Agenda Item Form

Agenda Date: 06/15/04

Districts Affected: 03
Dept. Head/Contact Information: Patrick T. Abeln, A.A.E. 780-4736

Type of Agenda Item:

- ☒ Resolution
- ☐ Tax Installment Agreements
- ☐ RFP/ BID/ Best Value Procurement
- ☐ Application for Facility Use
- ☐ Interlocal Agreements
- ☐ Other _____
- ☐ Staffing Table Changes
- ☐ Tax Refunds
- ☐ Budget Transfer
- ☐ Bldg. Permits/Inspection
- ☐ Contract/Lease Agreement
- ☐ Board Appointments
- ☐ Donations
- ☐ Item Placed by Citizen
- ☐ Introduction of Ordinance
- ☐ Grant Application

Funding Source:

- ☐ General Fund
- ☐ Grant (duration of funds: _____ Months)
- ☐ Other Source: _____

Legal:

☒ Legal Review Required Attorney Assigned (please scroll down): Sylvia Firth ☒ Approved ☐ Denied

Timeline Priority: ☒ High ☐ Medium ☐ Low # of days:_____

Why is this item necessary:
Authorize Four New Butterfield Trail Industrial Park Leases

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:
None

Statutory or Citizen Concerns:
None

Departmental Concerns:
Remarks: New Butterfield Trail Industrial Park Leases covering the properties located at #7 Leigh Fisher, #11 Leigh Fisher, #15 Zane Grey and #25 Butterfield Trail between The City of El Paso, ("Lessor") and W2001 TBT Real Estate Limited Partnership, ("Lessee"). Leases will be effective July 1, 2004 for a term of forty (40) years with one (1) 10-year option for renewal. Rental adjustments will be effective at each 5-year anniversary as determined by the original lease adjustment dates to amount equal to 8% of the then Fair Market Value without adjustment limitations.

CITY CLERK DEPARTMENT
2004 JUN 10 PM 3 09

El Paso International Airport

TO: Mayor Joe Wardy
Jim Martinez, CAO
City Council Representatives

FROM: Patrick T. Abeln, A.A.E.
Director of Aviation

DATE: June 9, 2004

SUBJECT: **NEW BUTTERFIELD TRAIL INDUSTRIAL PARK LEASE AGREEMENTS BETWEEN CITY OF EL PASO, (LESSOR) AND W2001 TBT REAL ESTATE LIMITED PARTNERSHIP (LESSEE) PROVIDING FOR A SANDARD LEASE TERM OF 40 YEARS COMMENCING JULY 1, 2004 AND EXPIRING JUNE 30, 2044 FOR THE PROPERTIES LOCATED AT #3 BUTTERFIELD TRAIL, #7 LEIGH FISHER, #11 LEIGH FISHER, #15 ZANE GREY AND #25 BUTTERFIELD TRAIL.**

BACKGROUND:

TIAA Realty, Inc., has sold the improvements and assigned their interest in the ground leases covering the following properties to W2001 TBT Real Estate Limited Partnership, a holding company established by Archon Acquisition, L.L.C., to act as Lessee for the four (4) new leases. Archon is a global real estate industry leader and is affiliated with the Goldman Sachs Group, Inc.

1) **#7 Leigh Fisher**. A portion of Lot 5, Block 1, Butterfield Trail Industrial Park, Unit One, Replat "A", City of El Paso, El Paso County, Texas.

2) **#11 Leigh Fisher**. Portion of Lot 5, Block 8, Butterfield Trail Industrial Park, Unit One, Replat "A" and all of Lot 6, Block 8, Butterfield Trail Industrial Park, Unit One, Replat "B", City of El Paso El Paso County Texas.

3) **#15 Zane Grey.** Portions of Lots 4, 5, 6 and 7, Block 2, Butterfield Trail Industrial Park, Unit One, Replat "A", City of El Paso, El Paso County, Texas.

4) **#25 Butterfield Trail.** Lot 1, Block 11, Butterfield Trail Industrial Park, Unit Two, Foreign Trade Zone #68, City of El Paso, El Paso County, Texas.

All sites are improved with administrative offices, warehouse and/or manufacturing facilities and occupied by various subtenants. An attachment is provided to assist with locating the properties within the Butterfield Trail Industrial Park.

ANALYSIS:

W2001 TBT Real Estate Limited Partnership has requested the existing leases covering the properties be replaced with new Butterfield Trail Industrial Park Leases with a standard term of forty (40) years with one 10-year renewal option. Lessee will receive a new term suitable to meet its investment criteria and the benefit of its existing rental until July 1, 2013, at which time, the rate will be adjusted to a full 8% of the Fair Market Value, without adjustment limitations. The City will receive the benefits of a

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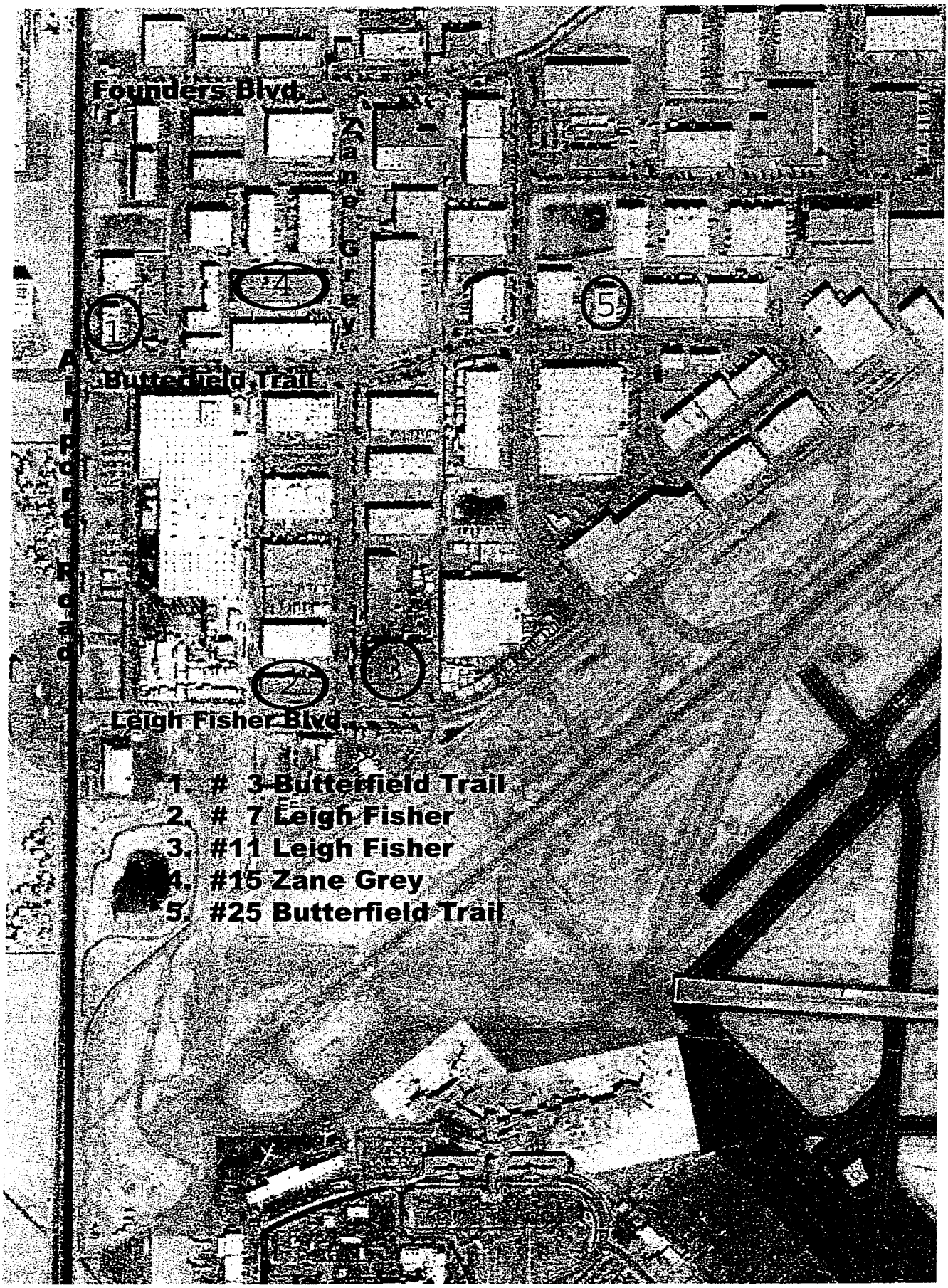
new updated lease form and a substantial monetary gain over the rents due in the existing lease agreements.

RECOMMENDATION:

The Department of Aviation recommends approval of the new Butterfield Trail Industrial Park Lease agreements. On May 25, 2004 the proposed new leases were presented to both the Airport Board and in more detail to a Board subcommittee. The documents have also been reviewed and approved as to form by the City Attorney's office. These items have been placed on the City Council agenda of June 15, 2004 for your consideration.

Attachment


Founders Blvd.
Zane Grey
Butterfield Trail
Leigh Fisher Blvd.
1
2
3
4
5
1. # 3 Butterfield Trail
2. # 7 Leigh Fisher
3. #11 Leigh Fisher
4. #15 Zane Grey
5. #25 Butterfield Trail

RESOLUTION

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

That the Mayor be authorized to sign a Butterfield Industrial Park Lease by and between the City of El Paso ("Lessor") and W2001 TBT Real Estate Limited Partnership ("Lessee") for the property described as portions of Lots 4, 5, 6 and 7, Block 2, Butterfield Trail Industrial Park, Unit One, Replat "A", City of El Paso, El Paso County, Texas, municipally known and numbered as #15 Zane Grey, El Paso, Texas.

