City of Las Cruces®

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Council Action and Executive Summary

Item # 9 **Ordinance/Resolution#** 10-231 **Council District:** 4

For Meeting of March 15, 2010
(Adoption Date)

TITLE:

A RESOLUTION TERMINATING A LAND LEASE BETWEEN WAYNE WALLACE AND THE CITY OF LAS CRUCES FOR PARCEL 10 AT THE LAS CRUCES INTERNATIONAL AIRPORT AND ENTERING INTO A NEW LAND LEASE FOR PARCEL 10 BETWEEN WAYNE WALLACE AND THE CITY OF LAS CRUCES FOR A TERM OF 30 YEARS.

PURPOSE(S) OF ACTION:

To terminate an existing land lease with Wayne Wallace at the Las Cruces International Airport and enter into a new land lease with the same tenant for the same parcel with a 30-year term.

Name of Drafter: Lisa Murphy LM Airport Administrator		**Department: Facilities**		**Phone: 541-2471**	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Facilities Department		541-2651	Budget		2300
			Assistant City Manager		2271
Legal		541-2176	City Manager		2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Wayne Wallace currently holds a land lease at the Las Cruces International Airport for a 13,026-square foot parcel of land known as Parcel 10. The lease for Parcel 10 is one of the older leases at the airport, originating on May 20, 1985, between the City of Las Cruces and Airspace, Inc., for a term of 30 years with two (2), ten-year extensions. The lease was assigned to Wayne Wallace on December 16, 1985, pursuant to Resolution 86-115. The parcel contains a hangar which Mr. Wallace subleases to Southwest Med-Evac and is presently used for storage.

The existing lease will expire on May 20, 2015. Two ten-year extension options are available but these will require City Council approval. Hence, the tenant has requested that the existing lease be terminated and a new, 30-year lease with two five-year extension options be granted. The 30-5-5 lease term is standard for new leases at the Airport.

(Continue on additional sheets as required)

The lease rate on the current land lease is 4.5 cents per square foot per year ($592.74 per year), which reflects the lower lease rates in effect at the time the lease was originated. By terminating the existing lease and entering into a new one, Mr. Wallace will be required to pay the current airport land lease rate of 20 cents per square foot per year, or $2,605.20 per year. The additional revenue will be recognized in the fiscal year 2011 budget submittal. The tenant is aware that his lease rate will increase, but states that he needs the flexibility provided by a new lease with more years remaining on the lease term.

Attached are the proposed new lease, the existing lease, and the letter from Mr. Wallace requesting a new lease. The Airport Advisory Board considered this request at their February 11, 2010 meeting and recommends approval.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Resolution
2. Exhibit "A", new Land Lease
3. Existing Land Lease
4. Resolution 86-115
5. Letter from Wayne Wallace requesting new lease
6. Map of Airport showing parcel location

OPTIONS / ALTERNATIVES:

1. Vote "yes" and approve the Resolution. This would terminate the existing lease between Wayne Wallace and the City of Las Cruces for Parcel 10 at the Las Cruces International Airport and approve a new lease between Wayne Wallace and the City of Las Cruces for Parcel 10 for a term of 30 years with two five-year extension options.

2. Vote "no" and do no approve the Resolution. This will result in keeping the existing lease for Parcel 10 between Wayne Wallace and the City of Las Cruces in place.

3. Amend the Resolution. This may include approving a different lease term than is requested.

4. Postpone consideration of the lease and direct staff to negotiate other terms.

(Continue on additional sheets as required)

RESOLUTION NO. 10-231

A RESOLUTION TERMINATING A LAND LEASE BETWEEN WAYNE WALLACE AND THE CITY OF LAS CRUCES FOR PARCEL 10 AT THE LAS CRUCES INTERNATIONAL AIRPORT AND ENTERING INTO A NEW LAND LEASE FOR PARCEL 10 BETWEEN WAYNE WALLACE AND THE CITY OF LAS CRUCES FOR A TERM OF 30 YEARS.

The City Council is informed that:

WHEREAS, the City of Las Cruces, New Mexico, a municipal corporation, is the owner of certain real property known as the Las Cruces International Airport; and

WHEREAS, on May 20, 1985, the City entered into a land lease agreement for land known as Parcel 10 at the Las Cruces International Airport; and

WHEREAS, the land lease for Parcel 10 is currently held by Wayne Wallace and has only five years remaining on its initial term; and

WHEREAS, Wayne Wallace has requested that the existing lease for Parcel 10 be terminated and a new lease for Parcel 10 be entered into; and

WHEREAS, most airport land leases are for a term of 30 years; and

WHEREAS, the Airport Advisory Board considered this request at their meeting of February 11, 2010, and recommended that a new lease be approved for a term of 30 years with two five-year extensions.

