

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

**DEPARTMENT:** Aviation

**AGENDA DATE:** February 24, 2015

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

**DISTRICT(S) AFFECTED:** District 3

**SUBJECT:**

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

This item is a Resolution to authorize the City Manager to sign a Temporary Land Use Lease by and between the City of El Paso (Lessor) and The Hertz Corporation (Lessee) for the following described property:

A portion of Lots 2, 2B and 2C, Block 1, Butterfield Trail Industrial Park Unit One Replat "A," City of El Paso, El Paso County, Texas, containing approximately 174,805 square feet of land.

**BACKGROUND / DISCUSSION:**

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

The Hertz Corporation operates the Hertz, Dollar Rent A Car and Thrifty Car Rental concessions at the El Paso International Airport. As part of their operations, it leases and operates from two service facilities on Convair Road and Allegheny Drive as well as leased on Allegheny to use as overflow storage for its fleet.

The Department of Aviation is requesting approval of this Temporary Land Use Lease to allow Hertz to have additional vehicle storage space to support its airport rental car concessions. It should be noted that the space to be leased is the parking lots only and does not include the buildings (4 & 6 Butterfield Trail Boulevard and 9 Zane Grey). This month-to-month Lease will allow Hertz to continue operating as the consolidated rental car agency complex (ConRAC) is scheduled to be completed until early 2016. Hertz is in need of additional space as it will be increasing its fleet at the El Paso International Airport by more than 400 vehicles. Vehicle deliveries are scheduled to begin this month.

The rental rate proposed for this month-to-month lease is as follows:

- 174,805 square feet x \$0.15/square foot/annum = \$26,221.00 per year or \$2,185.06 per month.

It is beneficial to both the Lessor and the Lessee that the Lessee remains at the Airport during the construction of the ConRAC so that the Lessee can continue to provide uninterrupted service to the travelling public using the airport rental car concessions. Under the two (2) current concession agreements, the Concessionaire pays the Airport a combined minimum concession fee of \$1,374,745.00 per year.

**PRIOR COUNCIL ACTION:**

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

12/10/2013 – First Amendment to Vehicle Rental Concession Agreement with The Hertz Corporation dba Hertz dba Advantage Rent A Car, which amended the location of the Interim Ready/Return Lot and maintenance responsibilities.

12/10/2013 – First Amendment to Vehicle Rental Concession Agreement with DTG Operations, Inc. dba Dollar Rent A Car and Thrifty Car, which amended the location of the Interim Ready/Return Lot and maintenance responsibilities.

10/25/2011 - Award of Vehicle Rental Concession Agreement under Solicitation 2011-239R to The Hertz Corporation dba Hertz dba Advantage Rent A Car effective December 1, 2011.

**AMOUNT AND SOURCE OF FUNDING:**

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

N/A – this is a revenue-generating item

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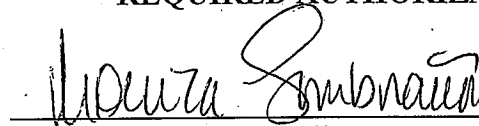
**BOARD / COMMISSION ACTION:**

Enter appropriate comments or N/A

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

**DEPARTMENT HEAD:**



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

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

*Information copy to appropriate Deputy City Manager*

## RESOLUTION

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

That the City Manager is hereby authorized to sign a Temporary Land Use Lease by and between the City of El Paso ("Lessor") and The Hertz Corporation ("Lessee") for the following described property:

A portion of Lots 2, 2B and 2C, Block 1, Butterfield Trail Industrial Park Unit One Replat "A", City of El Paso, El Paso County, Texas, containing approximately 174,805 square feet of land.

PASSED AND APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2015.

THE CITY OF EL PASO

\_\_\_\_\_  
Oscar Leeser  
Mayor

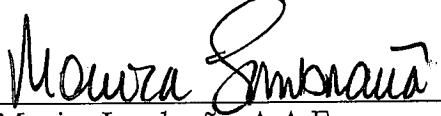
ATTEST:

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

APPROVED AS TO FORM:

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

APPROVED AS TO CONTENT:

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

# **TEMPORARY LAND USE LEASE**

**EL PASO INTERNATIONAL AIRPORT  
EL PASO, TEXAS**

**February 24, 2015**  
**Effective Date**

**THE HERTZ CORPORATION**  
**Lessee**

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## TEMPORARY LAND USE LEASE

THIS Temporary Land Use Lease is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2015, between the **CITY OF EL PASO** ("Lessor") and **The Hertz Corporation**, a Delaware corporation ("Lessee").

### WITNESSETH:

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

**WHEREAS**, Lessor deems it advantageous to itself and to its operation of the Airport to lease to Lessee the parcel of land described below, together with certain privileges, rights, uses and interests therein;

**WHEREAS**, Lessee proposes to lease the parcel of land on a net basis from Lessor to avail itself of certain privileges, rights and uses pertaining thereto;

**WHEREAS**, Lessee has indicated a willingness and ability to properly keep and maintain said ground in accordance with standards established by Lessor if granted a lease on said ground area;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein set forth, Lessor and Lessee agree and covenant as follows:

### ARTICLE I PREMISES AND PRIVILEGES

**Section 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:

A portion of Lots 2, 2B and 2C, Block 1, Butterfield Trail Industrial Park Unit One Replat "A", City of El Paso, El Paso County, Texas, containing approximately 174,805 square feet of land.

The said property is further described on Exhibit "A" attached hereto and incorporated herein by reference and hereinafter referred to as the "Premises".

