

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

**DEPARTMENT:** Airport

**AGENDA DATE:** November 3, 2009

**CONTACT PERSON NAME AND PHONE NUMBER:** Monica Lombraña A.A.E.  
Director of Aviation  
780-4793

**DISTRICT(S) AFFECTED:** 3

**SUBJECT:**

Approve a Resolution authorizing the City Manager to sign the First Amendment to Commercial Site Lease agreement, between the CITY OF EL PASO ("Lessor") and PATRIOT PLACE, LTD., a Texas Limited Partnership ("Lessee")

**BACKGROUND / DISCUSSION:**

The City and Patriot entered into a Commercial Site Lease dated May 1, 1994 (the "Lease"), concerning leased premises being a portion of Lot 1, Block 1, Hawkins Plaza, City of El Paso. In addition, Patriot Place, Ltd currently holds the ground lease for second parcel of land within Hawkins Plaza Shopping Center, fronting Montana Ave.

The First Amendment to the lease allows, however restricts, for parking by employees, visitors and invitees of any tenant, on the adjacent premises which was leased to Lessee by the City with the option to use as a parking facility; to prohibit the parking spaces on the adjacent premises from ever being used in the calculations to meet the parking requirements of 20.14.050, as amended, and related code provisions, of the El Paso City Code, for any future expansion of any of the nightclubs or bars located on the Leased Premises; and to provide that certain future renovations or expansions to a particular portion of the Leased Premises be subject to approval by the Director of Aviation.

This Amendment benefits the surrounding residents by restricting the use of the property in accommodating the expansion of the night clubs and bars within the Hawkins Plaza Shopping Center.

**PRIOR COUNCIL ACTION:**

City Council has previously approved the Lease on the existing property.

**AMOUNT AND SOURCE OF FUNDING:**

N/A This is a revenue generation lease.

**BOARD / COMMISSION ACTION:**

N/A

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

**DEPARTMENT HEAD:**

  
Monica Lombraña A.A.E.

*Information copy to appropriate Deputy City Manager*

## RESOLUTION

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

That the City Manager be authorized to sign a First Amendment to Commercial Ground Lease ("Lease") by and between the City of El Paso ("Lessor") and Patriot Place, Ltd. ("Lessee") for the following described property:

A portion of Lot 1, Block 1, Hawkins Plaza, City of El Paso, El Paso County, Texas containing approximately 175,164 square feet of land and municipally known and numbered as 1550 Hawkins Boulevard, ("Premises").

**ADOPTED** this the \_\_\_\_ day of \_\_\_\_\_ 2009.


**THE CITY OF EL PASO:**

**ATTEST:**

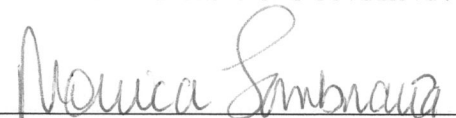
\_\_\_\_\_  
John F. Cook  
Mayor

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Theresa Cullen  
Deputy City Attorney

**APPROVED AS TO CONTENT:**

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

STATE OF TEXAS       §  
                                  §  
COUNTY OF EL PASO   §

**FIRST AMENDMENT TO  
COMMERCIAL GROUND LEASE**

This First Amendment to Commercial Ground Lease is made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the **CITY OF EL PASO** (the "City"), and **PATRIOT PLACE, Ltd.** (the "Lessee").

**WITNESSETH:**

**WHEREAS**, City and Mohawk Joint Venture entered into a Commercial Ground Lease (the "Original Lease") on March 1, 1986, covering the surface of approximately 194,865.492 square feet of real property located in El Paso County, Texas and being more particularly described as follows:

A portion of Tract 1B, Block 2, Ascarate Grant, and a portion of Morehouse Survey No. 12, City of El Paso, El Paso County, Texas and municipally known and numbered as 1550 Hawkins Boulevard.