ADOPTED this the 15th day of June 2004.

THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Sylvia Borunda Firth
Assistant City Attorney

APPROVED AS TO CONTENT:

Patrick T. Abeln, A. A. E.
Director of Aviation

ORIGINATING DEPARTMENT: AIRPORT

Airport/1/Resos BTIP Leases-W2001 TBT Real Estate
Doc #1256
Author: SFIR

BUTTERFIELD TRAIL INDUSTRIAL PARK LEASE

El Paso International Airport
El Paso, Texas

JULY 1, 2004
Effective Date

W2001 TBT REAL ESTATE LIMITED PARTNERSHIP
Lessee

BUTTERFIELD TRAIL INDUSTRIAL PARK LEASE
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EXHIBIT "A" - Property Description & Metes and Bounds of Premises

EXHIBIT "B" - Declaration of Restrictions & Covenants Butterfield Trail Industrial Park

EXHIBIT "C" – List of existing Subleases

BUTTERFIELD TRAIL INDUSTRIAL PARK LEASE

THIS LEASE AGREEMENT ("Lease") is entered into this 15th day of June 2004 by and between the City of El Paso ("Lessor") and W2001 TBT Real Estate Limited Partnership, a Delaware limited partnership ("Lessee").

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

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;

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

WHEREAS, Lessee has indicated a willingness and ability to properly keep, maintain and improve said ground in accordance with standards established by Lessor;

WHEREAS, Lessor and Kasco Venture, Butterfield 5 entered into a Butterfield Trail Industrial Park Lease dated July 1, 1983, as amended by that certain First Amendment to Lease dated February 21, 1984; and by that certain Second Amendment to Lease dated March 22, 1986; subsequently assigned to Kasco Ventures, Inc., consented to on April 14, 1986; subsequent possession, effective July 2, 1991 was pursuant to Article IX, Section 9.03 of the Lease, by Teachers Insurance and Annuity Association of America; and assigned on December 15, 1998 to TIAA Realty, Inc. ("TIAA") ("Original Lease");

WHEREAS, TIAA has requested Lessor's approval to assign the Original Lease to Lessee; and

WHEREAS, Lessor has agreed to the assignment conditioned upon the parties' agreement to surrender the Original Lease and replace it with this Lease whereupon all of TIAA's obligations with regard to the Original Lease will terminate.

NOW THEREFORE, Lessor and Lessee agree as follows:

ARTICLE I - PREMISES AND PRIVILEGES

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

> **Portions of Lots 4, 5, 6 and 7, Block 2, Butterfield Trail Industrial Park, Unit One, Replat "A", City of El Paso, El Paso County, Texas municipally known and numbered as #15 Zane Grey, El Paso, Texas more fully described in Exhibit "A" attached hereto and incorporated herein by reference (the "Premises").**

1.02 Right to Construct. Lessee shall have the right and privilege to construct, maintain, and remove improvements upon the Premises subject to the terms, covenants, and conditions herein contained herein.

1.03 Restriction of Privileges, Uses and Rights. The rights and privileges granted Lessee hereunder are subject and expressly limited to the terms and conditions of the Declaration of Restrictions and Covenants Butterfield Trail Industrial Park attached hereto as Exhibit "B", and fully incorporated herein by reference (the "Declarations").

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

A. That no functional alteration of the Premises shown on Exhibit A or functional change in the uses of such Premises, except as reflected in the Declarations, shall be made without the prior written consent of Lessor.

B. 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 and all

reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law and which rules, regulations and/or ordinances apply equally to all property within the Butterfield Industrial Park.

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 set forth in this Lease, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises. 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.

2.02 Construction and Installation. Lessor has rough graded the Premises, constructed public streets and installed underground utilities in order that Lessee may make utility connections in the right of way or at the property line of the Premises.

ARTICLE III - OBLIGATIONS OF LESSEE

3.01 Net Lease. This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth in Article II above and elsewhere in this Lease Agreement. Lessee shall:

A. Keep and maintain the Premises and improvements located thereon in a good state of repair at all times;

B. Pay any and all taxes assessed against the Premises, improvements located on the Premises, Lessee's interest in the Premises and improvements, and all of Lessee's personal property located on the Premises; and

C. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

3.02 Condition of Premises. Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Lessor has not made any warranties expressed or implied with regard to the condition of the Premises or improvements or their suitability for a particular use. Lessee accepts the Premises "As Is", with all faults, relying on Lessee's own inspection and judgment and not in reliance on any representations of Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

3.03 Compliance With Laws. Lessee, at Lessee's expense, agrees that it will construct, operate and maintain improvements on the Premises in accordance with the Declarations, and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990, as amended, and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

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

A. Definitions.

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

(2) "Hazardous material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, and diesel fuel.

(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 sublessees, agents, employees, contractors, invitees or licensees in violation of any Environmental Law. Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon caused by the act or omission of Lessee, it sublessees, agents, employees, contractors, licensees or invitees. 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 to the extent required under Environmental Laws. 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. 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 to the extent required by any federal, state or local governmental agency or political subdivision having authority to enforce Environmental Laws 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 in violation of Environmental Laws. 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 Release on the Premises or any improvements thereon in violation of Environmental Laws, Lessee shall promptly take all actions, at its sole cost and expense, as are necessary to place the Premises or any improvements thereon in compliance with applicable Environmental Laws; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld, conditioned or delayed so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.

(3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon in order for the Premises or the improvements thereon to comply with applicable Environmental Laws, 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 to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination of the Premises or the improvements thereon.

(4) Lessee shall immediately notify Lessor promptly after Lessee becomes aware of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.

(5) Lessee shall insert the provisions of this Section 3.03 in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease, but only with respect to those leases or contracts executed after the effective date of this Lease.

C. Fuel Storage Tanks.

(1) Lessee may install fuel or chemical storage, pumping and dispensing facilities on the Premises. All such tanks, pumps and dispensing machinery will be owned by Lessee or Lessee's sublessee or licensee and Lessor shall not have any interest therein. In connection with the installation, operation and maintenance of such storage, pumping and dispensing facilities, Lessee will comply with all governmental regulations, laws, rules and ordinances, all industry standards and insurance requirements, all at Lessee's sole cost, expense and risk. Prior to the end of the term of the Lease, Lessee will remove all tanks, pumping and dispensing facilities and will perform all necessary clean up, testing and backfilling necessary to assure that the Premises are not contaminated with any fuel, gasoline, petroleum product or Hazardous Material in violation of applicable Environmental Laws. Lessee will, without limiting the generality of the foregoing, test the ground under the tanks, once they are removed, and will deliver copies of the testing report showing no contamination on the site in violation of applicable Environmental Laws to Lessor. Lessee agrees to indemnify and hold Lessor harmless against any and all cost, expense and liability arising from the location, maintenance or operation of any fuel or other chemical storage, pumping and dispensing equipment on the Premises during the tenancy provided for under this Lease, including, without limitation, any leaks therefrom or contamination of the Premises or adjacent property therefrom.

(2) Without limiting the foregoing, if Lessee, at any time during the term of this Lease, installs any underground fuel storage tanks on the Premises, Lessee warrants that it will file all the appropriate forms with the Texas Commission on Environmental Quality, or any successor agency, to show that Lessee in the owner of said tanks, and, as such, accepts responsibility for the underground storage tanks.

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 Section 10.02, 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; provided, that Lessor shall use it best efforts to notify Lessee prior to its exercise of such self-help rights.

Lessee's failure or the failure of its sublessees, agents, employees, contractors, licensees or invitees 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 in Section 10.02 hereinbelow, in addition to all other rights and remedies provided by law or otherwise provided in the Lease, to which Lessor may resort cumulatively, or in the alternative.

D. Reporting.

(1) At any time that Lessee submits any filing pertaining to its property, operations, or presence on the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the Federal Aviation Administration, the Environmental Protection Agency or the Texas Commission on Environmental Quality, Lessee shall provide duplicate copies of the filing(s) made along with any related documents to Lessor.

(2) Upon expiration, termination or cessation of this Lease for any reason, Lessee shall provide to Lessor a Phase I Environmental Site Assessment meeting ASTM standards of the Premises ("Lessee's Report"); and if Lessee's Report indicates that the Premises is in violation of applicable Environmental Laws, then Lessee shall perform work as is necessary to cause the Premises to be in compliance with applicable Environmental Laws.

3.04 Minimum Improvement Standard. Lessee covenants and agrees that facilities constructed on the Premises, exclusive of paving and landscaping, shall cover a minimum of twenty percent (20%) of the Premises' land area, and a maximum of fifty percent (50%) of the Premises' land area. The improvements in existence on the Premises prior to the effective date of this Lease are hereby deemed to be in compliance with the requirements of this Section 3.04. In the event such improvements are partially or totally destroyed by fire or other casualty, Lessee shall have the absolute right to restore or rebuild such improvements to the same size as existed prior to the casualty.

3.05 Lessor's Approval of Plans. Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of improvements shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities. It is specifically understood that the Department of Aviation is only one of numerous departments of the Lessor and that, in addition to obtaining approval of the Director of Aviation, Lessee shall be required to obtain the approval of other departments as well, such as Engineering, Municipal Services or Building and Planning Services.