**Section 1.02 Right to Construct.** Lessee shall not construct any permanent or temporary structures on the Premises, without the prior written approval of the Director.

**Section 1.03 Restrictions 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 "C", and fully incorporated herein by reference (the "Declarations").

## **ARTICLE II OBLIGATIONS OF LESSEE**

**Section 2.01 Net Lease.** This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth 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 all taxes and governmental charges of any kind whatsoever that may be assessed against the Lessee or the Lessor, with respect to the Premises or any improvements thereon, during the term of this Lease, including any extensions or option periods granted thereto.
- C. Pay all casualty, bond, and liability insurance premiums required in accordance with Article V hereinbelow.
- D. Maintain all ground area with concrete, asphalt, landscaping or other comparable code compliant dust-free surfacing, and may fence the area in accordance with Section 1.02.

**Section 2.02 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 subject to Lessee's right to construct limited improvements under the terms of this Lease. 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.

**Section 2.03 Compliance With Laws.** Lessee, at Lessee's expense, agrees that it will operate and maintain improvements on the Premises, 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 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, diesel fuel, and the like.
- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

- (1) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on,

under or about the Premises, or transported to and from the Premises, by Lessee, its agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. **Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its 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 which activity or operation or discharge occurs on or subsequent to the effective date of this Lease. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.**

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Lessee results in any contamination of the Premises or any improvements thereon, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as

such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.

- (3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") 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, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.
- (4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, 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 2.03 in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

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.

Lessee's failure or the failure of its agents, employees, contractors, invitees or the failure of a third party to comply with any of the requirements and obligations of this Section shall constitute a material default of this Lease and shall permit Lessor to pursue the remedies as set forth in Section 6.02 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.

C. 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 current environmental inspection and inventory report on the Premises acceptable to Lessor, and if, in the opinion of Lessor, the Premises shall require environmental remediation, Lessee shall perform same to return the Premises into a (like new) condition equal or better to that as of the effective date of the Lease.

**Section 2.04 Lessor's Approval of Plans.** Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of any 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 El Paso International Airport is only one of numerous departments of the City 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.

**Section 2.05 Utilities.** Lessee shall pay for all meters and measuring devices installed by Lessee or a utility on the Premises and shall pay for all connection service charges, deposits and utilities consumed by Lessee.

**Section 2.06 Trash, Garbage, Etc.** Lessee shall make suitable arrangements for the storage, collection, and removal of all trash, garbage and other refuse resulting from Lessee's activities on the Premises. Lessee shall provide appropriate, covered, commercial type receptacles, for such trash, garbage, and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets, in an attractive, safe, and sanitary manner.

**Section 2.07 Permitted Uses.** Lessee will not enter into any activity on the Premises other than temporary parking of fully functioning rental cars. However, Lessee is also permitted to temporarily store only those wrecked vehicles that are pending insurance claim resolution, provided that such wrecked vehicles are entirely screened from the view of the public.

### ARTICLE III TERM OF LEASEHOLD

**Section 3.01 Term.** This shall be a month-to-month lease and may be terminated by either party upon a thirty (30) day written notice to the other. Provided, however, that the initial period of tenancy shall be less than a full month, beginning on February 24, 2015, and provided that rental for the partial month of February 2015 shall be pro-rated accordingly.

**Section 3.02 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 rental of one and one-half (1½) times the current monthly rental, 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.

**Section 3.03 Recapture.** Notwithstanding any other provision of this Lease, should Lessor execute a lease of the Premises, or should the Premises be required for Airport use, Lessee shall vacate the Premises within thirty (30) days of receipt of written notice from the Director and this Lease shall terminate.

**Section 3.04 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 such suspension.

### ARTICLE IV RENTALS

**Section 4.01 Ground Rental.** For the purpose of computing the monthly rental to be paid by Lessee to Lessor for the Premises (hereinafter referred to as the "Ground Rental"), Lessor and Lessee agree that the Premises comprise 174,805 square feet. The Ground Rental for the Premises will, during the lease term, be calculated on the basis of 174,805 square feet at an annual rate of \$0.15 per square foot. Initially, therefore, the annual Ground Rental shall be TWENTY SIX THOUSAND TWO HUNDRED TWENTY ONE AND NO/100 DOLLARS (\$26,221.00) per year.

**Section 4.02 Commencement of Rental.** Payment of Ground Rental by Lessee to Lessor as aforesaid shall commence on the Effective Date of this Lease, which is first noted on the title page of this Lease.

**Section 4.03 Time of Payment.** The annual rent shall be paid in twelve (12) equal monthly installments. Said monthly rental payments shall be paid in advance on or before the first day of each and every month during the term of this Lease and shall be in the amount of TWO THOUSAND ONE HUNDRED EIGHTY FIVE AND 06/100 DOLLARS (\$2,185.06) per month.

**Section 4.04 Unpaid Rent, Fees and Charges.** Any installment of Ground Rental, any fees, or other charges or monies accruing under any provisions of this Lease that are not received by the 10th day of the month in which payment is due, shall bear interest at the rate equal to the maximum allowed by law the date when the same was due according to the terms of this Lease until paid by Lessee.

**Section 4.05 Place of Payment.** All payments provided herein shall be paid to Lessor at the following address:

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

## ARTICLE V INSURANCE AND INDEMNIFICATION

**Section 5.01 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 Two Million Dollars (\$2,000,000.00) 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.

**Section 5.02 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 policies shall contain:

- A. A statement of the coverage;
- B. A statement certifying the Lessor to be listed as an additional insured;
- 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) day's prior written notice to Lessor.