NOW, THEREFORE, be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the City of Las Cruces terminates the existing land lease with Wayne Wallace for Parcel 10 and enters into a new land lease with Wayne Wallace for Parcel 10, attached hereto as Exhibit "A" and made a part of this Resolution.

(II)

THAT the Mayor is authorized to execute the lease on behalf of the City.

(III)

THAT City staff and officials are directed to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2010.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED TO FORM:

_____
Interim City Attorney

Exhibit "A"

Land Lease
City of Las Cruces, New Mexico, International Airport.
WAYNE WALLACE, LESSEE

WHEREAS, the City of Las Cruces ("City"), a Municipal Corporation of the State of New Mexico, is the owner of certain real properties known collectively as the Las Cruces International Airport ("Airport") in Dona Ana County, New Mexico; and,

WHEREAS, the City maintains designated areas on the Airport specifically to lease said areas to aviation-related businesses and individuals to develop the Airport, its infrastructure, and aviation business for the benefit of the citizens of the City; and

WHEREAS, Wayne Wallace ("Lessee") desires to lease a particular parcel of that real property on the Airport for the purpose of furthering the Lessee's aviation interests; and

WHEREAS, the City is willing to Lease the Parcel desired to the Lessee, and the parties desire to execute a written Lease containing the terms and conditions of their Lease.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the following is agreed:

1. The Leased Area Described. The City hereby Leases to the Lessee, a 13,026 square foot parcel of real Property located in the NW 1/4 of Section 26, T23S., R.1W., N.M.P.M. of the U.S.G.L.O. Surveys, within the City Limits of Las Cruces in the County of Dona Ana, State of New Mexico, also known as Parcel 10, and more particularly described in Exhibit "A-1" attached hereto and incorporated herein by this reference, together with an easement for ingress and egress to the property (hereinafter "Parcel") by the Lessee.

2. Terms.

a. Initial Lease Term. The term of this Lease shall be thirty (30) years (hereinafter "Lease Term") commencing on the "Commencement Date," as hereinafter defined, and terminating on the thirtieth (30th) anniversary of the Commencement Date. The Commencement Date shall be the 1st day of April, 2010, and the thirtieth anniversary date shall be the 31st day of March, 2040. Possession of the Parcel by the lessee shall begin on the Commencement Date.

b. Subsequent Lease. At the conclusion of the Lease Term, the Lessee shall have the right to enter into two additional five-year terms at the land lease rate in effect at the beginning of each of the five year terms. Should the Lessee elect to not enter into a new agreement, the provisions of paragraph 7.f.(2) shall apply.

3. Fees and Charges. Lessee shall pay the following fees and charges:

Rent. Beginning on the Commencement Date, the Lessee shall pay the City a fixed annual rental payment ("Rent"). The amount of the Rent shall be ten cents ($0.20) per square foot per year for 13,026 square feet, which equals two thousand six hundred five dollars and twenty cents ($2,605.20) for the Parcel per year for the Initial Lease Term. The rent shall be adjusted on the anniversary of the Commencement Date every five years based on the increase or decrease in the cumulative Average Annual U.S. Consumer Price Index, or its successor report issued by the Federal Government, over the preceding five (5) calendar years of reporting. The adjusted Rent payment shall be due on the next payment date. Should the lessee remain in possession of the Parcel as a hold-over Lessee, the rent shall be adjusted to the then current Fair Market Value of the land then in effect after the initial lease term and the two five-year renewals.

4. Payments Due.

a. Due In Advance. In addition to those payment dates specified above, all rent payments shall be due and payable in advance, beginning on the Commencement Date and continuing regularly and annually without notice from City thereafter during the Lease Term. However, the City may elect to invoice payment notices.

b. Due Annually. The first annual payment shall be due and payable on the Commencement Date. All subsequent payments shall be due on the Commencement Date Anniversary each year thereafter.

c. Late Fee Due. On any annual rental payment made 10 days after the payment due date, Lessee shall in addition pay a late charge of ten percent (10%) of the annual rent for each month or part thereof that the payment is late.

