

**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 January 27, 2009, to be effective February 1, 2009 (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 the shopping center known as Hawkins Plaza at the intersection of Hawkins Blvd and Montana Ave.

The First Amendment to the lease restates the effective date of the lease, reallocates the previous rents paid to start on the restated effective date, and places restrictions on the use of the property to prevent night clubs or bars from operation on the property. However, all other terms and conditions of the existing lease remain unchanged.

This Amendment benefits the surrounding residents by restricting the use of the property in accommodating the expansion or use of the property by other 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:**

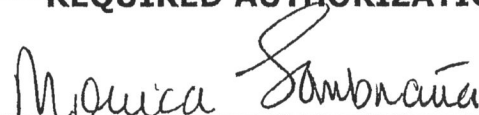
N/A This is a revenue generation lease.

**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 Site 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.

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

### THE CITY OF EL PASO:

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

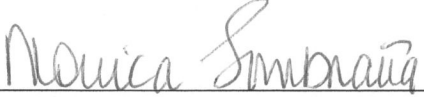
### ATTEST:

\_\_\_\_\_  
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 SITE LEASE**

This First Amendment to Commercial Site Lease is made, to be effective as of the 1st day of \_\_\_\_\_ 2009, by and between the **CITY OF EL PASO** ("City"), and **PATRIOT PLACE, LTD.** ("Lessee").

**WITNESSETH:**

**WHEREAS**, the City and Patriot entered into a Commercial Site Lease dated January 27, 2009, to be effective February 1, 2009 (the " Lease"), concerning leased premises being a portion of Lot 1, Block 1, Hawkins Plaza, City of El Paso, El Paso County, Texas (the "Premises");

**WHEREAS**, the primary purpose of the Original Lease was to provide additional parking for:

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 (the "Center Premises");

**WHEREAS**, the City and Hawkins Plaza, Ltd. had entered into Commercial Ground Lease (the "Shopping Center Lease") effective May 1, 1994, pursuant to which the Center Premises were the leased premises;

**WHEREAS**, the Shopping Center Lease was assigned from Hawkins Plaza, Ltd. to Lessee 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 City and Lessee on February 15, 2002, acknowledging the existence of the Shopping Center Lease dated May 1, 1994, the term of the Shopping Center Lease, and that Lessee was the current tenant of the Center Premises pursuant to the terms of the Shopping Center Lease; and

**WHEREAS**, the City and Lessee are negotiating amendment of the Shopping Center Lease so as to, among other terms and conditions, allow parking on the Premises by employees, visitors and invitees of any tenant of the Center Premises; and

**WHEREAS**, the City will not permit the Lessee to utilize the Premises for parking purposes unless and until the Proposed Amendment is finalized and approved by the City Council;

**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 Lease as follows:

1. **Effective Date.** The term "Effective Date" on the title page of the Lease is hereby amended to read, and the term "Effective Date" for all other purposes is amended to mean: "The first day of the first month following the execution by the parties, and approval by the City Council of the City of El Paso, of a First Amendment to Commercial Ground Lease, relating to the Commercial Ground Lease effective May 1, 1994 between the City as landlord and Hawkins Plaza, Ltd., predecessor-in-interest to Lessee, as tenant, which permits parking on the Premises by employees, visitors and invitees of any tenant of the leased premises described in such other lease, and approval by the City of the Lessee's paving and landscaping plans at the Premises".
2. **Cancellation.** The following is added as a new subparagraph 10.02H of the Lease:
  - H. Cancellation by Lessor of that certain Commercial Ground Lease effective May 1, 1994 between the City as landlord and Hawkins Plaza, Ltd., predecessor-in-interest to Lessee, as tenant, pursuant to Paragraph 10.02 thereof.
3. **Prepaid Rental.** Lessee has already paid to City the sum of \$20,317.30 in Ground Rental under the Lease, and such amount shall be applied to the first installments of Ground Rental due under the Lease after the Effective Date.
4. **Restrictions.** Lessee agrees and acknowledges that the above-described First Amendment to the Shopping Center Lease, if and when entered into, may impose restrictions upon use of the Center Premises, and such restrictions may impact Lessee's use of the Premises. Lessee further agrees that no nightclub or bar shall be operated on the Premises; provided, however, that a restaurant that principally serves food but also serves beer, wine, or liquor as part of food service [even if the term "bar" is in its name or a separate bar area is included within the restaurant], does not constitute a "bar" or "nightclub".
5. **Ratification.** Except as herein amended, all other terms and conditions of the Lease, not specifically changed by this First Amendment, shall remain unchanged and in full force and effect.
6. **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]

**LESSEE: PATRIOT PLACE LTD.**

By: Hawkins Plaza Trust, Its General  
Partner

By: \_\_\_\_\_  
David Brandt, Trustee

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS    )**  
**)**  
**COUNTY OF EL PASO    )**

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2009,  
by David Brandt as Trustee of Hawkins Plaza Trust, general partner of Patriot Place Ltd. (Lessee).

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