**Section 5.03 Indemnification. LESSEE COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY OF EL PASO, TEXAS, AND ITS RESPECTIVE DIRECTORS, OFFICERS, AGENTS, COUNCIL MEMBERS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, DAMAGES, LOSSES, DEMANDS, LIABILITIES, FINES OR EXPENSES WHATSOEVER (INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS OF LITIGATION) WHICH MAY BE BROUGHT, ALLEGED, OR IMPOSED AGAINST THE CITY OF EL PASO, TEXAS, ITS RESPECTIVE DIRECTORS, OFFICERS, AGENTS, COUNCIL MEMBERS, AND/OR EMPLOYEES RELATING TO OR CONCERNING ANY DAMAGE TO OR LOSS OF PROPERTY, OR PERSONAL INJURY TO OR DEATH OF ANY PERSON ARISING OUT OF OR INCIDENT TO ITS OPERATIONS AND THE LEASING, OR THE USE AND OCCUPANCY OF, THE LEASED PREMISES.**

## **ARTICLE VI EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER**

**Section 6.01 Expiration.** This Lease shall expire at the end of the term or any extension thereof.

**Section 6.02 Cancellation.** Subject to the provisions of Article VI, 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;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises;
- E. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default

continues for a period of thirty (30) 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 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 sixty (60) 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.

**Section 6.03 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 lawful 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.



**Section 6.04 Assignment, Subleasing and Transfer.** Lessee shall not sublease, assign or transfer this Lease.

**Section 6.05 Rights Upon Expiration.** At the expiration of this Lease, Lessor shall be entitled to have the Premises returned to Lessor clear of all improvements, or may, at its option, take title to the improvements in lieu of removal by or for Lessee.

**Section 6.06 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 or its successor agency, and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first to the necessary 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 VII GENERAL PROVISIONS

**Section 7.01 Building and Equipment Heights.** 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 thirty (30) feet above the curb line.

**Section 7.02 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.

**Section 7.03 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.

**Section 7.04 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 300 N. Campbell St. El Paso, Texas 79901	Director of Aviation El Paso International Airport 6701 Convair Road El Paso, Texas 79925-1099
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LESSEE:	The Hertz Corporation Attn: Real Estate Department 3181 N. Bay Village Court 1A Bonita Springs, Florida 34135
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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.

**Section 7.05 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.

**Section 7.06 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.

## **Section 7.07 FAA Covenants.**

Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the Leased Premises are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

- A. 1. The Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) in the event facilities are constructed, maintained, or otherwise operated on the property described in this agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations set out in Federal Aviation Administration Order 1400.11, Appendix 4, as same may be amended from time to time (the "Acts and Regulations") such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if the lease had never been made or issued. [See FAA Order 1400.11, Appendix C of Appendix 4]
- B. 1. The Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.
2. In the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued. [See FAA Order 1400.11, Appendix D of Appendix 4]
- C. 1. During the term of this agreement, Lessee for itself, its successors in interest, and assigns, as a part of the consideration hereof, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (which discourages programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP).;
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

2. In the event of breach of any of the covenants in this section C, Lessor shall have the rights and remedies set forth in sections A and B above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E of Appendix 4]

**Section 7.08 Parking Lot Lease Does Not Include Buildings.** Lessor and Lessee agree that the Leased Premises constitutes a parking lot area which is adjacent to and wraps around two (2) buildings located at 4 & 6 Butterfield Trail Blvd. and 9 Zane Grey Street, respectively, which the Leased Premises was originally constructed to service; that the buildings do not form a portion of the interest temporarily conveyed to Lessee by this Lease; and that Lessee does not intend to, nor is allowed hereby, to occupy or in any way use or benefit from the two buildings.

**Section 7.09 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.

**Section 7.10 Interpretation.** Lessor and Lessee agree that this Lease has been freely negotiated by both parties and that in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusion there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Lease or any portion thereof.

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.

**Section 7.11 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.

**Section 7.12 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.

**Section 7.13 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.

**Section 7.14 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.

**Section 7.15 Taxes and Other Charges.** The Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against the Lessee or the Lessor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, or any improvements thereon, during the term of this Lease including any extensions or option periods granted thereto. Lessor is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from the Lessee's use of the property or possession of the Premises.

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 unless, in the opinion of counsel satisfactory to the Lessor, such action will not adversely affect any right or interest of the Lessor.

**Section 7.16 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.

**Section 7.17 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 2.03 and 5.03.

**Section 7.18 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 the right, at any reasonable time and without notice, to 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.

**Section 7.19 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.

**Section 7.20 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.

**Section 7.21 Force Majeure.** Neither party to this Agreement is responsible to the other party for non-performance or delay in performance of the terms and conditions herein due to acts of God, acts of government, wars, riots, strikes, accidents in transportation, fuel or materials shortages, or other causes beyond the control of the parties.

**Section 7.22 Performance Standards.** The Premises shall not be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable conditions

**Section 7.23 Hazardous Activities.** No activity shall be conducted on the Premises that may be or may become hazardous to public health and safety, that shall increase the fire insurance rating for adjoining and adjacent Lots, or that shall be illegal.

**Section 7.24 Effective Date.** Regardless of the date signed, this Lease shall be effective as of the Effective Date first noted on the Title Page.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, this Lease has been approved on the \_\_\_\_\_ day of \_\_\_\_\_ 2015.