(Lessee's Initials)

5. No Refunds. Lessee may relinquish this Lease to the City, however the Lessee shall not be entitled to a refund of any fees of any kind paid.

6. Insurance Requirements.

a. General Liability. Lessee shall maintain general liability insurance insuring such claims. This insurance shall name the City of Las Cruces (City) as an additional insured. The insurance shall have a minimum per occurrence limit of $ 1,000,000 or as required to meet the mandatory requirements of the New Mexico Tort Claims Act or its successors in law, whichever is greater.

b. Property Insurance. Lessee shall maintain property insurance covering the improvements to the Parcel and the contents thereof. Such insurance shall be a property insurance policy with the broadest cause of loss endorsement including vandalism and malicious mischief. The insurance shall be on a replacement cost basis and shall name the City of Las Cruces as an additional insured, as its interests may appear.

c. Proof of Insurance. Such insurance shall be with a licensed and authorized company to do business in the State of New Mexico. The lessee shall furnish annually to the City on the rent payment due date of this Lease, a certificate or other evidence and proof of maintenance of the above required insurances. The certificate of insurance shall provide the City of Las Cruces with a minimum 60 days notice of cancellation or renewal of the insurance policy. Lessee shall provide the City with notice of any changes thereof and furnish to the City evidence of acquirement of a substitute therefore and payment of premium thereof. If the Lessee shall fail to maintain such insurance coverage, then the City may obtain same and add the cost of such insurance to the next due lease payment. If the City does so, it may charge interest thereon at the rate of 15% per annum from the time of payment, which shall be added to the rental becoming due and shall be collected as an additional fee.

d. Self Insurance. Lessee may self-insure by filing with the City a letter of credit in the amounts listed above or other promissory or escrowed monetary instrument.

7. Quiet Enjoyment. The Lessee, upon payment of the required fees and rents, and the faithful performance of such covenants, agreements and conditions required by law, or this agreement, shall and may, peaceably and quietly have, enjoy those portions of the Airport authorized for their use. Such use shall be free from molestation, eviction or disturbance by the City or any person claiming by, through, or under it, subject to the terms and conditions of the law or agreement entered into. Such quiet enjoyment is conditional upon Lessee adhering to the following conditions:

a. Permitted Uses. Lessee shall have use of the Parcel only for a hangar for the storage and maintenance of aircraft in so far as it does not disturb the peaceful enjoyment of other tenants and conforms to airport permitted use under the current or any revised Standards, Regulations, Codes and Policies.

b. Additional Uses Require Permission. The Lessee shall not use or permit the use of the Parcel, or improvements thereto, for any purpose or use other than those expressly and specifically authorized by this Lease. Additional uses may be hereafter authorized in writing by the City, but only upon such terms and conditions as may be set out in such authorization.

c. Commercial Use of Parcel and Future Improvements. Lessee agrees to obtain permission from the City prior to commencing or permitting any commercial use of the Parcel not specifically listed, or additional improvements thereto, in accordance with the current Airport policies, code and/or standards. In the event that this Parcel, or improvements thereto is used for business purposes, the Lessee shall at all times maintain and pay any required permits, licenses, insurances, and taxes as required by law.

d. Construction and Ownership of Improvements.

(1) Title to Improvements. During the Lease Term, title to all improvements existing or constructed upon the Parcel by Lessee are and shall be vested in Lessee.

(2) City Codes Apply. Lessee must meet City standards as specified in the Las Cruces Municipal Code for all design, planning, and construction activities, including development or extension of infrastructure. In addition, Lessee shall pave all access from the Parcel, or improvements thereto, to taxiways and roads, and such construction shall match the existing grade.

(3) Septic Systems. Lessee shall be allowed to use and maintain an easement on common City Property adjacent to the building to construct an individual on-site septic system, if necessary and as required to meet New Mexico Environment Department Regulations. The location and dimensions of this easement and constructed improvement shall be shown on the site plan submittal. In the event that the City provides a waste water disposal service to the Airport at such time in the future, Lessee shall be required to cease use of the individual on-site septic system and hook up to the City waste water system for sewage disposal, in accordance with the Las Cruces Municipal Code.

(4) Additional Improvements Constructed During the Initial Lease Term or Extended Term. Lessee may construct additional improvements or modifications at a later date, adhering to the requirements of those codes and regulations then in effect on the Airport. However, in all cases, construction must be completed within eighteen (18) months of approval by the City.

e. Condition, Maintenance and Repairs of Leasehold and Improvements Thereto.

