING / LAND SURVEYING / PLANNING  
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905  
(915) 592-0283 FAX (915) 592-0286



## Exhibit A - Description of the Premises

Prepared for: The City of El Paso  
August 13, 2014

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being Lot 2, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B at time of recording in Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

**COMMENCING FOR REFERENCE** at a found chiseled x on the intersection of the westerly right of way line of Airway Boulevard with the southerly right of way line of Boeing Drive; Thence along the southerly right of way line of Airway Boulevard, South 01°01'53" East a distance of 73.24 feet to a point; Thence leaving said right of way line and along said easement, South 88°58'07" West a distance of 55.00 feet to a point; Thence, South 01°01'53" East a distance of 176.42 feet to a point on the northerly line of Lot 2, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B; **THE "TRUE POINT OF BEGINNING"**


Thence, South 01°01'53" East a distance of 60.00 feet to a point on the southerly line of Lot 2, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence along said line, South 88°58'07" West a distance of 357.20 feet to a point on the westerly line of Lot 2, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence along said line, North 01°01'53" West a distance of 60.00 feet to a point on the northerly line of Lot 2, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence along said line, North 88°58'07" East a distance of 357.20 feet to the **TRUE POINT OF BEGINNING** and containing 21,432 Sq. Ft. or 0.4920 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.



Ron R. Conde  
R.P.L.S. No. 5152  
Job No. 414-14



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CONDE INC  
ENGINEERING / LAND SURVEYING / PLANNING  
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905  
(915) 592-0283 FAX (915) 592-0286

## Exhibit A - Description of the Premises

Prepared for: The City of El Paso  
August 13, 2014

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being Lot 3, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B at time of filing in Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

**COMMENCING FOR REFERENCE** at a found chiseled x on the intersection of the westerly right of way line of Airway Boulevard with the southerly right of way line of Boeing Drive; Thence South  $09^{\circ}02'24''$  East a distance of 314.51 feet to a point for the northeast corner of Lot 3, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B for **THE "TRUE POINT OF BEGINNING"**

Thence, South  $01^{\circ}01'53''$  East a distance of 213.58 feet to a point for the southeast corner of Lot 3, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence, South  $88^{\circ}58'07''$  West a distance of 357.20 feet to a point for the southwest corner of Lot 3, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence, North  $01^{\circ}01'53''$  West a distance of 213.58 feet to a point for the northwest corner of Lot 3, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence, North  $88^{\circ}58'07''$  East a distance of 357.20 feet to the **TRUE POINT OF BEGINNING** and containing 76,291 Sq. Ft. or 1.751 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.



Ron R. Conde  
R.P.L.S. No. 5152  
Job No. 414-14



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CONDE INC  
ENGINEERING / LAND SURVEYING / PLANNING  
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905  
(915) 592-0283 FAX (915) 592-0286



## Exhibit A - Description of the Premises

Prepared for: The City of El Paso  
August 13, 2014

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Lot 1, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B at time of recording in Real property records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

**THE "TRUE POINT OF BEGINNING"** being a point on the intersection of the southerly right of way line of Boeing Drive with the westerly line of Lot 1, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence along said right of way line, North  $88^{\circ}58'07''$  East a distance of 170.88 feet to a point on the easterly line of Lot 1, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence along said line, 182.37 feet along the arc of a curve to the right which has a radius of 389.98 feet a central angle of  $26^{\circ}47'37''$  a chord which bears South  $16^{\circ}16'47''$  West a distance of 180.71 feet to a point;

Thence along said line, South  $29^{\circ}40'37''$  West a distance of 28.65 feet to a point of curve;

Thence along said line, 127.12 feet along the arc of a curve to the left which has a radius of 415.88 feet a central angle of  $17^{\circ}30'50''$  a chord which bears South  $20^{\circ}55'12''$  West a distance of 126.63 feet to a point on the westerly line of Lot 1, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence along said line, 319.57 feet along the arc of a curve to the left which has a radius of 2883.36 feet a central angle of  $06^{\circ}21'01''$  a chord which bears North  $10^{\circ}58'22''$  West a distance of 319.40 feet to the **TRUE POINT OF BEGINNING** and containing 28,059 Sq. Ft. or 0.6441 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.



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## Exhibit A - Description of the Premises

Prepared for: The City of El Paso  
August 13, 2014

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Lot 2, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B at time of recording in Real property records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

**COMMENCING FOR REFERENCE** at a point on the intersection of the southerly right of way line of Boeing Drive with the westerly line of Lot 1, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B; Thence along the southerly right of way line of Boeing Drive, North 88°58'07" East a distance of 170.88 feet to a point on the common line of Lots 1 and 2, Block 5B, Proposed plat of El Paso International Replat of Unit 3 Replat B for **THE "TRUE POINT OF BEGINNING"**

Thence along the southerly right of way line of Boeing Drive, North 88°58'07" East a distance of 88.79 feet to a point for the common corner of Lots 2 and 3, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence along said line, South 01°01'53" East a distance of 120.00 feet to a point;

Thence along said line, North 88°58'07" East a distance of 155.76 feet to a point on the easterly line of Lot 2, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B