LESSOR: CITY OF EL PASO

\_\_\_\_\_  
Tomás González  
City Manager

APPROVED AS TO FORM:

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

APPROVED AS TO CONTENT:

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

#### ACKNOWLEDGMENT

THE STATE OF TEXAS   )  
  )  
COUNTY OF EL PASO   )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_ 2015,  
by **Tomás González** as **City Manager** of the **City of El Paso, Texas**.

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

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

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)



LESSEE: The Hertz Corporation

Michael E. Holdgrafer  
Printed Name: Michael E. Holdgrafer  
Title: Vice President, Real Estate and  
Concessions

ACKNOWLEDGMENT

THE STATE OF Florida  
COUNTY OF Lee

This instrument was acknowledged before me on this 13 day of February 2015,  
by Michael E. Holdgrafer as Vice President, Real Estate and Concessions on behalf of The  
Hertz Corporation.

Jennifer McCardle  
Notary Public, State of Florida

My Commission Expires:  
8/6/18



**PROPOSED PARKING LOT LEASE AREA**

**BEING A PORTION OF LOTS 2, 2B, AND 2C, BLOCK 1, BUTTERFIELD TRAIL INDUSTRIAL PARK UNIT ONE REPLAT "A", CITY OF EL PASO, EL PASO COUNTY, TEXAS**

The parking lot lease area herein described is a portion of Lots 2, 2B, and 2C, Block 1, Butterfield Trail Industrial Park Unit One Replat "A", City of El Paso, El Paso County, Texas, and is more particularly described by metes and bounds as follows [Bearings cited herein are Texas State Plane Grid Bearings, NAD 83, Central Zone, but distances are surface distances calculated by scaling TX-C-83 grid distances by 1.000231 and expressed in US Survey Feet] (record bearings appear in parentheses):

COMMENCING FOR REFERENCE at a found city monument at the intersection of Butterfield Trail Boulevard and Zane Grey Street;

Thence, along the centerline of Zane Grey Street, South  $02^{\circ}12'09''$  West (South  $00^{\circ}59'34''$  East - rec.), 111.02 feet;

Thence, leaving said centerline and passing the right of way line at 45.00 feet, North  $87^{\circ}47'51''$  West (South  $89^{\circ}00'26''$  West - rec.), 54.74 feet to the POINT OF BEGINNING;

Thence, with back of existing curb, South  $02^{\circ}10'22''$  West, 279.08 feet;

Thence, continuing along said back of curb, North  $35^{\circ}40'28''$  West, 25.96 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 7.43 feet, Radius = 2.22 feet, Delta Angle =  $191^{\circ}40'03''$ , Chord Bearing = South  $79^{\circ}17'16''$  West, and Chord Length = 4.42 feet;

Thence, continuing along said back of curb, South  $01^{\circ}26'31''$  West, 19.71 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 22.41 feet, Radius = 14.61 feet, Delta Angle =  $87^{\circ}53'40''$ , Chord Bearing = South  $40^{\circ}06'09''$  East, and Chord Length = 20.28 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 16.54 feet, Radius = 23.65 feet, Delta Angle =  $40^{\circ}04'09''$ , Chord Bearing = North  $81^{\circ}30'31''$  East, and Chord Length = 16.20 feet;

Thence, leaving said back of curb and following the western right of way line of Zane Grey Street, South  $02^{\circ}12'09''$  West (South  $00^{\circ}59'34''$  East - rec.), 45.32 feet to the beginning of a non-tangential curve;

Thence, leaving said right of way line and following an existing back of curb, with a curve to the left having the following elements: Arc Length = 16.49 feet, Radius = 23.26 feet, Delta Angle =  $40^{\circ}37'49''$ ,

**PROPOSED PARKING LOT LEASE AREA**

**BEING A PORTION OF LOTS 2, 2B, AND 2C, BLOCK 1, BUTTERFIELD TRAIL INDUSTRIAL PARK UNIT ONE REPLAT "A", CITY OF EL PASO, EL PASO COUNTY, TEXAS**

Chord Bearing = North 76°31'07" West, and Chord Length = 16.15 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 19.92 feet, Radius = 14.52 feet, Delta Angle = 78°37'05", Chord Bearing = South 44°03'19" West, and Chord Length = 18.40 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 6.72 feet, Radius = 4.37 feet, Delta Angle = 88°03'50", Chord Bearing = South 31°58'13" East, and Chord Length = 6.07 feet;

Thence, continuing along said back of curb, South 87°24'25" East, 17.48 feet;

Thence, continuing along said back of curb, South 03°45'00" West, 36.89 feet;

Thence, continuing along said back of curb, North 87°11'28" West, 19.90 feet;

Thence, continuing along said back of curb, South 01°14'06" West, 31.41 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 35.61 feet, Radius = 17.23 feet, Delta Angle = 118°25'34", Chord Bearing = South 66°28'47" East, and Chord Length = 29.60 feet;

Thence, leaving said back of curb and following the western right of way line of Zane Grey Street, South 02°12'09" West (South 00°59'34" East – rec.), 41.17 feet to the beginning of a non-tangential curve;

Thence, leaving said right of way line and following an existing back of curb, with a curve to the left having the following elements: Arc Length = 26.87 feet, Radius = 33.49 feet, Delta Angle = 45°58'05", Chord Bearing = North 86°13'42" West, and Chord Length = 26.15 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 14.56 feet, Radius = 5.07 feet, Delta Angle = 164°35'02", Chord Bearing = South 04°25'31" East, and Chord Length = 10.05 feet;

Thence, continuing along said back of curb, South 87°40'05" East, 15.04 feet;

Thence, continuing along said back of curb, South 02°13'03" West, 349.90 feet;