3.06 Landscaping and Maintenance of Improvements. Lessee shall landscape the Premises and keep the improvements on the Premises in a good state of repair and condition and in a presentable condition comparable in appearance and character to similar improvements in Butterfield Trail Industrial Park. The exterior finish on the improvements shall be repainted and refinished as reasonably necessary to maintain the appearance of such improvements to a standard comparable to similar improvements in Butterfield Trail Industrial Park. Notwithstanding anything to the contrary in the Declarations, Lessor agrees that attractive, low water usage landscaping is a desirable goal and agrees to consider and approve appropriate low water usage landscaping plans as a part of the architectural review process.

Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform reasonable maintenance Lessor reasonably deems necessary in order to cause the exterior finish to be in a condition comparable to similar improvements in Butterfield Trail Industrial Park. If said maintenance is not commenced by Lessee within forty-five (45) days after receipt of written notice, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which plus ten percent (10%) shall be borne by Lessee.

3.07 Utilities. Lessee shall pay for all costs or charges for utility services furnished to Lessee during the term hereof. Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense.

3.08 Trash, Garbage, Etc. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of its use and occupancy of 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.

3.09 Permitted Uses. Lessee will not enter into any business activity on the Premises other than those permitted in the Declarations.

ARTICLE IV - TERM OF LEASEHOLD

4.01 Term. This Lease shall be for a term of forty (40) years, commencing on the first day of July 2004.

4.02 Option to Extend. In the event Lessee is not in default of any terms of this Lease, Lessee shall have the option to extend this Lease for two (2) additional terms of five (5) years each by notifying Lessor in writing of Lessee's election at least one hundred and twenty (120) days prior to the expiration of the initial term. In the event the election is so exercised, the Lease shall be extended for five (5) years on the same

terms and conditions, except that the Rent during the option period shall be adjusted as set forth in Section 5.03(C), without regard to the twenty percent (20%) rent adjustment limitations set forth in Section 5.03(B). In no event however, shall this adjusted Rent during the option period be less than the Rent established at the beginning of the immediately preceding five (5) year period. The Appraiser(s) to determine the fair market value shall be selected using the procedure outlined in Section 5.03(D) of this Lease.

4.03 Holding Over. It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent of one and one-half times the current monthly rent, and 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 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 time of such suspension.

ARTICLE V - RENT

5.01 Rent. For the purpose of computing the rent payments, Lessor and Lessee agree that the Premises comprise 234,330.000 square feet of land. The Rent for the Premises will be calculated on the basis of 234,330.000 square feet at $0.122 per square foot per annum. From the effective date of this Lease until June 30, 2013, the rent shall be $28,557.60 per year.

5.02 Commencement of Rent. Payment of Rent by Lessee to Lessor as aforesaid shall commence on the effective date of this Lease, which is July 1, 2004.

5.03 Readjustment of Rent. The Rent payable under this Lease agreement shall be adjusted as follows, with each adjustment effective as of the appropriate anniversary date, regardless of the date the actual adjustment is made:

A. On July 1, 2013 the Rent shall be adjusted to a rate equal to eight percent (8%) of the then fair market value of the Premises, disregarding the value of any Lessee-owned improvements located on the Premises.

B. Commencing on July 1, 2018 and on every fifth anniversary of this adjustment date during the original term of the Lease, the Rent shall be

adjusted to a rate equal to eight percent (8%) of the fair market value of the Premises disregarding the value of Lessee-owned improvements on the Premises, established as set forth in Section 5.03(D). In no event shall the adjusted Rent be increased more than twenty percent (20%) at each adjustment or be less than the rental rate in effect for the immediately preceeding five (5) year period.

C. Within ninety (90) days prior to or after the date of the beginning of each option period, if so exercised, the Rent shall be adjusted to nine percent (9%) of the then fair market value of the Premises, disregarding the value of any Lessee-owned improvements located on the Premises. In no event, however, shall the Rent be less than the Rent for the rental period immediately preceding the beginning of each option period(s).

D. The fair market value of the Premises shall be determined by an appraisal of the Premises; however, if mutually agreeable to Lessor and Lessee, the appraisal to determine the fair market value, may be foregone under either of the following conditions:

1. The Director and Lessee mutually agree to an increase in the Rent equaling the maximum allowable percentage for that given lease anniversary as set forth hereinabove; or

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

In the event Lessor and Lessee do not so mutually agree, the Lessor shall select a qualified appraiser ("First Appraiser") to establish the fair market value of the Premises, disregarding the value of any Lessee-owned improvements located on the Premises. Lessor shall notify Lessee of such selection and, if Lessee is not satisfied with the selection of the First Appraiser, Lessee, within fifteen (15) days after receipt of said notice, shall notify Lessor of Lessee's selection of a qualified second appraiser ("Second Appraiser"). If Lessee does not so select a Second Appraiser, the First Appraiser shall proceed to establish the fair market value of the Premises. If the Second Appraiser is so selected and Lessor is satisfied with such selection, the Second Appraiser shall proceed to determine the fair market value of the Premises.

If Lessor is not satisfied with the selection of the Second Appraiser and Lessor and Lessee cannot mutually agree on the selection of one appraiser, then both the First Appraiser and the Second Appraiser will proceed to independently determine the fair market value of the Premises. If the fair market value determined in the two appraisals differs by less than five percent (5%), then the fair market value of the Premises shall be established by the averaging

of the two appraisals. If the fair market value determined by the two appraisals differs by five percent (5%) or more and the Lessor and Lessee cannot mutually agree as to a fair market value, the First Appraiser and the Second Appraiser shall mutually select a third qualified appraiser to determine the fair market value of the Premises. In such event, the fair market value shall be established by averaging the two appraisals that are the closest in fair market value determinations.

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

5.04 Time of Payment. The Rent shall be paid in twelve (12) equal monthly installments. The Rent payments shall be paid in advance on or before the first day of each and every month during the term of this Lease.

5.05 Unpaid Rent, Fees and Charges. Any installment of rent, fees, or other charges or monies accruing under any provisions of this Lease that are not received by Lessor by the 20th day of the month in which payment is due, shall bear interest at the rate of fifteen percent (15%) per annum from the date when the same was due according to the terms of this Lease until paid by Lessee.

5.06 Place of Payment. All rent payments provided herein shall be paid to Lessor at the following address: Accounting Department, El Paso International Airport, 6701 Convair, El Paso, Texas 79925-1091.

ARTICLE VI - INSURANCE AND INDEMNIFICATION

6.01 Fire and Other Risks Insurance. Lessee, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Premises insured 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, 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. Should the appraiser Lessee selects 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.

6.02 Liability Insurance. Lessee, at its sole cost and expense shall, throughout the term of this Lease, provide and keep in force for the benefit of Lessor and Lessee, as their respective interests may appear, comprehensive general liability insurance in an amount not less than Five Hundred Thousand Dollars ($500,000.00) for bodily injury to one person for each occurrence, One Million Dollars ($1,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Hundred Thousand Dollars ($100,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

6.03 Performance Bonds. Prior to commencement of any construction work on the Premises the total cost of which will exceed $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 in a sum equal to the full amount of the construction contract awarded.

Said bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work 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, in a sum equal to the full amount of the construction contract awarded.

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

In accordance with Article 7.19-1 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. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed ten percent (10%) of the reinsurer's capital and surplus.

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 construction contract awarded. Such Letter of Credit shall be issued by a national banking association with offices in El Paso, El Paso County, Texas, shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvement contemplated by the construction contract.

6.04 Authorized Insurance Companies. All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld. Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Each such certificate 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 fifteen (15) days prior written notice to Lessor.

6.05 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 constructed by Lessee upon the Premises be damaged or destroyed in whole or in part by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessee, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessee as aforesaid and subject to and in accordance with the following terms and conditions:

A. Prior to commencing such work, Lessee shall deliver to Lessor a set of the preliminary construction plans and specifications in accordance with the terms and provisions of the Declarations. In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto.

B. Upon approval of the preliminary plans and specifications, as herein provided, Lessee shall prepare, or cause to be prepared, final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.

C. Prior to commencing construction, Lessor may require Lessee to furnish a performance and payment bond in accordance with Sections 6.03 (if applicable) and 6.04 and, if requested, Builder's Risk Insurance.

D. Upon compliance with the foregoing, Lessee's obligation to repair, replace or rebuild shall be subject to settlement occurring with the insurance company or companies and said proceeds of such insurance policy or policies having been paid to Lessee. After actual receipt of such insurance proceeds, 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 two (2) years of the initial term or last two (2) years of any renewal term of this Lease, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and Lessee shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) 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, unless Lessor has elected to have the Premises returned to it clear of all improvements in accordance with Section 10.06 hereinbelow, in which case Lessee shall be entitled to such insurance proceeds. 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.

D. "Partial taking" means the taking of a fee title that is not either a total 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 condemnation summons and complaint 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 judgment, or by agreement, or otherwise.

H. "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement 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. 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 a Substantial taking under the aforementioned definition, Lessee may, by notice to Lessor within ninety (90) 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, except that the Rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

8.05 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 any Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

8.06 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 Lessee-owned improvements but subject to the Lease.

8.07 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 two (2) years of the initial term or any renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect; provided however, that all sums awarded for Lessee owned improvements and the Leasehold estate shall be disbursed to Lessor.