Thence along said line, South 01°01'53" East a distance of 142.18 feet to a point;

Thence along said line, North 88°58'07" East a distance of 13.00 feet to a point;

Thence along said line, South 01°01'53" East a distance of 78.52 feet to a point;

Thence along said line, South 88°58'07" West a distance of 13.00 feet to a point;

Thence along said line, South 01°01'53" East a distance of 204.31 feet to a point on the southerly line of Lot 2, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B

Thence along said line, South 88°58'07" West a distance of 43.74 feet to a point;

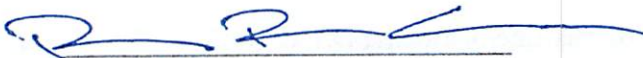
Thence, North 02°06'53" West a distance of 96.34 feet to a point;

Thence, South 85°16'00" West a distance of 301.29 feet to a point on the westerly line of Lot 2, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

## Exhibit A - Description of the Premises

Thence along said line, 473.75 feet along the arc of a curve to the left which has a radius of 2883.36 a chord which bears North 09°26'27" West a distance of 473.22 feet to a point on the southerly right of way line of Boeing Drive to the **TRUE POINT OF BEGINNING** and containing 129,966 Sq. Ft. or 2.984 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.



Ron R. Conde  
R.P.L.S. No. 5152  
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## Exhibit A - Description of the Premises

Prepared for: The City of El Paso  
August 13, 2014

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Lot 3, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B at time of recording in Real property records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

**COMMENCING FOR REFERENCE** at a point on the intersection of the southerly right of way line of Boeing Drive with the westerly line of Lot 1, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B; Thence along the southerly right of way line of Boeing Drive, North  $88^{\circ}58'07''$  East a distance of 259.67 feet to a point for the northwest corner of Lot 3, Block 5B, Proposed plat of El Paso International Replat of Unit 3 Replat B for **THE "TRUE POINT OF BEGINNING"**


Thence along said right of way line, North  $88^{\circ}58'07''$  East a distance of 155.76 feet to a point for the northeast corner of Lot 3, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence leaving said right of way line, South  $01^{\circ}01'53''$  East a distance of 120.00 feet to a point for the southeast corner of Lot 3, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence, South  $88^{\circ}58'07''$  West a distance of 155.76 feet to a point for the southwest corner of Lot 3, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence, North  $01^{\circ}01'53''$  West a distance of 120.00 feet to the **TRUE POINT OF BEGINNING** and containing 18,691 Sq. Ft. or 0.4291 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.

  
Ron R. Conde  
R.P.L.S. No. 5152  
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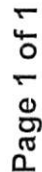
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6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905  
(915) 592-0283 FAX (915) 592-0286





EL PASO INTERNATIONAL AIRPORT  
REPLAT OF UNIT 3 REPLAT "B"  
BEING A REPLAT OF EL PASO INTERNATIONAL AIRPORT  
REPLAT OF UNIT 3 REPLAT "A".  
CITY OF EL PASO, EL PASO COUNTY, TEXAS.  
CONTAINING: 9.931= ACRES.