Thence, continuing along said back of curb, North 87°48'20" West, 14.94 feet;

**PROPOSED PARKING LOT LEASE AREA**

**BEING A PORTION OF LOTS 2, 2B, AND 2C, BLOCK 1, BUTTERFIELD TRAIL INDUSTRIAL PARK UNIT ONE REPLAT "A", CITY OF EL PASO, EL PASO COUNTY, TEXAS**

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 12.28 feet, Radius = 4.91 feet, Delta Angle =  $143^{\circ}17'36''$ , Chord Bearing = South  $20^{\circ}32'52''$  West, and Chord Length = 9.32 feet;

Thence, leaving said back of curb and crossing gated entrance, North  $87^{\circ}42'38''$  West, 21.57 feet;

Thence, with existing back of curb, North  $02^{\circ}12'28''$  East, 306.16 feet;

Thence, leaving said back of curb with a line that is 5.3 feet north and parallel with the north building face of 9 Zane Grey Street, North  $87^{\circ}45'46''$  West, 400.53 feet;

Thence, with the bottom edge of an existing raised loading dock, North  $01^{\circ}50'43''$  East, 54.98 feet;

Thence, continuing along said loading dock, South  $87^{\circ}56'19''$  West, 15.42 feet;

Thence, with existing back of curb, North  $02^{\circ}19'49''$  East, 186.66 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 27.14 feet, Radius = 18.10 feet, Delta Angle =  $85^{\circ}54'49''$ , Chord Bearing = North  $48^{\circ}11'05''$  East, and Chord Length = 24.67 feet;

Thence, continuing along said back of curb to the face of an existing building at 6 Butterfield Trail Boulevard, North  $01^{\circ}57'03''$  East, 38.87 feet;

Thence, with said face of building, South  $87^{\circ}39'43''$  East, 40.68 feet;

Thence, leaving said face of building and following approximate face of a chain linked fence, South  $01^{\circ}04'12''$  West, 28.21 feet;

Thence, continuing along said fence, South  $86^{\circ}44'45''$  East, 40.20 feet;

Thence, continuing along said fence to the face of an existing building at 6 Butterfield Trail Boulevard, North  $01^{\circ}16'40''$  East, 28.85 feet;

Thence, with said face of building, South  $87^{\circ}39'43''$  East, 80.06 feet;

Thence, leaving said face of building with the face of miscellaneous improvements the following 11 courses;

South  $00^{\circ}31'11''$  West, 32.32 feet;

**PROPOSED PARKING LOT LEASE AREA**

**BEING A PORTION OF LOTS 2, 2B, AND 2C, BLOCK 1, BUTTERFIELD TRAIL INDUSTRIAL PARK UNIT ONE REPLAT "A", CITY OF EL PASO, EL PASO COUNTY, TEXAS**

South 86°44'53" East, 32.24 feet;

North 02°56'02" West, 11.08 feet;

South 88°15'12" East, 29.06 feet;

North 09°52'55" East, 2.18 feet;

South 88°29'24" East, 39.73 feet;

South 00°59'38" West, 30.20 feet;

South 87°51'02" East, 9.66 feet;

North 02°24'44" East, 13.08 feet;

South 88°43'39" East, 69.97 feet;

North 01°04'05" East, 34.53 feet;

Thence, with the face of an existing building at 6 Butterfield Trail Boulevard and extending onto an existing back of curb, South 87°31'27" East, 55.82 feet;

Thence, continuing along said back of curb, South 04°12'56" West, 17.49 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 6.71 feet, Radius = 2.01 feet, Delta Angle = 191°12'14", Chord Bearing = South 81°37'52" East, and Chord Length = 4.00 feet;

Thence, continuing along said back of curb, North 03°58'43" East, 37.08 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 6.28 feet, Radius = 2.38 feet, Delta Angle = 151°12'12", Chord Bearing = North 63°01'45" West, and Chord Length = 4.61 feet;

Thence, continuing along said back of curb to the face of an existing building at 6 Butterfield Trail Boulevard, South 66°29'50" West, 18.63 feet;

Thence, with said face of building, North 02°18'05" East, 187.52 feet;

**PROPOSED PARKING LOT LEASE AREA**

**BEING A PORTION OF LOTS 2, 2B, AND 2C, BLOCK 1, BUTTERFIELD TRAIL INDUSTRIAL PARK UNIT ONE REPLAT "A", CITY OF EL PASO, EL PASO COUNTY, TEXAS**

Thence, leaving said face of building and following an existing back of curb, South  $51^{\circ}42'28''$  East, 15.74 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 10.33 feet, Radius = 4.40 feet, Delta Angle =  $134^{\circ}32'02''$ , Chord Bearing = North  $66^{\circ}24'44''$  East, and Chord Length = 8.12 feet;

Thence, continuing along said back of curb, North  $04^{\circ}01'05''$  East, 30.08 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 7.22 feet, Radius = 4.50 feet, Delta Angle =  $91^{\circ}58'48''$ , Chord Bearing = North  $44^{\circ}02'52''$  West, and Chord Length = 6.47 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 6.80 feet, Radius = 4.64 feet, Delta Angle =  $83^{\circ}59'58''$ , Chord Bearing = South  $48^{\circ}24'20''$  West, and Chord Length = 6.21 feet;

Thence, continuing along said back of curb, South  $04^{\circ}25'36''$  West, 15.68 feet;

Thence, continuing along said back of curb, North  $87^{\circ}44'43''$  West, 87.08 feet;