(1) Lessee Shall Maintain. Lessee shall maintain, at its own expense, the Parcel and any improvements, fixtures or equipment on the Parcel in a safe, sanitary, orderly, and sightly manner, in accordance with all applicable codes and regulations. Lessee shall also maintain the cleanliness of all paved area on the Parcel, and shall be responsible for mowing all grass, watering lawns, controlling weeds, and maintaining shrubs and trees on the Parcel.

(2) Erosion Control. Where the slope, terrain, or soil disturbance is such that active soil or wind erosion may be present, Lessee must carry out erosion control practices to mitigate the erosion. These practices include, but are not limited to drainage facilities constructed and maintained by Lessee, landscaping, and/or seeding and maintaining of vegetation.

(3) City's Right to Correct Deficiencies. The City has the right to require reasonable maintenance and repairs to the Parcel or the improvements thereon by Lessee as required by this lease. Should the Lessee fail to make the required corrections, the City shall have the right to enter the Parcel, or improvements thereto, correct the deficiency, and recover the cost of activities from Lessee as rent due on the next rent payment date.

(4) Repair of Damage. If the Parcel, or improvements thereto is partially destroyed or damaged by fire or other casualty, then Lessee shall repair and restore the Parcel, or improvements thereto as soon as it is reasonable and practicable. Such repair or restoration shall commence not later than six (6) months after such damage, and be completed within six (6) months thereafter. Such restoration shall be to substantially the same condition in which the Parcel or improvements thereto was before such damage. In the event that Lessee has not commenced repairs within six (6) months from the date of said damage and thereafter completed such repairs within six (6) months, this Lease may be immediately terminated by the City. Such termination shall be made effective by serving notice upon the Lessee, and effective on the date of receipt of such notice by the Lessee.

(5) Destruction of the Parcel or Improvements Thereto. In the event the Parcel, or improvements thereto is completely destroyed or so badly damaged that repairs cannot be commenced within six (6) months and completed within six (6) months thereafter, then this Lease may be terminated. Such termination shall be effective as of the date of the occurrence of the damage or destruction, and made effective by either party hereto by serving written notice upon the other.

f. Removal of Improvements.

(1) When Requested by Lessee. If at any time during the Lease Term, when all Rent then due and owing has been fully paid and Lessee is not in default under this Lease, Lessee may request to remove any or all improvements. Lessee shall give forty-five (45) days advance written notice of its intent to remove the improvements to the City, which shall not unreasonably withhold consent. When removing improvements, the Lessee shall restore the Parcel to its

previously existing condition, including filling excavations, returning the surface to grade, and leaving the Parcel safe and free from all debris and hazards.

(2) At Expiration or Termination of Lease. At the expiration or termination of this Lease, any or all buildings and other permanent improvements to the Parcel shall become the property of the City or shall be removed by the Lessee. Should the City elect for the Lessee to remove any or all improvements, the Lessee shall do so within forty-five (45) days. When removing improvements, the Lessee shall restore the Parcel to its previously existing condition, including filling excavations, returning the surface to grade, and leaving the Parcel safe and free from all debris and hazards. All improvements not removed as aforesaid shall, without compensation to or by City, become City's property free and clear of all liability and expenses. Lessee shall thereafter be released from any and all liability, cost or expense associated with the Parcel, including the improvements thereon, or associated with termination of this Lease. However, if Lessee fails to promptly remove said improvements if and as required by the city, the City may assess and bill Lessee based on receipt of an itemized statement of costs of removal and restoration of the Parcel.

g. Installation of Utilities. City warrants that all utilities, except for wastewater collection and treatment service, which are necessary for the conduct of Lessee's activities, are available at the Airport. However, Lessee shall obtain and install underground at its own expense any necessary electrical, gas, water, sewer and septic tank, and any other utility service, subject to the Development Guidelines, rules and regulations or building codes of the State of New Mexico and the City of Las Cruces.

h. Hazardous Waste. No toxic materials or hazardous waste subject to regulation by the EPA or NM Environment Department shall be stored or disposed of on the Airport without the written permission of the Airport Manager.

i. Environmental Assessment and Remediation. At the expiration or termination of this Lease, the City may require that Lessee furnish to the City an Environmental Assessment Report on the place of business, conducted in accordance with the laws, codes and regulations in effect at that time. The costs of remediation, if any should be required by law, shall be the responsibility of the Lessee.

j. Signs. Lessee must obtain City consent to paint or construct any exterior signs; including approval or a City Sign Permit. Lessee further agrees that upon vacating the Facilities, Lessee will restore exterior signs to same condition as received at time of occupancy. The Lessee shall be responsible for all cost and expense of maintaining its signs as permitted hereby. Lessee shall not erect, paint or maintain any temporary signs or advertising displays, such as banners, balloons, flashing sign boards, and/or any similar visual devices whatsoever.