**WHEREAS**, a First Amendment was executed on May 18, 1987, to provide for rental abatement and change the term to October 1, 1986 thru September 30, 2026; and

**WHEREAS**, an Assignment of Lease was executed on October 1, 1987 to assign the Lease from Mohawk Joint Venture to the Brandt Company; and

**WHEREAS**, the Lease was replaced with a new Commercial Ground Lease (the "New Lease") effective May 1, 1994 by and between City and Hawkins Plaza, Ltd., successor in interest to the Brandt Company for the purpose of (1) changing the name of the tenant, (2) changing the term and (3) revising the description of the premises as follows:

A portion of Lot 1, Block 1, Hawkins Plaza, City of El Paso, El Paso County, Texas, containing approximately 175,164 square feet of land and municipally known and numbered as 1550 Hawkins Boulevard. ("Leased Premises").

**WHEREAS**, the New Lease was assigned from Hawkins Plaza, Ltd. to Patriot Place, Ltd. on March 10, 1995 as part of an Order Confirming First Amended Plan of Reorganization in Bankruptcy Case No. 93-30278-LMC; and

**WHEREAS**, a Memorandum of Lease was executed by the parties on February 15, 2002, acknowledging the existence of the New Lease dated May 1, 1994, the term of the New Lease, and that Patriot Place, Ltd. was the current tenant of the Leased Premises pursuant to the terms of the New Lease; and

**WHEREAS**, the New Lease provides that all provisions for automobile parking for employees, visitors and invitees of any tenant shall be placed on the Leased Premises; and

**WHEREAS**, the parties desire to amend the New Lease (i) to also allow for parking by employees, visitors and invitees of any tenant, on the adjacent premises which was leased to Lessee by the City with the option to use as a parking facility; (ii) to prohibit the parking spaces on the adjacent premises from ever being used in the calculations to meet the parking requirements of 20.14.050, as amended, and related code provisions, of the El Paso City Code, for any future expansion of any of the nightclubs or bars located on the Leased Premises; and (iii) to provide that certain future renovations or expansions to a particular portion of the Leased Premises be subject to approval by the Director of Aviation.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to amend the Commercial Ground Lease dated May 1, 1994.

1. The parties agree to amend the Commercial Ground Lease dated May 1, 1994, Article I, Premises and Privileges, Section 1.03, Restriction of Privileges, Uses and Rights, by adding the following paragraphs:

In addition, the following parking requirements shall apply.

All provisions for automobile parking for employees, visitors and invitees of any and all tenants shall be placed on the Leased Premises or the adjacent premises that were leased to Lessee by the City with the option to use as a parking facility, the adjacent premises being described as follows:

A portion of Lot 1, Block 1, Hawkins Plaza, City of El Paso, El Paso County, Texas, more fully described in **EXHIBIT "A"**, attached hereto and incorporated herein by reference (the "Adjacent Premises").

It is further understood and agreed that the parking spaces on the Adjacent Premises, shall never be used in the calculations to meet the parking requirements of 20.14.050 and related code provisions of the El Paso City Code, as amended, for any future expansion of any, or increase in the number, of the nightclubs or bars located on the Leased Premises.

It is also understood and agreed that any parking spaces that Lessee may secure at any time for the use of the Leased Premises at locations other than the Leased Premises or Adjacent Premises, including without limitation any such spaces in the nearby golf course or swimming pool parking lots, shall never be used in the

calculations to meet the parking requirements of 20.14.050 and related code provisions of the El Paso City Code, as amended, for any future expansion of any, or increase in the number, of the nightclubs or bars located on the Leased Premises.

The parking requirements in this section will control over any conflicts with any parking requirements in the Declaration of Restrictions and Covenants attached hereto as Exhibit "B".