Thence, continuing along said back of curb, North  $02^{\circ}11'37''$  East, 15.10 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 7.49 feet, Radius = 4.37 feet, Delta Angle =  $98^{\circ}09'59''$ , Chord Bearing = North  $40^{\circ}48'33''$  West, and Chord Length = 6.60 feet;

Thence, continuing along said back of curb, North  $87^{\circ}52'13''$  West, 38.05 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 8.98 feet, Radius = 4.91 feet, Delta Angle =  $104^{\circ}50'45''$ , Chord Bearing = South  $40^{\circ}29'57''$  West, and Chord Length = 7.78 feet;

Thence, continuing along said back of curb, South  $04^{\circ}43'18''$  West, 14.09 feet;

Thence, continuing along said back of curb, North  $87^{\circ}46'59''$  West, 151.95 feet;

Thence, continuing along said back of curb, North  $01^{\circ}11'14''$  East, 15.35 feet to the beginning of a non-tangential curve;

**PROPOSED PARKING LOT LEASE AREA**

**BEING A PORTION OF LOTS 2, 2B, AND 2C, BLOCK 1, BUTTERFIELD TRAIL INDUSTRIAL PARK UNIT ONE REPLAT "A", CITY OF EL PASO, EL PASO COUNTY, TEXAS**

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 7.21 feet, Radius = 4.42 feet, Delta Angle =  $93^{\circ}29'24''$ , Chord Bearing = North  $43^{\circ}27'23''$  West, and Chord Length = 6.44 feet;

Thence, continuing along said back of curb, North  $87^{\circ}40'07''$  West, 37.73 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 8.00 feet, Radius = 4.60 feet, Delta Angle =  $99^{\circ}36'15''$ , Chord Bearing = South  $43^{\circ}54'20''$  West, and Chord Length = 7.03 feet;

Thence, continuing along said back of curb, South  $03^{\circ}11'01''$  West, 14.76 feet;

Thence, continuing along said back of curb, North  $87^{\circ}53'09''$  West, 81.72 feet;

Thence, continuing along said back of curb, North  $02^{\circ}22'49''$  East, 70.55 feet;

Thence, leaving said back of curb and following the southern right of way line of Butterfield Trail Boulevard, South  $87^{\circ}47'51''$  East (South  $89^{\circ}00'26''$  West – rec.), 26.22 feet;

Thence, leaving said right of way line and following an existing back of curb, South  $02^{\circ}26'42''$  West, 5.44 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 7.02 feet, Radius = 4.06 feet, Delta Angle =  $99^{\circ}07'48''$ , Chord Bearing = South  $41^{\circ}43'42''$  East, and Chord Length = 6.18 feet;

Thence, continuing along said back of curb, South  $87^{\circ}56'19''$  East, 357.15 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 4.39 feet, Radius = 3.49 feet, Delta Angle =  $72^{\circ}03'14''$ , Chord Bearing = North  $64^{\circ}10'38''$  East, and Chord Length = 4.11 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 7.16 feet, Radius = 19.58 feet, Delta Angle =  $20^{\circ}57'38''$ , Chord Bearing = North  $08^{\circ}24'08''$  East, and Chord Length = 7.12 feet;

Thence, leaving said back of curb and following the southern right of way line of Butterfield Trail Boulevard, South  $87^{\circ}47'51''$  East (South  $89^{\circ}00'26''$  West – rec.), 25.66 feet to the beginning of a non-tangential curve;

**PROPOSED PARKING LOT LEASE AREA**

**BEING A PORTION OF LOTS 2, 2B, AND 2C, BLOCK 1, BUTTERFIELD TRAIL INDUSTRIAL PARK UNIT ONE REPLAT "A", CITY OF EL PASO, EL PASO COUNTY, TEXAS**

Thence, leaving said right of way line and following an existing back of curb, with a curve to the left having the following elements: Arc Length = 6.72 feet, Radius = 32.39 feet, Delta Angle =  $11^{\circ}52'53''$ , Chord Bearing = South  $02^{\circ}56'04''$  East, and Chord Length = 6.70 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the left having the following elements: Arc Length = 12.31 feet, Radius = 14.90 feet, Delta Angle =  $47^{\circ}19'02''$ , Chord Bearing = South  $63^{\circ}39'43''$  East, and Chord Length = 11.96 feet to the beginning of a non-tangential curve;

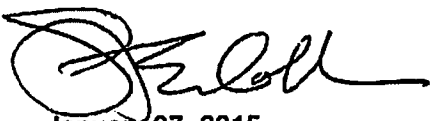
Thence, continuing along said back of curb, with a curve to the right having the following elements: Arc Length = 15.32 feet, Radius = 24.73 feet, Delta Angle =  $35^{\circ}30'20''$ , Chord Bearing = South  $57^{\circ}49'42''$  East, and Chord Length = 15.08 feet;

Thence, continuing along said back of curb, South  $44^{\circ}37'52''$  East, 12.19 feet;

Thence, continuing along said back of curb, South  $41^{\circ}16'15''$  East, 12.20 feet to the beginning of a non-tangential curve;

Thence, continuing along said back of curb, with a curve to the right having the following elements: Arc Length = 5.21 feet, Radius = 5.47 feet, Delta Angle =  $54^{\circ}36'03''$ , Chord Bearing = South  $17^{\circ}18'40''$  East, and Chord Length = 5.02 feet to the POINT OF BEGINNING and containing 174805 square feet or 4.0130 acres.

A survey drawing of the subject lease area on ledger size sheet is attached hereto for all purposes. This description is based on a field survey performed under the supervision of the undersigned.