8. Obtain Permits, Pay Taxes, and Obey Laws.

a. Lessee shall pay when due all valid taxes, special assessments, excises, license fees and permit fees of whatever nature applicable to its operation or levied or assessed against the Airport, or improvements thereto. Lessee shall take out and keep current all licenses, permits, and certificates (City, County, State and Federal) required for the conduct of its activities at and upon the Airport, and further agrees not to permit any of said taxes, excise or license fees to knowingly become delinquent.

b. Lessee shall, at its own expense, fully comply with all laws, regulations, rules, ordinances, and requirements of the applicable City, County, State and Federal authorities and agencies which affect this Lease, the land granted by this Lease, any improvements upon the Leasehold, and/or operations thereon. Such compliance shall be with any laws, regulations, rules, ordinances or requirements which have been or may be enacted or promulgated during the effective period of this Lease.

c. Lessee recognizes the authority of the City Council and staff to take those necessary and legal actions required to safeguard any person, aircraft, equipment or property at the Airport. Lessee agrees to abide by any suspension, restriction, or designation of specific procedures applicable to any or all Airport operations whenever such actions are established by such authorities.

9. Assignment and Sublease.

a. City Consent Required. Lessee shall not assign or sublease the rights granted by this Lease, nor the Leased parcel, nor the improvements constructed or occupied in accordance with this Lease, without the prior written consent of the City, which consent shall not be unreasonably withheld. All approved assignments or subleases shall be in accordance with the Minimum Standards for Commercial Airport Aeronautical Activity And Service Providers at The Las Cruces International Airport. The City may condition such consent upon an increase in the Rent, and may require other conditions or covenants before consenting to an assignment or sublease. Such additional rent, conditions or covenants shall be in accord with those terms and conditions for similar agreements in effect at the time of the assignment, sublease, or sale. If the Lease is assigned or subleased, all clauses herein binding the parties hereto are also binding on any and all successors and/or assigns, unless specifically amended by the City as a condition of consent.

b. Assignment Relieves Lessee. Upon a valid assignment of this Lease, but not upon a sublease, the Lessee shall be relieved of all obligations and liabilities arising from this Lease effective as of the date of the assignment.

10. Default and Termination.

a. Definition. If the City determines the Lessee is in violation of any of the terms, conditions or covenants of this Lease, or the Lessee fails to pay, on time, any fees or charges due, the condition shall be considered a default of the Lease.

b. Written Notice Required. The City shall provide the Lessee with written notice of any determination of default.

c. Compliance Time. The Lessee shall then have ten (10) days to cure or remedy said default or otherwise comply with any demand contained within such written notice which cures or remedies the default.

d. Failure to Comply. If the Lessee fails to correct the default as specified by the City's notice within the specified period, or if the Lessee receives a third notice of default within any 18 consecutive month period, the City may, at its option, terminate this Lease immediately, or at any time thereafter. Such termination may be made without further notice or demand. Upon such termination, without further notice or demand, the City may enter upon and into the Leased area, or improvements thereto, or any part thereof, and take absolute possession of the same fully and absolutely, and such re-entry shall not be judged trespass. In addition, the City may also require all associated and permitted operations to cease and be removed from the Airport.

e. Lease Remains Binding. All provisions of this Lease remain binding upon the Lessee while the Lessee is in default, and if this Lease is terminated due to default.