2. The parties agree to amend the Commercial Ground Lease dated May 1, 1994, Article I, Premises and Privileges, Section 1.02, Right to Construct, by renumbering the existing language as subsection A, and by adding the following paragraphs:

B. However, any alterations, renovations or additions, including but not limited to the construction of additional facilities, the expansion of current facilities, or alterations to existing facilities, to Suites 2 through 6 of the Leased Premises, now occupied by Lessee's subtenant, Three Legged Monkey, Inc., during any period the same are used as a bar or nightclub (the "3LM Space"), that involve either (a) structural changes to the Affected Space, (b) changes to the exterior of the 3LM Space, or (c) non-structural changes to the interior of the 3LM Space that would otherwise cause an increase in the occupancy limits as determined by the Development Services Department of the City on the final date of the certificate of occupancy pursuant to Section 1004 of the International Building Code under the applicable Fire Code (the "occupancy limit") for the 3LM Space beyond 525 persons for the interior area and 165 persons for the patio area, shall be subject to approval by the Director of Aviation (the "Director"), in addition to any other required City review.

Even if any required Director approval of any such alterations, renovations, or additions of the 3LM Space is granted, the occupancy limit for the 3LM Space in such case shall not exceed 525 persons for the interior area and 165 persons for the patio area, even if the applicable codes or law would otherwise permits a greater figure.

If the 3LM Space shall be altered, renovated, or expanded without any approval of the Director required by this Section, and the same continues in place for a period of thirty days after written notice from Lessor to Lessee, Lessee will be considered in default of the Lease for Leased Premises, and the City may terminate the Lease in accordance with the provisions set forth herein.

Use of the 3LM Space must conform to the external noise limits of Chapter 9.40 of the El Paso City Code.

The requirements in this subsection with respect to the 3LM Space shall control over any conflicts with any requirements in the Declaration of Restrictions and Covenants attached hereto as Exhibit "B".

C. However, any alterations, renovations, or additions, including but not limited to the construction of additional facilities, the expansion of current facilities, or alterations to existing facilities, to Suites 20 through 22 of the Leased Premises, now occupied by Lessee's subtenant, Wet, during any period the same are used as a bar or nightclub (the "Wet Space"), that involve either (a) structural changes to the Affected Space, (b) changes to the exterior of the Wet Space, or (c) non-structural changes to the interior of the Wet Space that would cause an increase in the occupancy limits for the Wet Space beyond 417 persons, shall be subject to approval by the Director, in addition to any other required City review and approval.

Even if any required Director approval of any such alterations, renovations, or additions of the Wet Space is granted, the occupancy limit for the Wet Space in such case shall not exceed 417 persons, even if the applicable codes or law would otherwise permit a greater figure.

If the Wet Space shall be altered, renovated, or expanded without any approval of the Director required by this Section, and the same continues in place for a period of thirty days after written notice from Lessor to Lessee, Lessee will be considered in default of the Lease for Leased Premises, and the City may terminate the Lease in accordance with the provisions set forth herein.

Use of the Wet Space must conform to the external noise limits of Chapter 9.40 of the Municipal Code of the City.

The requirements in this subsection with respect to the Wet Space shall control over any conflicts with any requirements in the Declaration of Restrictions and Covenants attached hereto as Exhibit "B".

D. The Leased Premises can never contain more than two nightclubs or bars, without approval of the Director, in addition to any other required City review and approval.

No outdoor street party, outdoor parking lot party, or similar outdoor entertainment event in the parking lot and other common areas of the Leased Premises can be sponsored by any of the nightclubs or bars at the Leased Premises, without the approval of the Director, in addition to any other City approval required by law.

For purposes of this Lease, neither a ballroom, nor a restaurant that principally serves food but also serves beer, wine, or liquor as part of its food service [even if the term "bar" is in its name or a separate bar area is included within the restaurant], constitutes a "bar" or "nightclub".

The requirements in this subsection shall control over any conflicts with any requirements in the Declaration of Restrictions and Covenants attached hereto as Exhibit "B".