8.08 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. If a result of the Taking is to necessitate expenditures 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, after the termination of such Taking, Lessee shall receive, hold and disburse the Award in trust for such work. 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 beneficiaries under deeds of trust, whether one or more. 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 Section 9.01 above, Mortgagee shall have one hundred and twenty (120) 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. If the default cannot be cured within one hundred and twenty (120) days, to commence performance within such one-hundred-twenty (120) day period and 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.

E. If Lessee defaults, then Lessor shall so notify all Mortgagees. Each shall have the right to cure such default. In the event of multiple Mortgagees, Lessor shall accept cure from the first Mortagee that tenders complete cure without regard to lien priority. No notice of a default by Lessee hereunder given by Lessor shall be effective against a Mortgagee that has provided Lessor the information specified in Section 9.01 of this Lease unless Lessor has given a copy of it to such Mortgagee.

F. No Mortgagee shall have any personal liability under this Lease unless and until it becomes Lessee under this Lease.

G. Lessor shall, upon request by any Mortgagee, certify in writing that this Lease is in full force and effect, whether this Lease has been amended, that to Lessor's knowledge Lessee is not in default, and the date through which rent has been paid.

H. If this Lease and the fee estate in the Premises are ever commonly held as a result of a default by Lessee, then they shall remain separate and distinct estates and shall not merge until such time as all cure periods for Mortgagee specified in this Lease have expired.

J. This Lease may not be amended, modified, changed, cancelled, waived, or terminated without prior written notice to all Mortgagees. Lessor shall

not accept a voluntary surrender of the Lease without consent by all Mortgagees.

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.

ARTICLE X - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

10.01 Expiration. This Lease shall expire at the end of the term or any extension thereof.

10.02 Cancellation. Subject to the provisions of Article IX above, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due.

B. 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 and such petition is not dismissed within ninety (90) days after filing;

C. Make any general assignment for the benefit of creditors;

D. Abandon the Premises;

E. Be in violation of any local, state, or federal rules and/or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Lessee, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;

F. Be adjudged a bankrupt in involuntary bankruptcy proceedings; or

G. 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 ninety (90) days after the appointment of such receiver.

In any of the aforesaid events, Lessor may take immediate possession of the Premises 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 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.

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 rent 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) days after receipt of notice of deficiency.

10.04 Assignment and Transfer. Lessee shall have the right and privilege to assign or transfer this Lease subject to the prior written approval of Lessor; provided, however, that 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, ll 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. The subleases described on Exhibit C to this Lease are in existence on the Premises prior to the effective date of this Lease. Lessor acknowledges that the subleases shall not be disturbed by the surrender of the Original Lease and execution of this Lease. Lessor shall not disturb the possession, interest or quiet enjoyment of any subtenant.

10.06 Rights Upon Expiration. At the expiration of this Lease, Lessor shall be entitled to have the Premises returned to Lessor clear of all improvements above ground level. Lessee shall have one hundred and eighty (180) days after expiration in which to remove such improvements; provided that any occupancy by Lessee for the purposes of removal shall be subject to the rent due hereunder. If Lessee fails to so remove said improvements, Lessor may remove same at Lessee's expense.

Lessor may, at its option, take title to the improvements in lieu of removal by or for 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) 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 and eighty (180), but not more than three hundred and sixty (360), days before the beginning of the last year of this Lease or any extension or renewal thereof.

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 the necessary 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.

ARTICLE XI - GENERAL PROVISIONS

11.01 Continuity of Deed Restrictions and Covenants. This Lease agreement is subject to the terms, covenants and conditions contained in the Declarations. Lessor reserves the right to revise the standards set forth in Exhibit "B" provided, however, that such revisions will not cause a substantial reduction in the value of Lessee's leasehold interest, result in a material cost or expense to Lessee, or be contradictory to the reasonable and prudent operation of property located within Butterfield Trail Industrial Park similar to the Premises. Lessor's right to revise the restrictions and covenants contained in the Declarations, is limited to the right to revise said document because of the development of new concepts or improved construction and architectural techniques and, in any event, such revisions shall be operative on a going forward basis only and shall not apply retroactively to any existing improvements.

11.02 Right of Flight. The City of El Paso 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 on, taking off from or operation on the El Paso International Airport.

The City of El Paso 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 El Paso International 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.

The City of El Paso 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 El Paso International 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 provided to be given under 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:	City Clerk City of El Paso 2 Civic Center Plaza El Paso, Texas 79999	Director of Aviation El Paso International Airport 6701 Convair Rd. El Paso, Texas 79925-1091

LESSEE: W2001 TBT Real Estate Limited Partnership
C/o Archon Group, L.P
600 E. Las Colinas Blvd. Suite 400
Irving, Texas 75039
Attention: General Counsel

With Copy to: _____
_____
_____

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

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, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

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 in El Paso County, Texas.

11.07 Nondiscrimination Covenant. Lessee, for himself, his heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

A. That in the event facilities are constructed, maintained, or otherwise operated on the Premises for the purpose for which DOT 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 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. Economic Discrimination. To the extent that, under this Lease, 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.

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 it will undertake an affirmative action program as required 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 the City of El Paso, to insure that no person shall, on the grounds of race, color, sex, age, disability or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Lessee assures that it will require that its covered sub-organizations (sublessees) provide assurances to Lessor, as set forth herein, that they

similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublessees) to the same effect.

11.09 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.

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

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

11.11 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.

11.12 Paragraph Headings. The Table of Contents of this Lease 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.

11.13 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.

11.14 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.

11.15 Taxes and Other Charges. The Lessee shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against the Lessee or the Lessor, with respect to the Premises, any improvements, equipment, personal property, inventory thereon or Lessee's use and/or occupancy of the Premises

during the term of this Lease including any extensions or option periods granted thereto.

The Lessee in good faith may contest any tax or governmental charge; provided that the Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom.

11.16 Waiver of Warranty of Suitability. Lessor 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 commercial purpose.

11.17 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, Paragraphs 3.03 and 6.05.

11.18 Restrictions and Reservations. This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Lessor 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 such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all the 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.

11.19 Subordination of Lease. All rights granted in this Lease shall be subordinate to the rights in any deed from the United States to the City of El Paso. 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.

11.20 Authorization To Enter Lease. If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that

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

11.21 Effective Date/Memorandum. Regardless of the date signed, this Lease shall be effective as of July 1, 2004. Simultaneously with the full execution and delivery of this Lease, Lessor and Lessee shall execute, acknowledge and file of record a memorandum of this Lease in form and substance reasonably acceptable to Lessor and Lessee.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this 15th day of June 2004.

LESSOR: CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Sylvia Borunda Firth
Assistant City Attorney

APPROVED AS TO CONTENT:

Patrick T. Abeln, A.A.E.
Director of Aviation

ATTEST:

Printed Name: Timothy W. Johnson
Title: Vice President
Archon Group, L.P.

LESSEE: W2001 TBT Real Estate Limited Partnership
By: W2001 TBT Gen-Par, L.L.C., general partner
By:
Printed Name: Ernest O. Perry III
Title: Assistant Vice President

(ACKNOWLEDGMENTS ON FOLLOWING PAGE)

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____ 2004, by _____as Mayor of the City of El Paso, Texas.

_____
Notary Public, State of Texas

My Commission Expires:

_____

ACKNOWLEDGMENT

THE STATE OF Texas)
)
COUNTY OF Dallas)

This instrument was acknowledged before me on this 8 day of June 2004, by Ernest O. Perry III as Assistant Vice President of W2001 TBT Gen-Par, L.L.C. ~~(Lessee)~~.

Notary Public, State of

My Commission Expires:
9-21-06

VICKI J MAGNESS
Notary Public
State of Texas
My Commission Expires
September 21, 2006

EXHIBIT “A”

PREPARED FOR: Kasco Development
Portion of Lots 4,5,6, and 7, Block 2,
Butterfield Trail Industrial Park Unit One, Replat "A"
City of El Paso, El Paso County, Texas

PROPERTY DESCRIPTION

Description of a parcel of land being a portion of Lots 4,5,6, and 7, Block 2, Butterfield Trail Industrial Park Unit One, Replat "A", City of El Paso, El Paso County, Texas and being more particulary described by metes and bounds as follows:

From a point said point being the intersection of the centerline of Butterfield Trail Boulevard with the centerline of Zane Grey Street; thence North 00° 59' 39" West along the centerline of Zane Grey St. a distance of 405.00 feet; thence South 89° 00' 26" West a distance of 45.00 feet to a point lying on the westerly right-of-way of Zane Grey St. and said point being the POINT OF BEGINNING:

Thence South 89° 00' 26" West a distance of 730.00 feet;

Thence North 00° 59' 34" West a distance of 321.00 feet;