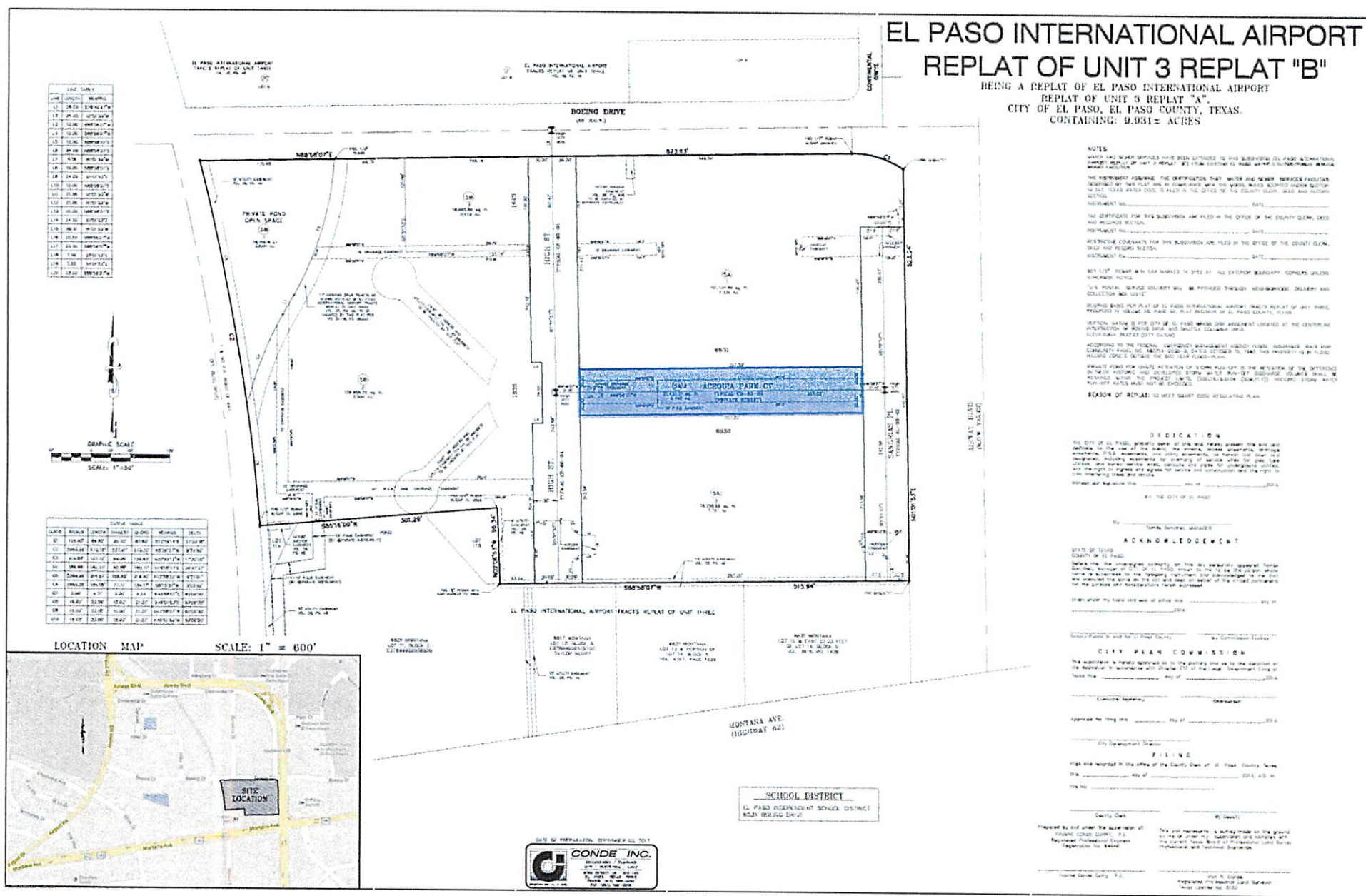


EL PASO INTERNATIONAL AIRPORT  
REPLAT OF UNIT 3 REPLAT "B"  
BEING A REPLAT OF EL PASO INTERNATIONAL AIRPORT  
REPLAT OF UNIT 3 REPLAT "A".  
CITY OF EL PASO, EL PASO COUNTY, TEXAS.  
CONTAINING: 9,931 ± ACRES.





### Exhibit C-2 – Private Street



## **EXHIBIT "D"**

### **HOTEL AND RETAIL SITE LEASE COVENANTS AND RESTRICTIONS**

#### **ARTICLE I - DEFINITIONS**

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

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

- M. **"SETBACK"** shall mean the distance a building must be set back from the property line of the Premises.
- N. **"STREET"** shall mean any street, highway or other public thoroughfare recognized by the City.

## **ARTICLE II - PERMITTED USES AND PERFORMANCE STANDARDS**

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

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

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

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

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

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

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

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

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

I. **Illumination/Exterior Lighting.**

(i) **Exterior Lighting.** The design and location of exterior lighting shall comply in all respects to the applicable requirements of the City, the FAA or successor agencies, and any other governmental agencies having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from, and around the Airport.

(ii) **Interior Lighting.** The source of illumination of any kind within any Building on the Premises shall not be visible at the property line, except for normal installation of standard interior lighting fixtures within buildings.

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

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

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

L. **Storage.** All storage of every type, except of automobiles or aircraft, shall be within approved Buildings or enclosures. Storage shall be expressly prohibited outside of approved

Buildings or enclosures, including but not limited to the storage of parts, service equipment or similar items.

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

### **ARTICLE III - DEVELOPMENT OF SITE-REQUIRED IMPROVEMENTS**

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

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

**C. Setbacks.** All Building setbacks shall comply with Title 21 Smart Code of the City of El Paso, as amended. This provision applies to the entirety of the Premises, unless the requirements of the City of El Paso, through its planning and zoning requirements or otherwise, shall be more restrictive, in which case the more restrictive requirements shall apply.

**D. Landscaping.** Every lot on the Premises for which a Building shall be constructed must be landscaped in accordance with the standards established by Title 21 Smart Code of the City of El Paso, as amended. This provision applies to the entirety of the Premises, unless the requirements of the City of El Paso, through its planning and zoning requirements or otherwise, shall be more restrictive, in which case the more restrictive requirements shall apply. Lessee is also encouraged to expand landscape development plans to include such elements as sculptures, rock arrangements and sheltered outdoor seating areas, all subject to design approval by the Director or authorized agent prior to installation.

**E. Building Heights.** All building heights shall conform to standards established by Title 21 Smart Code of the City of El Paso, as amended; in addition to FAA rules and regulations and shall require prior written approval of the Director. The term "building height" shall include any Building equipment, structures or other extrusions from the roof.

**F. Lot Coverage.** All Buildings and structures, or portions thereof, excluding paving and landscaping, placed on the Premises shall be constructed in compliance with Title 21 Smart Code of the City of El Paso, as amended. This provision applies to each individual lot.

**G. Type of Construction.** All Buildings shall be constructed in compliance with the Architectural Design Standards defined in Title 21 Smart Code of the City of El Paso, as amended. In addition, concrete or masonry units shall be kept neatly painted, if used. Pre-fabricated metal buildings are specifically prohibited. All Buildings shall conform to applicable laws, ordinances and building codes of the City.