3. **Cancellation.** The following is added as a new subparagraph 10.02H of the Lease:  
  
cancellation by Lessor of that certain Commercial Site Lease dated January 27, 2009, to be effective February 1, 2009, between the City as landlord and Lessee, as tenant, pursuant to Paragraph 10.02 thereof.
4. **Ratification.** Except as herein amended, all other terms and conditions of the Commercial Ground Lease dated May 1, 1994, not specifically changed by this First Amendment, shall remain unchanged and in full force and effect.
5. **Effective Date.** This Amendment shall be effective upon the date it is executed by the City Manager on behalf of the City of El Paso.

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

APPROVED on the \_\_\_\_ day of \_\_\_\_\_, 2009.

LESSOR: CITY OF EL PASO

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
*Theresa Cullen*  
Theresa Cullen  
Deputy City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
*Monica Lombraña*  
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 \_\_\_\_\_, 2009,  
by Joyce A. Wilson as City Manager of the City of El Paso (Lessor).

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

[SIGNATURES CONTINUE ON FOLLOWING PAGE]





# PROPERTY DESCRIPTION

19,700 Square Feet or 0.452 Acre

Being a portion of Lot 1, Block 1, Hawkins Plaza (recorded in volume 61, page 14, plat records), City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

**COMMENCING FOR REFERENCE** at a found ½ inch rebar at the Southwest corner of said Lot 1 in the East right-of-way line of Hawking Boulevard;

**THENCE**, North 05°37'33" East, a distance of 540.73 feet to a found concrete nail with shiner and **POINT OF BEGINNING** for the herein described tract and a found "x" in concrete in said East right-of-way line of Hawking Boulevard bears, South 85°18'25" West, 134.95 feet;

**THENCE**, North 08°50'00" West, a distance of 197.00 feet to a set ½ inch rebar with cap marked (Tx2027) in the South right-of-way line of Montana Avenue;

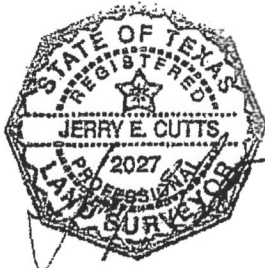
**THENCE**, along said South right-of-way line, North 81°10'00" East, a distance of 100.00 feet to a set ½ inch rebar with cap marked (Tx2027);

**THENCE**, leaving said South right-of-way line, South 08°50'00" East, a distance of 197.00 feet to a found concrete nail with shiner;

**THENCE**, South 81°10'00" West, a distance of 100.00 feet to the **POINT OF BEGINNING** and containing 19,700 square feet or 0.452 acre of land.

This description was prepared from a survey made on the ground on February 28, 2002.

PREPARED BY:  
Cutts Land Surveying, Inc.  
El Paso, Texas  
February 28, 2002  
Jon No. 020210