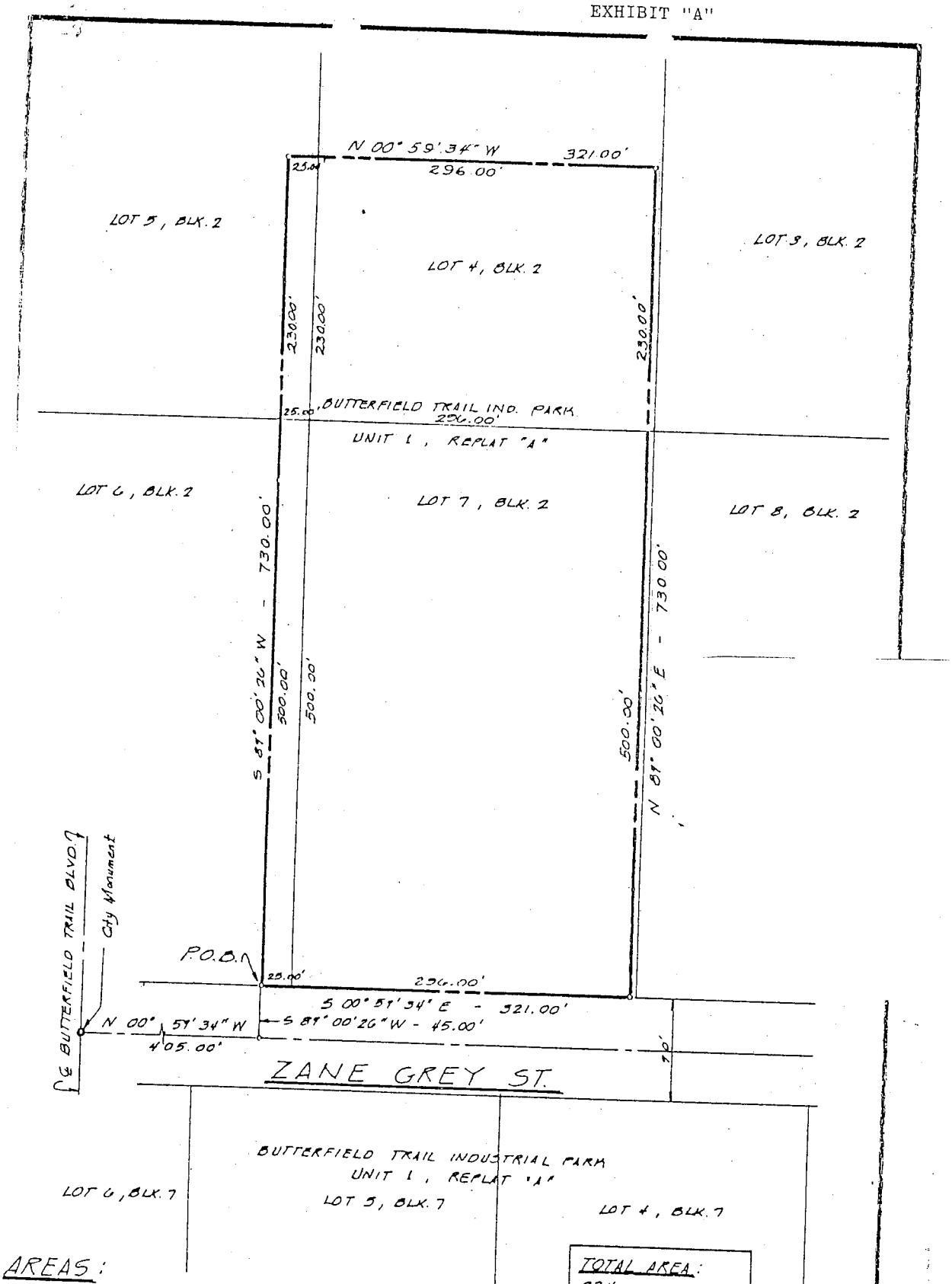
Thence North 89° 00' 26" East a distance of 730.00 feet to a point lying on the westerly right-of-way line of Zane Grey St.;

Thence South 00° 59' 34" East along said westerly right of way line a distance of 321.00 feet to the POINT OF BEGINNING and containing in all 234,330.00 square feet or 5.379 acres of land, more or less.

Ramon E. Lara, P.E.
Vice President
CREMANS INC.

May 27, 1983

EXHIBIT "A"



AREAS:

Portion of Lot 4	68 080.000 S.F. 1.562 AC.
Portion of Lot 5	5750.000 S.F. 0.132 AC.
Portion of Lot 6	12,500.000 S.F. 0.287 AC.
Portion of Lot 7	148,000.000 S.F. 3.398 AC.

"NOT A SURVEY"

TOTAL AREA:
234 330.000 S.F.
5.379 AC. ±

Rev.: 6/7/83
Rev.: 5/27/83
Revised: 5/11/83

PLAT

BEING A PORTION OF LOTS 4, 5, 6, 7, BLOCK 2
BUTTERFIELD TRAIL INDUSTRIAL PARK
UNIT 1, REPLAT "A"
CITY OF EL PASO, EL PASO COUNTY, TEXAS

FIELD BOOK No.:	DRAWN: H.S.D.	CREMANS INC. Engineers - Planners El Paso, Texas
CHECKED: R.E.L.	APPROVED: R.E.L.	
DATE 4-21-83	FILE No.	

SCALE: 1" = 100'

EXHIBIT “B”

DECLARATION OF RESTRICTIONS AND COVENANTS

BUTTERFIELD TRAIL INDUSTRIAL PARK

El Paso International Airport

El Paso, Texas

EXHIBIT B

Revised: 5-2-84

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DECLARATIONS OF RESTRICTIONS AND COVENANTS
BUTTERFIELD TRAIL INDUSTRIAL PARK

El Paso International Airport
El Paso, Texas

THIS DECLARATION, made this _____ day of _____, 19____, by the CITY OF EL PASO, a political subdivision of the State of Texas, hereinafter referred to as the "Declarant";

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of El Paso International Airport, located in the City of El Paso, State of Texas, hereinafter referred to as the "Airport"; and

WHEREAS, the Airport has within its physical boundary certain real property intended for the establishment of a desirable industrial environment for certain manufacturing and industrial uses and, under statutory authority, for certain manufacturing and merchandise manipulation to encourage and expedite foreign trade, and known as Butterfield Trail Industrial Park, hereinafter referred to as the "Property"; and

WHEREAS, the Butterfield Trail Industrial Park has been designated as a Foreign-Trade Zone, thereby permitting foreign trade activities to occur on any Lot in the Property; and

WHEREAS, to establish a general plan for improving and developing the Property and to use the Property as a Foreign-Trade Zone, the Declarant desires to subject the development of the Property to certain conditions, restrictions, and covenants on which the entire Property and Improvements thereto shall be bound;

WHEREAS, the Declarant desires to subject the development of said Property to certain conditions, restrictions, and covenants to ensure the development of a desirable environment for said

activities, and to ensure that said development will be compatible with adjacent land uses on the Airport by performance, appearance, and general operating characteristics;

NOW, THEREFORE, the Declarant hereby declares that (except to the extent compliance with this revised Declaration of Restrictions and Covenants would cause undue hardship or expense for a Tenant with respect to leasehold improvements and activities undetaken by him prior to the effective date of this instrument in conformity with the Restrictions and Covenants incorporated in his lease) the Property more particularly described hereinafter is and shall be held and conveyed subject to the conditions, restrictions, and covenants hereinafter set forth, each and all of which are for the benefit of each Tenant of any portion of said Property, each and all of which shall inure to and pass with each and every lot on said Property, and each and all of which shall apply to and bind the respective successors in interest of said Property and any portion thereof, as follows:

ARTICLE 1

PROPERTY

The real property subject to this Declaration is situated on El Paso International Airport in El Paso County, El Paso, Texas, and is known as the Butterfield Trail Industrial Park and Foreign-Trade Zone No. 68

ARTICLE 2

DEFINITIONS

The words and phrases defined in this Article shall have the following meanings when used elsewhere in this Declaration:

2.01 AIRPORT BOARD: An advisory board appointed by the

Mayor and City Council for the purpose of advising them with respect to Airport matters.

2.02 AIRPORT MANAGER: The Manager of El Paso International Airport.

2.03 BUILDING: The main portion of any building located on a Lot or Lots and all projections or extensions therefrom, including garages, outside platforms and docks, carports, canopies, and porches. Ground cover shall not be included.

2.04 BUILDING COVERAGE: The surface area of a Building Site that may be covered by Buildings, expressed as a percentage of the total site area.

2.05 BUILDING SITE: The entire Lot or Lots (if contiguous) leased by one Tenant.

2.06 CITY: The City of El Paso, its duly elected Council, or any duly constituted agent or committee representing said Council to fulfill the obligations herein required.

2.07 DECLARANT: The City of El Paso, a political subdivision of the State of Texas.

2.08 FAA: The Federal Aviation Administration of the U. S. Government or any federal agencies succeeding to its jurisdiction.

2.09 FOREIGN-TRADE ZONE: The use of any or all Lots or any part thereof in the Butterfield Trail Industrial Park for Industrial Operations or other activities that comply with the U. S. Foreign Trade Zone Act Regulations (Title 15, Code of Federal Regulations), U. S. Customs Service Regulations, and City regulations of Foreign-Trade Zone use.

2.10 FRONT LOT LINE: The property line that faces a Street. On corner Lot or Lots fronting on two parallel Streets,

the Front Lot Line shall mean the property lines facing each Street, one of which shall be designated by the City as the principal Street.

2.11 IMPROVEMENTS: Improvements shall mean but shall not be limited to Buildings, bridges, overpasses, retaining walls, ditches, culverts, lighting supports, earth fills, earth excavation, paving, ground cover, sidewalks, fences, screening walls, signs, and landscaping, constructed, installed, or placed on, under, or above any Lot by or on account of a Tenant.

2.12 INDUSTRIAL OPERATION: The manufacturing of products from raw or semi-finished materials, including research, warehousing and wholesaling operations. Retail sales of goods and services are specifically prohibited except as otherwise permitted herein with respect to the commercial support areas.

2.13 INDUSTRIAL PARK COMMERCIAL SUPPORT: The retail sale of goods and services on a limited basis primarily to the employees of the Tenants in the Butterfield Trail Industrial Park as specifically provided herein.