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

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

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

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

#### **ARTICLE IV - PREPARATION AND SUBMISSION OF PLANS FOR IMPROVEMENT**

**A. General.** All plans for alterations to the Premises in excess of FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00) ("Material Amount"), either for the construction of additional facilities or alterations to existing Buildings, including repairs, shall be prepared, submitted and approved as outlined herein. This requirement shall be in addition to the requirements set forth in the Lease but shall not be applicable to alterations that are less than the Material Amount. All initial plans for improvements to each site shall be prepared by a registered engineer or architect and shall be affixed with their signature and official seal, and further, shall require the prior written approval by the Director before any construction may begin ("Initial Plans"). Such approval from the Director shall not be unreasonably withheld. The architect or engineer who prepares Initial Plans and other construction documents shall have full responsibility for complying with Texas Occupations Code, Chapter 1001 (Engineers) or Chapter 1051 (Architects), as applicable. Notwithstanding anything to the contrary contained herein, the Director will not withhold its approval of the Initial Plans and Final Plans (including but not limited to the plans for repairs or alterations to existing Buildings) provided that, when applicable, such plans are consistent with the prototype design of the hotel brand franchisor or the retail brand licensor/franchisor.

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

- (i) A plot plan at a scale not smaller than one (1) inch equaling one hundred (100) feet showing the relationship of the proposed improvements to the Premises and to the improvements on adjacent lots, utilities and access thereto, curbs, walks, driveways, parking areas, and other pertinent design information;
- (ii) Preliminary schematic plans for the improvements showing typical, general layouts, including guest room areas, public spaces, back-of-house areas, and lounge and banquet areas for the hotel site and comparable plans for the other, non-hotel sites;
- (iii) Ground cover plans, including landscaping;
- (iv) A true architectural rendering of the proposed Buildings, including elevations, the proposed exterior color scheme, style, materials and design and placement of signs; and
- (v) Any other plans, specifications or design features which the Director may reasonably deem necessary and request.

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

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

**E. Approval of Final Plans.** Following approval of the Initial Plans, Lessee shall prepare and submit to the Director specifications for the construction of the improvements ("Construction Specifications"), and any subsequent alterations, renovations, additions, and improvements thereto, all in sufficient detail to allow the Director to determine that the proposed construction will comply with the requirements of Paragraph C above and otherwise comply with the provisions of the Lease. If the Director determines that the Construction Specifications do not so comply, the Director shall advise Lessee in writing, specifying in reasonable detail the areas of noncompliance, within fifteen (15) business days ("Approval Period") of the date said

Construction Specifications were submitted for approval. In the event that Director and Lessee are not able to resolve outstanding issues with the Construction Specifications, Lessee may, at its option and sole cost, engage a mediator to provide assistance in the resolution of such dispute.

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

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

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

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

## **ARTICLE V – GENERAL PROVISIONS**

**A. Maintenance of Premises.** Lessee shall, at its sole cost and expense, provide for the maintenance of the Premises and the Buildings, improvements and appurtenances thereto, in a presentable condition consistent with good business practice and equal in appearance and character to other similar improvements on the Airport.

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

**C. Maintenance of Landscaping.** If landscaped areas are not maintained in accordance with the standards prescribed under this Lease and these Covenants, and the condition is not corrected within ten (10) days after written notice from the Lessor, the Director or authorized



agent shall have the right to enter on the Premises and plant or replant such areas without being deemed guilty of trespass and without incurring any liability. The costs therefore, as determined by the Lessor, shall be paid by the Lessee to the Lessor within thirty (30) days from Lessee's receipt of notice of such costs.