11. Airport Development. The City reserves the right to further develop the Airport as it sees fit, without unreasonable interference or hindrance from Lessee.

a. Eminent Domain Rights. If the physical development of the Airport requires the relocation, removal or alteration of Lessee's business from the Airport, the City has the right to condemn the business area wholly under the City's eminent domain rights.

b. Notice of Total Taking. In the case of a total taking by the City of the areas authorized for use by this Lease, the City will provide a minimum of ninety (90) days notice of such impending action. In the event of such a total taking, Lessee's obligation to pay rent and other charges shall terminate on the date of the taking.

c. Actions in the Event of Total Taking. In the case of a total taking, both parties hereto agree that the value of this Lease shall be declared to be zero dollars ($0.00). The value of the Building will be determined by an independent appraisal at Fair Market Value. The Lessee will have the option of receiving the monetary FMV of the building or having a similar building constructed at another site and entering into a new lease agreement at the then current land lease rate.

12. Amendment. This Lease shall not be altered, changed or amended except by instrument in writing executed by the City and Lessee.

13. Severability. If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision, which shall remain in full force and effect.

14. Right of Aircraft Operations. The City hereby reserves a right of aircraft ground operations on and above the surface of the Airport, when conducted in accordance with the Federal Aviation Regulations, together with the right to cause such noise, odors and other disturbances as may be inherent in such operation.

15. Reserved Water, Gas, Oil, and Mineral Rights. The City reserves, subject to the BLM Patent all water, gas, oil, hydrocarbon and mineral rights in and under the surface of the Airport. However, the City shall not conduct any operations on the surface of the Airport for the exploration, development or recovery of the rights and substances reserved which would unreasonably interfere with the Lessee's use of the Airport.

16. Easements and Right of Way.

a. Existing Easements. This Lease is subject to all existing rights-of-way or easements of record and all other Leases granted by the City to other parties at the Airport, and to those retained by the City.

b. City's Right to Use Existing Easements. The City retains the right to locate utilities as necessary on existing easements on the Airport.

c. Easements to be Accessible. Lessee shall leave any utility easements upon the Airport open and unobstructed. A perpetual easement and right-of-way for the construction, maintenance, removal and replacement of any and all utility lines, manholes, and related facilities through, over, across and under the Airport is hereby reserved for the benefit of the City.

d. City's Right to Establish Easements. The City may at any time and from time to time relocate, in whole or in part, any easement serving the Airport, provided that such relocation does not diminish or permanently interrupt the rights or operations of the Lessee nor increase the costs to be incurred by Lessee. The City may temporarily interrupt operations with respect to such Easements during the period of relocation, and the City agrees to restore the Airport to a condition substantially similar to the condition existing prior to any alterations thereto by the City.

e. City's Right to Protect Aerial Approaches. The City reserves the right to take such action as may be reasonably necessary to establish and protect aerial approaches to the Airport against obstruction, including the right to prevent persons from erecting or permitting to be erected any improvements on the Airport which would constitute a hazard to aircraft.

17. Right to Perform Own Aircraft Servicing and Maintenance. It is clearly understood by the Lessee that no rights or privileges have been granted which would prevent any legal person from performing any services that it may choose to perform on its own aircraft at locations reserved for such purposes. All such servicing, maintenance and repair shall be conducted in accordance with Federal Aviation Regulations and applicable law.

18. Security and Safety. Lessee will participate in the City's security and safety programs as they relate to the Airport.

19. Airport Access. Subject to the rules and regulations established by the City, the Lessee has the right of access to the parcel. Such access also applies to the Lessee's employees, agents, patrons and invitees, its suppliers of materials and furnishings of services and its equipment, vehicles, and machinery. The City may, at any time, temporarily or permanently close or consent to the closing of any roadway or other right-of-way for such access, ingress, and any other area at the Airport or in its environs presently or hereafter used as such. In such a case, a means of access, ingress and egress reasonably equivalent to that formerly provided may be substituted and concurrently made available subject to the Airports Security and Operational needs.

20. City's Right to Enter. The City, its officers, agents and representatives, subject to any security regulations imposed by any governmental authority, shall have the right to enter all parts of the premises at all reasonable hours to inspect the premises when reasonably required and as it may deem necessary or desirable.

21. Operational Reports. Lessee agrees to submit to the City, upon request by the City any report or reports or information regarding Lessee's operations at the Airport. The City agrees to receive from Lessee, upon request by Lessee, any reports the Lessee deems appropriate for the purpose of keeping the City informed of any operational problems and of any suggested improvements at the Airport.

22. Automobiles and Other Vehicles. The City reserves the exclusive right to control, by security gate, uniform driving regulations, or otherwise, all vehicular ingress and egress to, and operations on, the aircraft operating areas including but not limited to all taxiways, runways and ramp areas on the Airport.