January 07, 2015  
Stephen Earl Cobb  
Texas RPLS 4297  
Huitt-Zollars, Inc.; El Paso Office  
5822 Cromo Drive, Suite 210  
El Paso, Texas, 79912-5502  
Phone 915-587-4339





B  
Pg 1002

PROPOSED PARKING LOT LEASE AREA  
 6 BUTTERFIELD TRAIL BLVD. & 9 ZANE GREY ST.  
 PORTION OF LOTS 1, 2, 3, AND 22, BLOCK 9  
 BUTTERFIELD TRAIL INDUSTRIAL PARK UNIT ONE REPLAT "A"  
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

STATE OF TEXAS  
 COUNTY OF EL PASO  
 SURVEYOR  
 6822 Cherry Glen, Suite 110  
 El Paso, Texas 79912  
 Phone 915-467-4338  
 Fax 915-467-4347  
 www.hill-country.com



BEARING (MAGNETIC)  
 INFORMATION CONTAINED HEREIN IS BASED UPON THE  
 CURRENTLY AVAILABLE MAGNETIC DATA, AND THE  
 DATA IS NOT GUARANTEED TO BE ACCURATE  
 WITHIN A TOLERANCE OF 1/10000. Therefore,  
 bearings are "true" bearings and distances  
 are "true" distances. (Please  
 note that bearings are not true  
 bearings.) The field survey was  
 performed with respect to the Texas 824  
 Geodetic and Base Data Network.

All survey was prepared  
 under the supervision of the  
 undersigned. No portion was  
 not for the base line & 1/10000  
 assumption accompanies this  
 survey drawing.