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

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

**[END OF COVENANTS]**

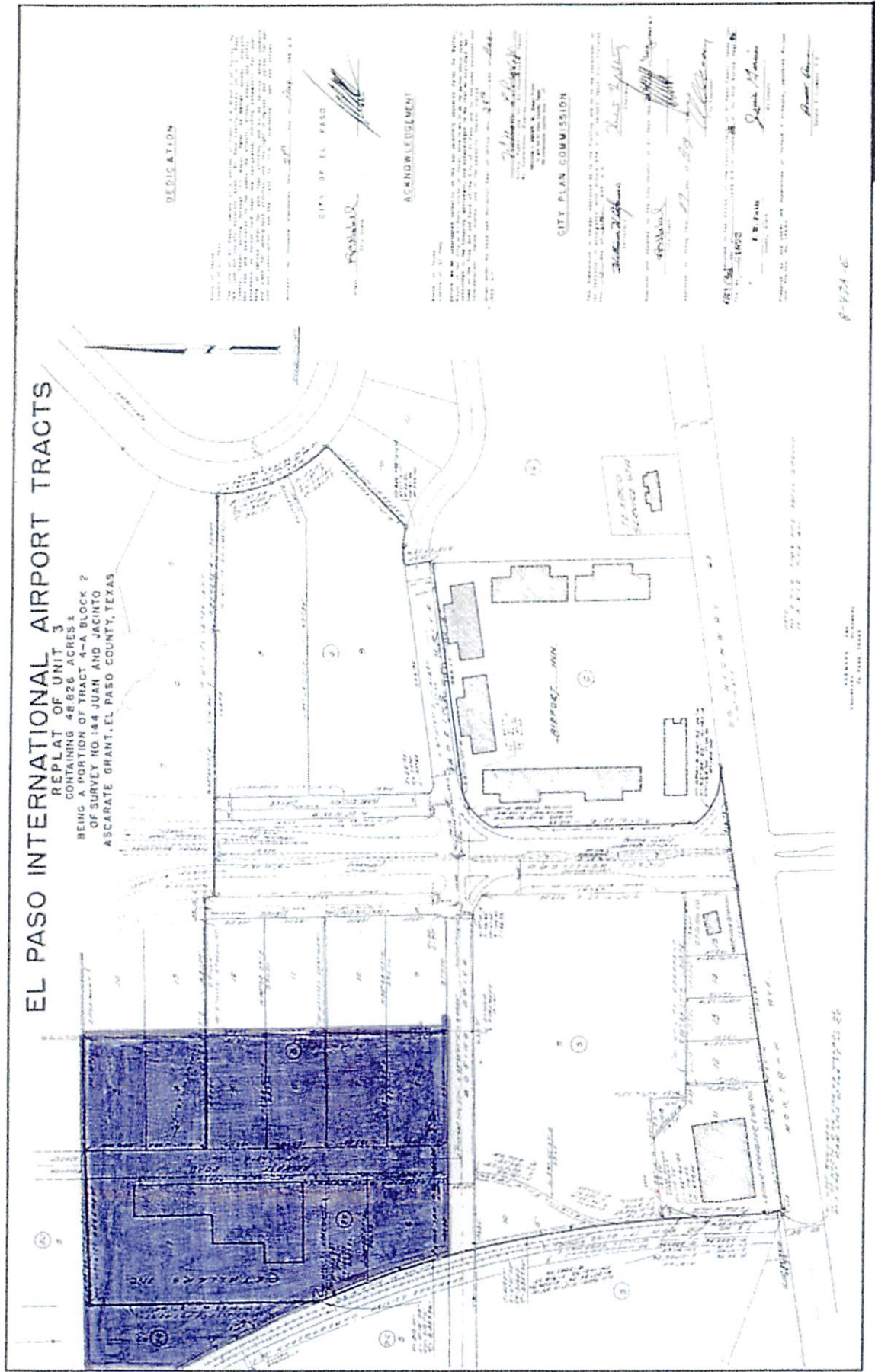


Exhibit E – First Right of Refusal Property Depiction – All of Lots 3, 4, 5, 6, 7, and 8, Block 3, and All of Lots 6 and 7, and a 2.007-acre Portion of Lot 10, Block 2-C (including the vacated Bonanza Street), El Paso International Airport Tracts, Unit 3 Replat, City of El Paso, El Paso County, Texas.

## **Exhibit F**

### **FOUR-STAR HOTEL STANDARDS**

200 rooms minimum

Standard rooms – 330 sq. ft. minimum for Airport locations

Minimum Ceiling Height – 8'-4"

Two single line telephones

One HDTV

King – Full shower

Double/Double – Tub

Suites

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

Executive Suites (6 required) – 660 sq. ft. minimum

Room Mix

King – 40% minimum

Double/Double – 20% minimum

Room Features

Electronic door locks

In-room safe

Hinged and illuminated closet

Refreshment center

Dual showerhead

Illuminated make-up mirror

Hair dryer

Weight scale

Robes & slippers

Iron/ironing board

Coffee unit

Concierge Service (minimum required)

Complimentary Newspapers

Complimentary soft drinks and snacks

(Continued on following page)

## **Restaurant & Bar**

3 Meals required  
24 Hour room service required  
125 seats minimum

## **Meeting Rooms**

10,000 sq. ft. minimum not including pre function space  
Minimum capacity – 450 people / Banquet style  
Required to be divided into 5 separate spaces

## **Fitness Room**

750 sq. ft. minimum size  
Multi-station required  
Free weights required  
Minimum of 6 pieces of high quality equipment required

## **Pool**

800 sq. ft. minimum size

## **Interior Finishes and Standards**

All interior finishes will be reflective of an upper upscale property. The direction will be modern, relaxing and comfortable. The quality of the finishes will also be designed to endure usage and exhibit an elegant feel.

## **Atmosphere**

Modern, refreshing, welcoming, comfortable and exceptional guest experience while also respecting the surrounding environment.

## **Franchise**

National Brand of similar quality required

**Exhibit G-1**

**Standards of Care for  
Park Pond and Amenities  
Hotel/Retail Site**

09-25-2014

## **Standards of Care for Park Pond and Amenities Hotel/Retail Site**

It is the vision of the El Paso International Airport to ensure that Lot 1, Block 5B, El Paso International Airport Tracts, Replat of Unit 3, "Replat B," City of El Paso, El Paso County, Texas, designated as Open Space is developed as a park pond that can be used for be used both as a passive recreation space and storm water retention. These standards were developed to ensure that this parcel is maintained in a manner consistent with the standards of care for outdoor park facilities established by the City of El Paso's General Service Department as well as storm water pond maintenance standards established the El Paso Water Utilities.