CITY CLERK DEPT.  
09 JAN 29 AM 11:20



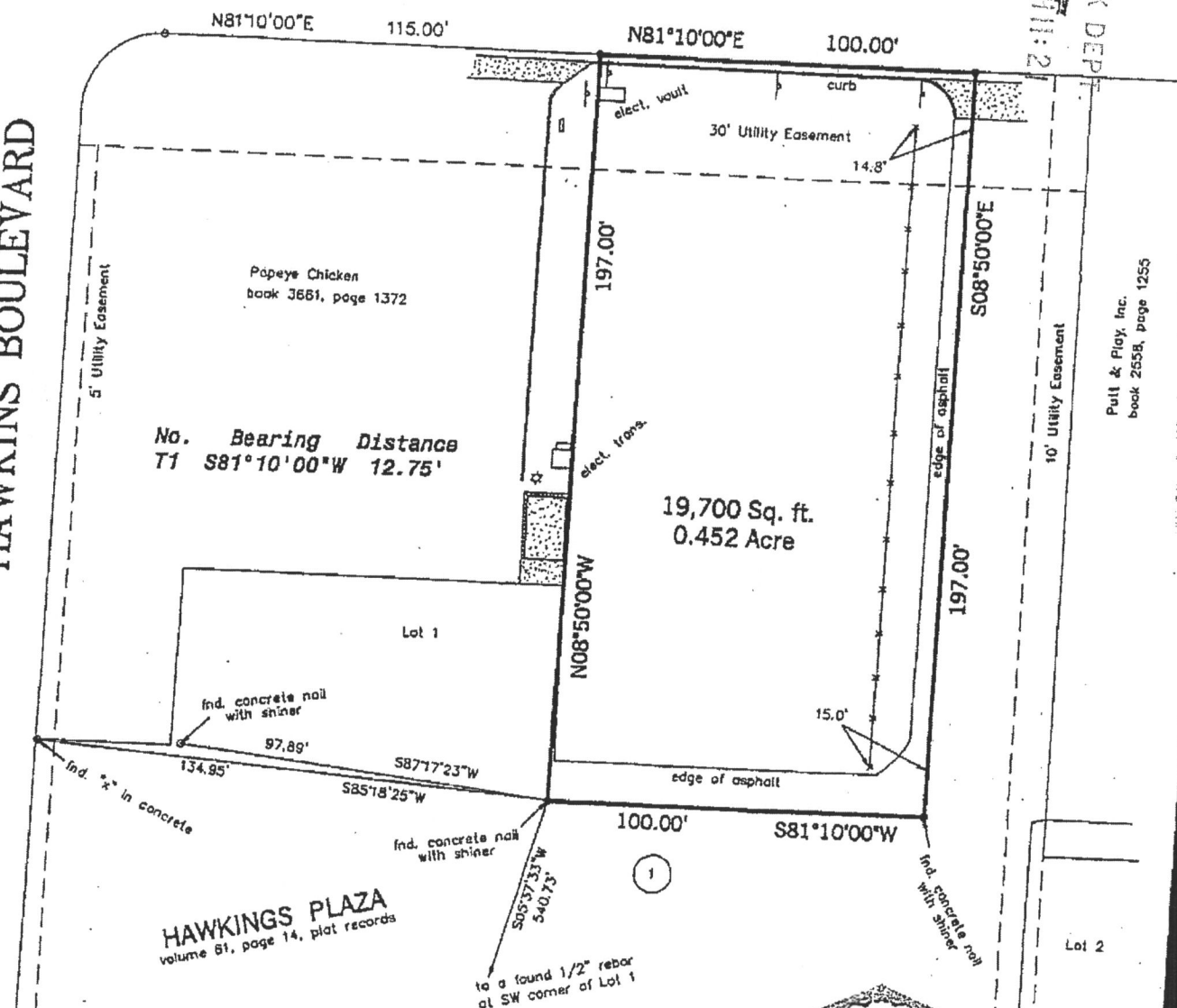
EXHIBIT

A  
Page 1 of 2

# MONTANA AVENUE

HAWKINS BOULEVARD

CITY CLERK DEPT.  
Scale 1" = 20' N 11:12



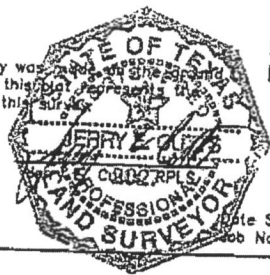
No. Bearing Distance  
T1 S81°10'00"W 12.75'

19,700 Sq. ft.  
0.452 Acre

HAWKINGS PLAZA  
volume 61, page 14, plat records

I hereby certify that this survey was made on the ground under my supervision and that this plat represents the facts as found at the time of this survey.

2-28-02  
Date



Cutts Land Surveying, Inc.

Professional Land Surveyors  
1100 Montana Avenue, Suite 206 Ph (954) 574-0700

PLAT OF SURVEY  
PORTION OF LOT 1, BLOCK 1,  
HAWKINS PLAZA,  
EL PASO, EL PASO COUNTY TEXAS