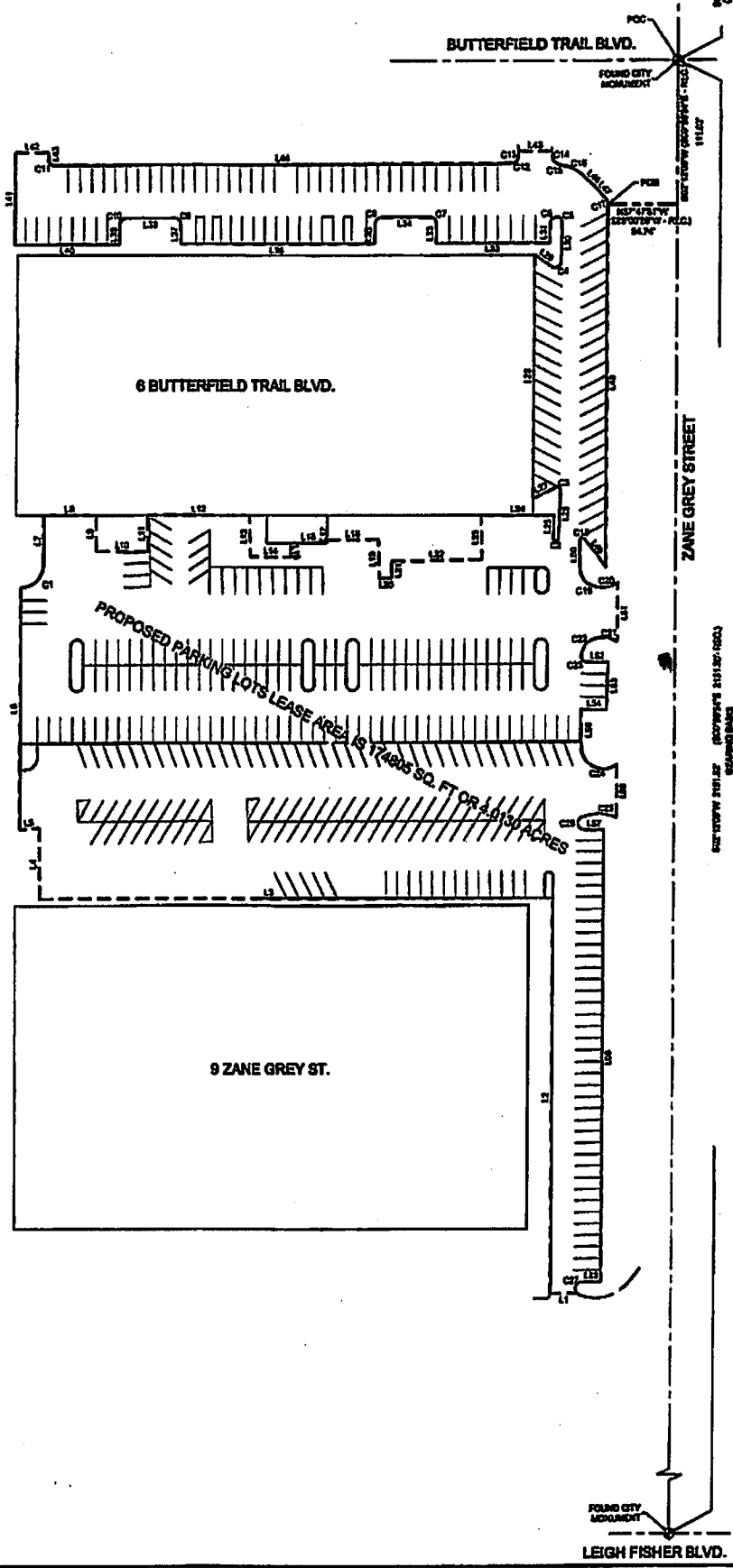


**LINE TABLE**  
 (Distances in Feet)

LINE	LENGTH	BEARING	REMARK
L1	31.57	S89°45'00"W	
L2	328.08	N89°45'00"E	
L3	400.00	N89°45'00"E	
L4	54.88	N01°30'45"E	
L5	18.42	S87°30'15"W	
L6	106.88	N02°30'45"E	
L7	38.87	N04°30'00"E	
L8	50.88	S87°30'15"W	
L9	39.31	S01°30'45"E	
L10	41.30	S87°30'15"W	
L11	28.88	N01°30'45"E	
L12	40.00	S87°30'15"W	
L13	38.42	S02°30'45"E	
L14	30.88	S87°30'15"W	
L15	11.88	N02°30'45"E	
L16	30.88	S87°30'15"W	
L17	8.00	S87°30'15"W	
L18	58.32	S87°30'15"W	
L19	30.30	S02°30'45"E	
L20	8.88	S41°30'45"E	
L21	18.88	N02°30'45"E	
L22	88.87	S87°30'15"W	
L23	38.88	N01°30'45"E	
L24	58.82	S87°30'15"W	
L25	17.42	S04°30'00"E	
L26	57.88	N02°30'45"E	
L27	18.88	S87°30'15"W	
L28	88.87	N01°30'45"E	
L29	38.88	N04°30'00"E	
L30	18.88	N01°30'45"E	
L31	18.88	N01°30'45"E	
L32	57.88	N02°30'45"E	
L33	18.88	N01°30'45"E	
L34	18.88	N01°30'45"E	
L35	18.88	N01°30'45"E	
L36	18.88	N01°30'45"E	
L37	18.88	N01°30'45"E	
L38	18.88	N01°30'45"E	
L39	18.88	N01°30'45"E	
L40	18.88	N01°30'45"E	
L41	18.88	N01°30'45"E	
L42	18.88	N01°30'45"E	
L43	18.88	N01°30'45"E	
L44	18.88	N01°30'45"E	
L45	18.88	N01°30'45"E	
L46	18.88	N01°30'45"E	
L47	18.88	N01°30'45"E	
L48	18.88	N01°30'45"E	
L49	18.88	N01°30'45"E	
L50	18.88	N01°30'45"E	
L51	18.88	N01°30'45"E	
L52	18.88	N01°30'45"E	
L53	18.88	N01°30'45"E	
L54	18.88	N01°30'45"E	
L55	18.88	N01°30'45"E	
L56	18.88	N01°30'45"E	
L57	18.88	N01°30'45"E	
L58	18.88	N01°30'45"E	
L59	18.88	N01°30'45"E	
L60	18.88	N01°30'45"E	

**CURVE TABLE**  
 (Distances in Feet)

CURVE	LENGTH	RADIUS	DELTA	CHORD BEING	CHORD
C01	27.14	11.00	87°45'00"	N89°45'00"E	31.87
C02	6.72	2.41	101°30'45"	S87°30'15"W	4.01
C03	6.26	2.41	89°45'00"	N89°45'00"E	4.41
C04	10.36	4.01	128°30'15"	N87°30'15"W	8.13
C05	7.22	4.01	87°30'15"	N89°45'00"E	8.47
C06	6.41	1.81	87°30'15"	S87°30'15"W	6.31
C07	7.49	4.57	86°00'00"	N87°30'15"W	6.51
C08	6.86	4.31	80°30'00"	S87°30'15"W	7.79
C09	7.21	4.63	87°30'15"	N87°30'15"W	8.45
C10	6.50	4.63	87°30'15"	S87°30'15"W	7.65
C11	7.53	4.01	87°30'15"	N87°30'15"W	8.15
C12	4.36	5.29	72°00'00"	N87°30'15"W	4.11
C13	7.16	10.88	20°30'00"	S87°30'15"E	7.12
C14	6.72	11.88	17°00'00"	S87°30'15"E	6.71
C15	12.30	14.83	47°00'00"	S87°30'15"E	11.88
C16	12.30	14.72	82°30'00"	N87°30'15"E	12.00
C17	6.41	1.81	84°30'00"	N87°30'15"E	5.21
C18	7.43	2.23	121°00'00"	S87°30'15"E	4.43
C19	27.42	14.81	87°30'15"	N87°30'15"E	20.38
C20	18.88	18.88	40°00'00"	N87°30'15"E	18.30
C21	18.88	18.88	40°00'00"	N87°30'15"E	18.13
C22	18.88	14.83	78°30'00"	S87°30'15"E	16.45
C23	6.72	4.57	86°00'00"	S87°30'15"E	6.58
C24	18.41	17.81	115°30'00"	S87°30'15"E	22.45
C25	20.87	18.88	47°00'00"	N87°30'15"E	26.13
C26	14.88	8.87	124°30'00"	S87°30'15"E	13.04
C27	12.36	4.31	145°17'30"	S87°30'15"E	9.12



82°30'15"W 208.12' (80°30'15"E 201.30' 100.00')  
 82°30'15"E

# EXHIBIT C

## DECLARATION OF RESTRICTIONS AND COVENANTS BUTTERFIELD TRAIL INDUSTRIAL PARK

El Paso International Airport

El Paso, Texas

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DECLARATIONS OF RESTRICTIONS AND COVENANTS  
BUTTERFIELD TRAIL INDUSTRIAL PARK

El Paso International Airport  
El Paso, Texas

THIS DECLARATION, made this 5<sup>th</sup> day of February,  
1985, 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 undertaken 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 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.

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

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

2.05 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.

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

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

2.08 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.

2.09 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.

2.10 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.

2.11 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.

2.12 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.

2.13 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.

2.14 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.

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

2.16 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.

2.17 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 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. 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 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