### **ARTICLE I – GENERAL**

**A. Integrated Pest Management.** The City utilizes Integrated Pest Management (IPM) in managing all turf and landscaped areas. IPM is an effective and environmentally responsible approach to manage plant health and pest control that relies on a combination of tools and practices. It is a system that includes the following components:

- 1) Regular scouting and record keeping.
- 2) Maintaining healthy plants that can more effectively combat pests.
- 3) Proper pest identification and clearly identifying when the pest population is at a level that causes significant damage.
- 4) Multiple options in control methods – cultural, biological, mechanical, and chemical.
- 5) Selecting chemical control products based on safety of applicator and environment, efficacy, and lastly cost.

**B. Plant Care Product Application.** The City complies with the State of Texas pesticide handling requirements that apply to the application and storage of plant care products, and always strives to protect the applicator, public and environment. All persons applying and/or directing the application of plant pest control products are properly licensed through the Texas Department of Agriculture.

- 1) All products must be certified that they are manufactured with raw materials that are technical grade or better (utility and agricultural grades are not acceptable) to ensure purity, and will not pollute the environment with inert and possibly harmful by-products/ingredients.
- 2) Cannot contain any of the following:
  - (1) Chlorides – they actually compete with the roots/cells for water.
  - (a) Acetates – they actually tie up potassium and inhibit foliar uptake of nutrients.

- (b) Carbonates – they react with calcium and magnesium to form scale on the leaf surfaces
  - (c) Hydroxides – they can cause turf burn and make essential micronutrients unavailable.
  - (d) Synthetic Chelates – such as EDTA, EDDTA, and HEDTA.
  - (e) Any other non-beneficial ingredients that may cause detrimental effects on nutrient uptake and plant growth.
- 3) All plant pest control products are applied according to the label/instructions.
  - 4) All plant pest control products are applied at the time when the fewest number of users will be at the park facility.
  - 5) Record keeping of all applications is performed in accordance to State of Texas laws and regulations.

#### **C. Severe Cold Weather Procedures**

- 1) Check all facility irrigation systems, and turn off all automated systems.
- 2) Close Main, if deemed necessary.

### **ARTICLE II - TURF**

- A. General.** Turf care is comprised of mowing, fertilization, irrigation, cultural practices, and pest control.
- B. Mowing.** Turf areas are mowed from 1.0 to 1.5 inches every 7- 28 days, depending on turf species/variety, primary use, and time of year.
- C. Fertilization.** Using data from current soil reports, 350-650 pounds of fertilizer are applied per acre per year to fertilize turf areas based on use.
- D. Irrigation.** Irrigation systems are programmed based on evapo-transpiration data, time of year, and water district guidelines.
  - 1) During the growing season (Time when the plant is most actively growing), which is generally May 16<sup>th</sup> through September 15<sup>th</sup> irrigation systems will operate four to six days per week from 10:00 PM to 10:00 AM and apply 1-1.5 inches of water per week.
  - 2) During transition times of the year, which is generally September 16<sup>th</sup> through October 31<sup>st</sup>, and March 1<sup>st</sup> through May 15<sup>th</sup> irrigation systems will operate three to five days per week from 11:00 PM to 8:00 AM and apply up to 1 inch of water per week.

- 3) During the dormancy period (when the turf is not green or actively growing), generally from November 1<sup>st</sup> through February 28<sup>th</sup> irrigation systems will operate at least once per month and apply 0.5 inch of water to prevent desiccation/drying-out. During dormancy turf areas will be checked for soil moisture every 10-21 days by probing the soil at a 3-4 inch depth.
- 4) Irrigation systems are inspected weekly during the growing season and monthly at all other times.

#### **E. Cultural Practices**

- 1) Aerification - all turf areas are aerified several times during the growing season depending on use.
- 2) Park pond turf areas are aerified twice during the growing season.
- 3) Dethatching/Verticutting will occur as needed.
- 4) Topdressing and leveling will occur as needed.

#### **F. Pest Control.** All of the above practices are used to produce a healthy plant that can naturally combat pests.

- 1) Turf areas are monitored weekly for signs of pest populations which may have a detrimental effect.
- 2) If it is determined that a control method is warranted, all options will be considered prior to the utilization of chemical controls.

### **ARTICLE III – TREES AND LANDSCAPE**

#### **A. General.** Tree and landscape maintenance comprises pruning/trimming, fertilization, irrigation, and pest control. Due to the site's proximity to the El Paso International Airport special care must be given to plant trees that do not attract birds and other wildlife that may pose a hazard to aircraft.

#### **B. Pruning/trimming.** Trees and woody ornamentals will be pruned/trimmed according to their growth habit, time of year, and as needed for safety.

- 1) Those that flower on last year's growth, or flower early like Bartlett Pear and Redbud, will be pruned after flowering.
- 2) Those that flower on the current year's growth, or flower later in the growing season like Bird of Paradise and Crepe Myrtle, will be pruned during dormancy.
- 3) Non-flowering trees and woody ornamentals will be pruned/trimmed in accordance with accepted industry practices and schedules.