2.14 LOT: One of the numbered parcels on the map entitled "Butterfield Trail Industrial Park," as filed with the County Clerk, County of El Paso, Texas.

2.15 REAR LOT LINE: The property line generally paralleled to the Front Lot Line and contiguous to another Lot. On corner Lots, the Rear Lot Line shall be parallel to the Front Lot Line facing the principal Street; on Lots fronting on two parallel Streets, there shall be no Rear Lot Line.

2.16 SETBACK: The distance a Building must be set back from the property line of a Lot.

2.17 STREET: Any street, highway, or other thoroughfare

shown on the map entitled "Butterfield Trail Industrial Park," as filed with the County Clerk, County of El Paso, Texas.

2.18 TENANT: Any person, firm or corporation leasing or subleasing one or more Lots or space in a Building on a Lot.

ARTICLE 3

PERMITTED USES AND PERFORMANCE STANDARDS

3.01 PERMITTED USES: No Building, structure, or land shall be used for any purpose other than the following, or any combination thereof, and such uses shall satisfy the standards set forth in this Declaration:

A. All Blocks and Lots in the Butterfield Trail Industrial Park, except as Specified in Paragraph 3.01(B):

1. Unless specifically prohibited as herein defined, any Industrial Operation shall be permitted. In addition, if approved by the U. S. Customs Service or other federal agency having jurisdiction, any Industrial Operation or activity complying with the Foreign-Trade Zone Act Regulations (Title 15, Code of Federal Regulations) shall be permitted.

All industrial processes shall be carried out entirely within facilities so designed to prevent any nuisance as defined in Paragraph 3.04 to adjacent Lots. An exception shall be made during periods when equipment breaks down in such a manner to make it evident that it was not reasonably preventable.

2. General permitted industrial classifications are as follows: research and light industry, industrial support, and medium and heavy industry, warehousing, and wholesaling.

3. Administrative and professional office use shall be permitted.

B. Lots 1 through 5, Block 3, Block 4 and Block 6 and such other blocks or Lots that may be designated by the Declarant in future stages of the Butterfield Trail: Unless specifically prohibited as herein defined, the following Industrial Park Commercial Support activities shall be permitted:

1. Restaurants, including fast food establishments;
2. Offices;
3. Day-care centers;
4. Banks or banking facilities;
5. Printing, reproduction, and photographic services for Industrial Operations;
6. Office and graphics supplies;
7. Commercial exercise clubs; and
8. Self-service gas stations.

3.02 PROHIBITED USES: The following uses shall not be permitted on a Lot at any time: residential, retail commercial except as permitted in Paragraph 3.01(B); trailer courts; labor camps; junkyards; mining and quarrying; dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals,

or refuse; fat rendering, stockyards or slaughtering of animals; smelting of iron, tin, zinc, or other ores; large animal raising.

3.03 APPROVAL OF USES: Certain industrial uses may neither be specifically prohibited nor specifically permitted. In these cases, approval in writing of the use must be obtained from the Declarant or its authorized agent prior to approval of plans and specifications for construction of the facility.

3.04 PERFORMANCE STANDARDS: No Lots shall be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable conditions that may affect any other Lots, including but not limited to:

Hazardous activities
Vibration or shock
Noise
Smoke, dust, odor, or other forms of air pollution
Heat or glare
Electronic or radio interference
Illumination
Liquid or solid refuse or waste
Other substance, condition, or element in such amount as to affect the surrounding area or adjoining premises

A. Hazardous Activities: No activity shall be conducted on any Lot that may be or may become hazardous to public health and safety, that shall increase the fire insurance rating for adjoining or adjacent Lots, or that shall be illegal.

B. Vibration or Shock: No vibration or shock perceptible to a persons of normal sensibilities shall be permitted within fifty (50) feet of the property line.

C. Noise: No noise objectionable to a person of normal sensibilities shall be permitted within fifty (50) feet of the property line.

D. Air Pollution: Except for the operation of motor

vehicles to, from, and on a Lot as incidental to the use thereof, the following requirements shall apply:

1. Any use producing smoke, gas, dust, odor, fumes, aerosols, particulates, products of combustion, or any other atmosphere pollutant shall be conducted within a completely enclosed Building.

2. Any use producing atmospheric emissions shall comply with the standards of the U. S. Environmental Protection Agency, the Texas Air Control Board, any local environmental regulatory body, or any successor organizations performing similar functions, as such regulations exist at the date of the lease to which this Declaration is attached, or which may be enacted during the term of such lease.

3. The emission of odors that are detectable at any point beyond the property line of any Lot or Lots shall not be permitted.

E. Dust Control: All ground areas not covered by structures shall be landscaped or surfaced with concrete, asphaltic concrete, asphalt oil, or other comparable dust-free surfacing; shall be maintained in good condition, free of weeds, dust, trash, and other debris; and shall be properly drained and graded. Such development shall be accomplished before issuance of a certificate of occupancy.

F. Heat or Glare: Any operation producing intense glare

or heat shall be performed within an enclosed screened area in such manner that the glare or heat emitted will not be discernible from the property line.

G. Electronic or Radio Interference: No electrical, electronic, or radio emissions shall be produced that will interfere, obstruct, or adversely affect the operation of air navigation aids and Airport communications.

H. Illumination:

1. The source of illumination of any kind on a Lot shall not be visible at the property line except for normal installation of standard interior lighting fixtures within Buildings.

2. The maximum height of any lighting standards shall be limited to thirty (30) feet above curb level.

3. The intensity of illumination shall be limited to 10 foot candles or 0.1 lumens per square foot per open areas or surfaces visible at the property line.

4. The design and location of exterior lighting shall comply in all respects to the requirements of the FAA or any other governmental agency 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.

I. Refuse and Trash: No refuse or trash shall be kept, stored, or allowed to accumulate on any Lot.

J. Sewage Disposal Systems: No cesspool, septic tank, or other sewage disposal system or device shall be installed, maintained, or used on any Lot without the approval of the City.

3.05 SECURITY: If a Tenant activates space on its leased premises for Foreign-Trade Zone usage, said Tenant will comply with the security requirements imposed by the U. S. Customs Service or other federal agencies having jurisdiction.

ARTICLE 4

REGULATION OF IMPROVEMENTS

4.01 MINIMUM SETBACK LINES: No structure of any kind and no part thereof shall be placed on any Lot closer to a property line than hereby described.

A. Front Setback: Setbacks from Front Lot Lines shall be a distance equal to twenty percent (20%) of the length of the Building or two hundred percent (200%) of the height of the Building, whichever is greater, from the Street; the area between the Street(s) and the Front Setback Line shall be landscaped if no visitor parking is provided in the Front Setback areas. If visitor parking is provided in the front Setback area, an area equivalent to twenty percent (20%) of the Front Setback shall be landscaped. All Buildings shall be set back a minimum of twenty-five (25) feet from the Front Lot Line. If the Tenant's Lot or Lots front on more than one Street, the front Setback shall be from all Lot lines facing a Street.

The front Setback area(s) shall be landscaped and planted in accordance with the Airport Landscaping Standards except for areas used for parking lots, driveways, or sidewalks. In no event shall less than twenty percent (20%) of the required minimum front Setback area(s) facing a Street be landscaped and planted.

B. Side Setbacks: Side Setbacks shall be a minimum of thirty (30) feet, and up to fifty percent (50%) of the required minimum Setback shall be landscaped and planted at the discretion of Declarant or its authorized agent. If a single Tenant uses two or more Lots with a common boundary line between them, the side Setback restrictions may be waived by the Declarant or its authorized agent for the term of the shortest lease.

C. Rear Setback: Rear Setback shall be forty (40) feet from the Lot line or utility easement line, except that Buildings on Lots abutting railroad spurs may have loading docks extending to the Rear Lot Line, provided such construction does not interfere with utility services.

D. Exclusions from Setback Requirements: The following structures or Improvements are excluded from the Setback requirements:

1. Roof overhang.

2. Steps and walks.

3. Paving and associated curbing, except that parking areas will not be permitted within ten (10) feet of Street property lines.

4. Fences.

5. Landscaping.

6. Planters, none over four (4) feet in height.

7. Railroad spur tracks, switches, and bumpers.

8. Approved signs identifying the Tenant.

4.02 EXCAVATION:

A. General: No excavation shall be made by a Tenant unless the excavation is directly related to the construction of an Improvement. When construction is complete, all disturbed ground shall be filled or graded and shall be landscaped in accordance with and conform to the Airport Landscaping Standards.

B. Cut and Fill: The Declarant or any authorized agent thereof may at any time make such cuts and fills on any Lot and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the Streets in or adjacent to any Lot and to drain surface waters therefrom; provided that after the principal structure on a Lot shall have been completed in accordance with approved plans, the rights of the Declarant under this Paragraph 4.02 shall terminate with respect to such Lot, except that the Declarant shall thereafter have the right to maintain existing Streets and drainage structures.

4.03 LANDSCAPING: Every Lot on which a Building shall have been placed shall have landscaping according to plans prepared in

accordance with the standards established in this Paragraph 4.03 and any amendments or successors standards thereto. The first phase of such landscaping, as approved, shall have been completed within ninety (90) days of the date the certificate of occupancy is filed on the initial Building.

Setback areas shall be landscaped to the minimum extent outlined in Paragraphs 4.01(A) and (B). In addition, paving or landscaping shall extend from the property line to the curb, such paving and landscaping to be compatible with treatment for this area on other Lots on the same block. All landscaping shall be maintained in a sightly and well kept condition.