- 4) Damage caused by nature, man, or vandalism will be inspected, when necessary a Certified Arborist will be consulted, to determine the proper corrective actions.
  - 5) Along paths and trails tree canopies will be maintained at a minimum height of 7-10 feet. Maximum tree height is 35 feet from the curb.
- C. Fertilization.** Will be determined using data collected from soil analysis and industry standards for trees and other landscape plants.
- D. Irrigation.** Irrigation systems will be programmed so that trees and other landscape plants receive proper moisture and comply with El Paso Water Utilities guidelines.
- E. Pest Control.** All of the above practices are used to produce a healthy plant that can naturally combat pests.
- 1) Trees and landscape areas are monitored weekly for signs of pest populations which may have a detrimental effect.
  - 2) If it is determined that a control method is warranted, all options will be considered prior to the utilization of chemical controls.
  - 3) Weeds are defined as a plant out of place.
  - 4) Weeds will be removed and/or sprayed in order to maintain the intended integrity of the area, even if it is a native species.

#### **ARTICLE IV – PARK AMENITIES**

- A. General.** Amenities include improvements, equipment, furnishings, and other similar structures installed for passive recreation on the site, which must include the following:
- 1) Two (2) park benches at maximum;
  - 2) One (1) trash receptacle at maximum; and,
  - 3) One (1) area light that meets standards for lighting near an airport.
- B. Maintenance and Appearance.**
- 1) Amenities must be maintained in a good state of repair and preservation and good safe condition, excepting wear and tear and obsolescence in spite of repair.
  - 2) Amenities must be in presentable condition consistent with good business practice and equal in appearance to other similar improvements on the Airport.
- C. Inspection.** Amenities must be inspected monthly and repairs/replacements made as needed.

## **ARTICLE V - LITTER AND GRAFFITI**

### **A. Litter**

- 1) Litter will be removed from grounds upon discovery or being reported.
- 2) Receptacles will be emptied at least daily or upon discovering that receptacle is full.

### **B. Graffiti.** Graffiti will be documented and removed within 48 hours of its discovery/being reported.

### **C. Lighting.** Lighting consists of area lighting.

### **D. Area Lighting.** Area lighting is inspected monthly and repairs are made as needed.

### **E. Park.** Checks will occur weekly.

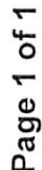
## **ARTICLE V – STORM WATER RETENTION**

### **A. General.** A park pond that can be used for be used both as a passive recreation space and storm water retention.

### **B. Pond Maintenance.** To ensure that pond can be used for storm water retention, pond and drainage infrastructure must be maintained in compliance with storm water detention guidelines established by the El Paso Water Utilities, as amended.

### **C. Pond.** Inspected monthly and repairs made as needed.

EL PASO INTERNATIONAL AIRPORT  
REPLAT OF UNIT 3 REPLAT "B"  
BEING A REPLAT OF EL PASO INTERNATIONAL AIRPORT  
REPLAT OF UNIT 3 REPLAT "A",  
CITY OF EL PASO, EL PASO COUNTY, TEXAS.  
CONTAINING: 9.931 ± ACRES.



**Exhibit G-1**

**Standards of Care for  
Park Pond and Amenities  
Hotel/Retail Site**

09-25-2014

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### **ARTICLE III – TREES AND LANDSCAPE**

#### **A. General.** Tree and landscape maintenance comprises pruning/trimming, fertilization, irrigation, and pest control. Due to the site's proximity to the El Paso International Airport special care must be given to plant trees that do not attract birds and other wildlife that may pose a hazard to aircraft.

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- 3) Non-flowering trees and woody ornamentals will be pruned/trimmed in accordance with accepted industry practices and schedules.

- 4) Damage caused by nature, man, or vandalism will be inspected, when necessary a Certified Arborist will be consulted, to determine the proper corrective actions.
  - 5) Along paths and trails tree canopies will be maintained at a minimum height of 7-10 feet. Maximum tree height is 35 feet from the curb.
- C. Fertilization.** Will be determined using data collected from soil analysis and industry standards for trees and other landscape plants.
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#### **ARTICLE IV – PARK AMENITIES**

- A. General.** Amenities include improvements, equipment, furnishings, and other similar structures installed for passive recreation on the site, which must include the following:
- 1) Two (2) park benches at maximum;
  - 2) One (1) trash receptacle at maximum; and,
  - 3) One (1) area light that meets standards for lighting near an airport.
- B. Maintenance and Appearance.**
- 1) Amenities must be maintained in a good state of repair and preservation and good safe condition, excepting wear and tear and obsolescence in spite of repair.
  - 2) Amenities must be in presentable condition consistent with good business practice and equal in appearance to other similar improvements on the Airport.
- C. Inspection.** Amenities must be inspected monthly and repairs/replacements made as needed.



## **ARTICLE V - LITTER AND GRAFFITI**

### **A. Litter**

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- 2) Receptacles will be emptied at least daily or upon discovering that receptacle is full.

### **B. Graffiti.** Graffiti will be documented and removed within 48 hours of its discovery/being reported.

### **C. Lighting.** Lighting consists of area lighting.

### **D. Area Lighting.** Area lighting is inspected monthly and repairs are made as needed.

### **E. Park.** Checks will occur weekly.

## **ARTICLE V – STORM WATER RETENTION**

### **A. General.** A park pond that can be used for be used both as a passive recreation space and storm water retention.

### **B. Pond Maintenance.** To ensure that pond can be used for storm water retention, pond and drainage infrastructure must be maintained in compliance with storm water detention guidelines established by the El Paso Water Utilities, as amended.

### **C. Pond.** Inspected monthly and repairs made as needed.

**Exhibit G-2**

**Standards of Care for  
Public and Private Streets  
and Amenities  
Hotel/Retail Site**

09-25-2014

## **Standards of Care for Public and Private Streets and Amenities Hotel/Retail Site**

It is the vision of the El Paso International Airport to provide streets that are safe for use by pedestrians, bicyclists, and vehicular traffic alike. These standards of care were developed to ensure that the streets, both public and private, on the Hotel/Retail site are maintained in a manner consistent with the standards of care for streets established by City of El Paso's Department of Transportation as well as grounds maintenance standards established by the Department of Aviation for the El Paso International Airport.

### **ARTICLE I – GENERAL**

**A. General.** The standards for maintenance of streets hereby established shall meet, or exceed City of El Paso Pavement Maintenance Program Standards, as amended from time to time.

#### **B. Pavement Maintenance**

- 1) Sweeping. Streets must be swept at least once weekly.
- 2) Patching and crack sealing. Street pavement and curbs must be patched and repaired as needed.
- 3) Asphalt Maintenance Schedule. The following are generally accepted maintenance milestones:
  - a. Year 5 – Crack seal
  - b. Year 10 – Grind and overlay
  - c. Year 15 – Crack seal
  - d. Year 20 – Reconstruction
- 4) Concrete Maintenance Schedule. The following are generally accepted maintenance milestones:
  - a. Year 10 – Joint seal replacement
  - b. Year 20 – Joint seal replacement
  - c. Year 30 – Reconstruction
- 5) Pavers. Must be repaired or replaced as needed.
- 6) Curbs and gutters.
  - a. Must be repaired or replaced as needed.

- b. Must be maintained free of debris to ensure proper flow of rainwater into storm drains.

**C. Sidewalks**

- 1) Sidewalks must be maintained free of cracks and clear of debris.
- 2) Sidewalks are inspected monthly and repairs are made as needed.

**D. Lighting**

- 1) Lighting. Lighting consists of area lighting.
- 2) Area Lighting. Area lighting is inspected monthly and repairs are made as needed.

**E. Inspection.** Streets must be inspected monthly and repairs made as needed.

**ARTICLE II - AMENITIES**

**A. General.** Amenities include improvements, equipment, furnishings, and other similar structures installed for the benefit of the public and/or visitors to the site, which may include, but are not limited to the following:

- 1) Shade structures
- 2) Fountains
- 3) Water features
- 4) Bike stands
- 5) Benches and other street furniture

**B. Maintenance and Appearance.**

- 1) Amenities must be maintained in a good state of repair and preservation and good safe condition.
- 2) Amenities must be in presentable condition consistent with good business practice and equal in appearance to other similar improvements on the Airport.
- 3) Amenities that reach obsolescence in spite of repair must be replaced.

**C. Inspection.** Amenities must be inspected monthly and repairs/replacements made as needed.

### **ARTICLE III – TREES AND LANDSCAPE**

- A. General.** Tree and landscape maintenance comprises pruning/trimming, fertilization, irrigation, and pest control. Due to the site's proximity to the El Paso International Airport special care must be given to plant trees that do not attract birds and other wildlife that may pose a hazard to aircraft.
- B. Pruning/trimming.** Trees and woody ornamentals will be pruned/trimmed according to their growth habit, time of year, and as needed for safety.
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  - 2) Those that flower on the current year's growth, or flower later in the growing season like Bird of Paradise and Crepe Myrtle, will be pruned during dormancy.
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  - 5) Along paths and trails tree canopies will be maintained at a minimum height of 7-10 feet. Maximum tree height is 35 feet from the curb.
- C. Fertilization.** Will be determined using data collected from soil analysis and industry standards for trees and other landscape plants.
- D. Irrigation.** Irrigation systems will be programmed so that trees and other landscape plants receive proper moisture and comply with water district guidelines.
- E. Pest Control.** All of the above practices are used to produce a healthy plant that can naturally combat pests.
- 1) Trees and landscape areas are monitored weekly for signs of pest populations which may have a detrimental effect.
  - 2) If it is determined that a control method is warranted, all options will be considered prior to the utilization of chemical controls.
  - 3) Weeds are defined as a plant out of place.
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## **ARTICLE - LITTER AND GRAFFITI**

### **A. Litter.**

- 1) Litter will be removed from grounds upon discovery or being reported.
- 2) Receptacles will be emptied at least daily or upon discovering that receptacle is full.

### **B. Graffiti.** Graffiti will be documented, reported and removed within 48 hours of its discovery/being reported.

# EXHIBIT H

## EL PASO INTERNATIONAL AIRPORT

### Sample Hotel Site Lease Gross Revenues Reporting Form

Lessee Name: \_\_\_\_\_

Property Name: \_\_\_\_\_

Reporting Period: \_\_\_\_\_ (month/year)

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

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

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

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