Lessee shall landscape only in accordance with a plan submitted to and approved in writing by the Declarant or its authorized agent prior to any development. Such landscaping plan shall include information regarding the type of sodding, the type of seeding, types of trees, hedges and shurbs, and information regarding other customary landscape treatment for the entire applicable site, in accordance with such approved plans and said plan may not be altered, amended or revised without submitting the revised landscaping plan for prior written approval by the Declarant or its authorized agent.

A. Landscaping Standards: It is the intent of the Declarant to obtain high quality landscaping throughout the Property which is the subject of this Declaration. If lessee should fail, in the sole and final judgment of Declarant, to maintain landscaping consistent with Declarant's intent, Declarant may, at its option, do such maintenance work as it deems advisable, and the actual cost of labor and materials

multiplied by 1.25 shall be added to the next monthly rental payment of lessee as an additional charge.

The following requirements shall apply:

1. All street setback areas shall be landscaped except those areas approved for walkways, driveways and parking.
2. All areas in site setbacks shall be fully landscaped, except for area approved to be paved.
3. Desert planting, defined as native desert plants set in ground cover of boulder, pebbles, sand or landscape shall not comprise more than fifty percent (50%) of any given landscaped setback area.
4. The lessee shall landscape and maintain unpaved areas between the curb and the setback lines. The first ten (10) feet of setback from street property lines shall be used exclusively for landscaping except where driveways bisecting the required landscape area occur.
5. Complete landscape and sprinkler plans are required for review. Specifications should indicate soil treatment and preparation.

4.04 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 approval by the Airport Manager after review by the Airport Architectural Review Committee prior to installation, and in accordance with any Airport Graphics Standards and any amendments or successor standards thereto.

A. AIRPORT GRAPHICS STANDARDS: It is the intent of the Declarant that all signs be uniform and limited to specified graphic guidelines.

No billboards, flashing lighting or advertising sign shall be permitted on any site within the Property. Only signs identifying the name, business and products of the person or firm occupying the premises and those offering the premises for sale or lease will be permitted.

Only one (1) sign of approved design shall be permitted on the front setback line and one (1) sign may be attached to the side of a building which faces a public street.

Design and construction of signs shall be approved in writing by the Declarant or its authorized agent after review by the Architectural Review Committee with respect to size, design and color. Signs shall also conform to local building codes as well as regulations of the FAA.

Multiple occupancy building signs may be approved on a case-by-case basis by the Declarant or its authorized agent after review by the Architectural Review Committee.

B. COMMERCIAL SUPPORT AREAS: Signs within the Commercial Support areas shall be limited in height to seven (7) feet, and in space to no more than four (4) square feet. All signs in the Commercial Support area shall be uniform. No signs shall be affixed to or otherwise placed on a building in a Commercial Support area except immediately adjacent to a door and of a style acceptable to Declarant or its authorized agent.

4.05 PARKING AREAS: Adequate offstreet parking shall be provided to accommodate the parking requirements of a business

within the limits of the Lot. Parking for employees, visitors, and business vehicular traffic shall be provided on the Lot and designated by white lines painted on the paved surface. All parking must comply with applicable City parking ordinances.

Parking shall not be permitted on the public Streets and between the Street pavement and property line. If visitor parking is permitted in the front Setback area(s), such parking shall be screened from the Street(s) by approved trees or shrubbery specified in the Airport Landscaping Standards or such other screening as may be approved by the Declarant or its authorized agent.

4.06 STORAGE AND VEHICLE LOADING AREAS: All outside storage and refuse areas shall be constructed and contained to eliminate odors, insects, dust, visual nuisances, and other similar nuisance.

No materials, supplies, or equipment, including company-owned or company-operated trucks, shall be stored in any area on a Lot except inside a closed Building or behind a barrier completely screening such areas from view of adjoining Lots or public Streets or both.

All provisions for the loading and maneuvering of vehicles incidental to the operation of the business shall be placed on the Lot(s) leased and shall not encroach into Setback areas; onstreet vehicle loading shall not be permitted. Vehicle loading shall be permitted only at the rear of the Buildings, or on a side, except that such loading performed at a side shall be completely screened from view of adjoining Lots or public Streets or both.

4.07 BUILDING HEIGHTS: Building heights shall be limited to the height requirements established in Federal Aviation

Regulations Part 77 or successor regulations for the Airport but shall not exceed a maximum of fifty (50) feet above the curb line, including any building equipment, penthouse, extrusions, etc.

4.08 BUILDING COVERAGE: Buildings shall not cover more than fifty percent (50%) of a Building Site.

4.09 BUILDING REGULATIONS:

A. City Zoning Code: The City of El Paso Zoning Code, as amended, shall apply except that in the event of a conflict between the City Zoning Code and the standards in this Declaration, the more stringent requirement shall apply.

B. FAA Regulations: All construction must comply with applicable codes and ordinances and the rules and regulations of the FAA where applicable.

C. Final Approval By Declarant: Final approval of the compatibility of any Improvement with the overall architectural character of the Butterfield Trail Industrial Park shall remain with the Declarant. Construction shall not commence before the Declarant has granted final approval.

4.10 TYPE OF CONSTRUCTION:

A. Building Materials: All Buildings shall be framed with reinforced concrete or masonry, structural steel, structural aluminum, or wood that has been satisfactorily treated to resist fire, rot, and insects. Siding shall be masonry, concrete or glass. Porcelain, enameled steel, anodized aluminum or treated wood may be used upon approval of the Airport Manager based upon the favorable recommendation of the Airport Architectural Review Committee. Concrete, masonry, and treated wood siding shall be kept neatly painted, if used. State-of-the-art changes in types

of construction may be permitted from time to time only upon the express condition that any such change be consistent with the intent of this Declaration and that any such change receives written approval of at least three members of the Airport Architectural Review Committee. Pre-fabricated metal buildings are specifically prohibited.

B. Roof Screening: All heating and cooling towers, equipment, etc., placed on the roofs of Buildings shall be screened or enclosed from view so that they are architecturally compatible with the main portion of the Building and cannot be seen from any point within two hundred-fifty (250) feet of the Building at an eye level of six (6) feet above the curbline.

C. Accessory Buildings, Enclosures, and Fences: Accessory Buildings, enclosures, and fences shall enhance the design of and be of the same quality of materials as the Buildings they serve.

D. Building Codes and Ordinances: All Buildings shall conform to all local building codes and ordinances.

E. Approval by Airport Manager: The type of building construction proposed shall be subject to the written approval of the Airport Manager as authorized agent of Declarant and the decision of Airport Manager shall be based on the recommendations of the Airport Architectural Review Committee and appealable to the City Council through the Airport Board.

4.11 PIPES: No water pipes, gas pipe, sewer pipe, or drainage pipe (other than those within structures) shall be installed or maintained on any Lot above the surface of the ground, except hoses and movable pipes used for irrigation or similar purposes.

ARTICLE 5

SUBMISSION OF PLANS FOR IMPROVEMENTS

5.01 SUBMISSION OF PLANS: All plans for Improvements shall be prepared by registered engineers, architects, and landscape architects; shall be of contemporary design; and shall require prior written approval by the Declarant or its authorized agent before any construction may begin.

Prior to the execution of a lease for a Building Site, the Declarant or its authorized agent and the Tenant shall jointly determine a reasonable time schedule in which final plans and specifications shall be submitted and construction of facilities shall be completed. Such time schedule shall be incorporated in the lease.

The following plans shall be required for submission to the Declarant or its authorized agent within the time schedule determined:

A. Topographic, Grading, Drainage, Utility and Plot Plans:

1. Topographic, grading, drainage, and utility plans showing one (1) foot contour intervals and spot elevations referenced to the Airport datum.

2. A plot plan at a scale not smaller than one (1) inch equals one hundred (100) feet showing the relationship of the proposed Improvements to the Lot(s) demised and to the Improvements on adjacent Lots, utilities, and access thereto, curbs, walks, driveways, parking areas, etc.

B. Floor Plan: Floor plans at a scale not smaller than one-sixteenth (1/16) inch equals one (1) foot.

C. Ground Cover Plans: Ground cover plans, including landscaping in accordance with the Airport Landscaping Standards.

D. Renderings: A true architectural rendering of the proposed Buildings, including the proposed exterior color scheme, style, materials, and design and placement of signs.

E. Materials and Color Samples: Samples, no smaller than one (1) foot square, of all materials or paint or both or other coating colors to be used on the exterior of all improvements that are visible from any point on any Lot line. The Declarant reserves the right through it authorized agent to approve all said materials or colors or both and further reserves the right to suggest alternative materials or colors or both that, in the sole opinion of the Declarant, shall be determined to be more compatible with the Declarant's objectives for the overall aesthetic character and quality of Improvements on the Airport.

F. Other Plans: Any other plans, specifications, or design features that the Declarant or its authorized agent may deem necessary and request.

G. Additional Requirements - Foreign-Trade Zone: Tenants who intend to use their facilities as a Foreign-Trade Zone shall, in addition to submittal to the Declarant or its authorized agent submit their plans and specifications to the U. S. Customs Service and other federal agencies, as appropriate, for approval and compliance with the Foreign-Trade Zone Act and other required federal regulations.

5.02 FORMS AND CONTENT OF PLANS: The Declarant may

promulgate rules governing the form and content of plans to be submitted for its approval and may issue statements of policy with respect to approval of disapproval of architectural styles, details, or other matters pertaining to the plans.

Such rules and such statements of policy may be amended or revoked by the Declarant at any time, and no inclusion in, omission from, or amendment of any such rule shall be deemed to bind the Declarant to its approval or to waive the exercise of the Declarant's discretion as to any such matter.

5.03 CODES AND REGULATIONS: All Improvements shall be planned and constructed in accordance with the rules and regulations established by the Declarant or its authorized agent, the laws and ordinances of the City, applicable building codes, and the rules and regulations of the FAA, where applicable.

5.04 REVIEW OF PLANS: Plans and specifications for proposed Improvements submitted to the Declarant for approval by its authorized agent shall be reviewed by the Airport Architectural Review Committee as established by ordinance.

The Airport Architectural Review Committee shall submit in writing to the Airport Manager, as authorized agent of the Declarant, the Committee's recommendation with respect to the plans and specifications of the proposed Improvements within thirty (30) working days of the original date of submission to the Declarant. The Airport Manager, shall within ten (10) days of receipt by him of the recommendations of the committee, approve or disapprove the plans and specifications. Any party dissatisfied with a decision of the Airport Manager based on the recommendation of the Airport Architectural Review Committee

shall have the right to appeal such decision to the City Council through the Airport Board. The Airport Architectural Review Committee shall also be responsible for inspecting and continuous monitoring of construction, signs, installation of landscaping, and review of the as-built plans.

5.05 BASIS FOR APPROVAL BY THE DECLARANT: Approval by the Declarant or its authorized agent shall be based on the adequacy of site dimensions and on the general conformity of the plans and specifications to the intent of this Declaration. The Declarant shall not arbitrarily, without written explanation, withhold approval of properly submitted plans and specifications.

Approval of any plans or specifications for use on any one Lot shall not be deemed a waiver of the discretionary right of the Declarant to disapprove the same plans or specifications if such plans or specifications are subsequently submitted for approval for use on any other Lot or Lots.

5.06 FAILURE TO APPROVE: If the Declarant fails to approve or disapprove plans and specifications within forty (40) working days after the same have been submitted, it shall be conclusively presumed that the Declarant has approved said plans and specifications.

5.07 COMMITMENT TO CONSTRUCT: Upon approval by the Declarant of plans for construction of any structure, a copy of the approved plans shall be deposited for permanent record with the Declarant and a copy of such plans bearing the written approval of the Declarant shall be returned to the Tenant of the Lot(s) on which such structure is or will be placed.

Approval of these plans by the Declarant shall constitute a commitment on the part of the Tenant to erect and maintain the Improvements as proposed and approved within the time schedule established in Paragraph 5.01.

5.08 CONSTRUCTION WITHIN TIME SCHEDULE SPECIFIED: Any approved construction shall be prosecuted diligently in accordance with the approved plans and specifications and shall be completed within the specified time schedule. Failure to complete such work in the specified time schedule shall cause such approval to be automatically withdrawn unless the Declarant or his authorized agent grants written extension of such approval. After such automatic withdrawal of approval, the Tenant will be considered in default of its lease for such Lot(s), and the Declarant may terminate such lease in accordance with the provisions in that document.

5.09 LANDSCAPING PLANS: Trees, shrubs, fences, hedges, or other landscaping shall not be planted, placed, or maintained on any Lot until a complete plan thereof has been submitted to and approved by the Declarant or his authorized agent in writing. The landscaping plans shall be prepared in accordance with the Airport Landscaping Standards and shall be submitted at the same time as the other plans and specifications for proposed Improvements. The plans shall be reviewed by the Airport Architectural Review Committee in the same manner and time period as those required for architectural plans under Paragraph 5.04.

All plans for landscaping Improvements shall be prepared by registered or approved landscape architects. Final approval

shall be by the Declarant or its authorized agent.

5.10 PLANS FOR ALTERATIONS IN IMPROVEMENTS: All plans for alterations to the leased Lot(s), either for the construction of additional facilities or alterations to existing Buildings, shall be prepared, submitted, and approved as outlined in Paragraphs 5.01 through 5.09 and shall be subject to the same restrictions as herein provided. This paragraph shall apply only to exterior or structural changes; alterations to the interior of Buildings shall not be considered unless they affect the performance standards in Article 3.

5.11 FEES: The Declarant shall charge and collect a reasonable fee, as determined every five years by the Declarant or its authorized agent, for architectural review and other reviews of plans submitted for approval. Such plans could relate to initial development or alterations to existing development. The fee shall be payable at the same time such plans are submitted. If initial plans or any subsequent plans are disapproved, an additional review fee, as determined by the Declarant or its authorized agent, shall be paid before further review.

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

ARTICLE 6

ENFORCEMENT

6.01 CONSTRUCTION WITHOUT APPROVAL: If any structure shall be erected, placed, altered, or maintained on any Lot other than in accordance with plans and specifications approved by the Declarant or his authorized agent, such erections, alterations,

and maintenance shall be deemed to have been undertaken without the approval required herein. This restriction shall be applicable to landscaping and signage plans as well as to architectural plans.

In the event of such construction without approval, the Tenant will be considered in default of the lease for such Lot, and the Declarant may terminate the lease in accordance with the provisions set forth in that document.

6.02 ABATEMENT AND REMOVAL: If the Declarant determines that his Declaration is being violated by any Tenant on a Lot or Lots, the Declarant shall have the right after giving notice as required by the lease to enter the Lot(s) of such Tenant to determine the exact cause, effect a cure, and abate or remove the violation from the Lot(s). All expenses incurred in this action shall be payable by the Tenant of the facility in which the violation occurred.

6.03 SUIT: The Declarant or the Tenants of facilities affected by a violation shall have the right to file suit against violators of this Declaration, to prevent a violation, effect a cure, abate or remove a violation, or recover damages for said violation.

6.04 ATTORNEY'S FEES: In any legal proceeding for the enforcement of this Declaration or prevention of a violation of this Declaration or any part hereof, the party against whom judgment is rendered shall bear the reasonable expense of attorneys' fees of the prevailing party in the amount to be specified by the Court.

6.05 RIGHT OF ENTRY AND INSPECTION: Any authorized agent of the Declarant, at any reasonable time and without notice, may enter on and inspect any Lot to ascertain whether the maintenance of such Lot, Improvements under construction, or alteration of structures thereon are in compliance with the provisions hereof. Neither the Declarant nor such authorized agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

6.06 FAILURE TO ENFORCE A RESTRICTION: The Declarant may fail to enforce any restriction herein specified on any Tenant on a Lot or Lots, but in no event should this be deemed a waiver of this Declaration or the right to enforce any restriction at a later date.

ARTICLE 7

MISCELLANEOUS PROVISION

7.01 ACCEPTANCE BY ALL TENANTS: Every person, firm, or corporation who shall hereafter acquire any right, title, or interest in any Lot(s) or Buildings or portions thereof shall have consented and agreed to every covenant and restriction herein contained or implied even though this Declaration may not have been made reference to or part of the documents received as a part of leasing a Lot or Building or any portion thereof.

7.02 ASSIGNMENT OF DECLARANT'S RIGHT AND DUTIES: The Declarant has certain rights, powers, and reservations as herein established by this Declaration and may assign to any person, firm, or corporation these rights, powers, and duties evidencing its consent in writing to accept such an assignment and assume such duties. The person, firm or corporation having accepted the

rights of the Declarant shall also be bound to the obligations in this Declaration.

7.03 HOUSEKEEPING: If accumulations of weeds, rubbish, or items of equipment or supplies are permitted to remain on a Lot more than ten (10) days after a request in writing from the Declarant or its authorized agent to have them removed, the Declarant or its authorized agent may enter on any Lot to remove same by whatever means it deems necessary. Such entry shall not be deemed a trespass, and the Declarant shall not be subject to any liability therefor. The cost of such work shall be borne by the Tenant.

7.04 MAINTENANCE OF LANDSCAPING: The Declarant shall be the sole judge of the quality of maintenance of the landscaping. If landscaping areas are not maintained in accordance with the standards in the lease and those in this Declaration and the condition is not corrected within ten (10) days after written notice from the Declarant, the Declarant or its authorized agent shall have the right to enter on any of the Lot(s) leased and plant or replant such areas, without being deemed guilty of trespass. The costs therefor, as determined by the Declarant, shall be paid by the Tenant.

7.05 SIDEWALKS PROHIBITED: The construction of sidewalks is prohibited except (1) between onsite parking areas and the Buildings they serve, (2) between Buildings involved in a single industrial activity for single Tenant, (3) in the Industrial Park Commercial Support areas, and (4) along the east side of Airport Road. Any sidewalks to be constructed in said areas shall be depicted on the plot plans and shall be subject to approval by the Declarant.

7.06 USE PERMITS: Such use and occupancy permits as may be required by the Building Code of City shall be maintained in force at all times by each Tenants.

IN WITNESS WHEREOF, THE CITY OF EL PASO, the Declarant, has caused its name to be hereunto subscribed this 5th day of February, 1985.

ATTEST:

City Clerk

CITY OF EL PASO, TEXAS

Mayor

APPROVED AS TO CONTENT:

Airport Manager

APPROVED AS TO FORM:

Assistant City Attorney

EXHIBIT “C”

Schedule C

Building	Tenants	SF	Lease Effective Date
15 Zane Grey	Van Roll	44,800	April 1, 1992
15 Zane Grey	Forward Air	19,600	October 23, 2000
15 Zane Grey	Corporate Express	12,498	February 18, 2003