23. Attorney's Fees. City and Lessee agree that if either is found by a court to have breached this Lease, reasonable attorney's fees and the cost of litigation may be recovered from the defaulting party.

24. Notices. Whenever any notice is required or permitted hereunder, such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not, when deposited in the United States mail, as Certified Mail, postage prepaid, return receipt requested, and addressed to the parties at their respective addresses, as set forth below:

Airport Manager
City of Las Cruces
P.O. Box 20000
Las Cruces, New Mexico 88004

Wayne Wallace
PO Box 758
Las Cruces, New Mexico 88004

25. Exhibits. The following exhibits are attached and made part of this Lease:

A. EXHIBIT "A-1": LEGAL DESCRIPTION OF PARCEL.

IN WITNESS WHEREOF, City and Tenant have executed the Lease to be in effect as of the date first written above.

CITY OF LAS CRUCES, LESSOR

Ken Miyagishima, Mayor

_____ _____
(Signature) *(Date)*

_____
CITY CLERK
(SEAL)

APPROVED AS TO FORM

_____
CITY ATTORNEY

LESSEE

Wayne Wallace, Owner

_____ _____
(Signature) *(Date)*

REVISED AIRPORT LEASE PARCEL 10

A parcel of land situate in the northwest quarter of Section 26, T.23S., R.1W., N.M.P.M., Dona Ana County, New Mexico; within the limits of the Las Cruces International Airport; more particularly described as follows:

Beginning at the northeast corner of the herein described parcel, whence the northwest corner of Section 26 bears N 57 deg. 08' 31" W 2013.30 feet;

Thence S 00 deg. 10' 30" E 100.00 feet;

Thence S 89 deg. 49' 30" W 130.26 feet;

Thence N 00 deg. 10' 30" W 100.00 feet;

Thence N 89 deg. 49' 30" E 130.26 feet to the beginning corner;

Containing 13026 square feet (0.299 Acre) more or less.

LEASE AND AGREEMENT

THIS LEASE AND AGREEMENT ("Lease") is made this _____ day of _____, 1985, between the City of Las Cruces ("City") and Airspace, Inc., ("Lessee").

WITNESSETH:

WHEREAS, City is a political subdivision of the State of New Mexico, holds title to the Las Cruces International Airport ("Airport") and the City has the power to lease designated areas for the purpose of supplying services to aircraft and users of Airport facilities.

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained and other good and valuable consideration, the parties hereto agree as follows:

1. Land Parcel. The parcel of land referred to herein is stipulated in the County of Dona Ana, State of New Mexico, and is depicted and described upon Exhibit "A" dated 1985, and more particularly described upon Exhibit "A-1", attached hereto and made a part hereof.

2. Terms and Options.

A. Parcel. With respect to above described parcel, hereinafter sometimes referred to as the "leased premises", the City hereby leases said parcel unto Lessee for a period of thirty (30) years commencing on the date of this lease.

B. Renewal Option. Lessee shall have the option of renewing or extending this lease for a term of ten (10) years

with an additional ten (10) year option at a rental rate to be renegotiated as hereinafter provided. Lessee shall notify Lessor of his intention to renew the option at least 120 days before the expiration of this lease by notice to Lessor by registered mail. This option is only available provided the Lessee is current in payment of all rents and fees and is not in default in any of the conditions of the lease.

3. Use of Parcel.

A. Improvements by Lessee. Lessee shall have the right to construct upon the leased premises, pursuant to plans and specifications approved by the City, at the sole cost and expense of Lessee, aircraft hangars for use for aircraft storage; provided that nothing contained herein shall authorize Lessee to construct hangars for uses not directly related to storage of aircraft. Lessee shall commence construction of these improvements within ninety (90) days of the approval of the plans and specifications by the City and shall proceed with due diligence to develop these improvements according to the phase construction timetable attached hereto as Exhibit "C". Lessee agrees to use its best efforts to comply with said timetable, but shall not be considered to be in breach of this lease or subject to any penalty therefor in the event that events and circumstances beyond Lessee's control including, but not limited to, delays due to strikes, work stoppages, material shortages or inclement weather, should delay construction progress.

B. Permitted Operations. Lessee shall have the exclusive right to use and occupy the leased premises in accordance with uses

hereinafter described, including but not limited to the following permitted uses:

(i) Facilities for the housing and storage of aircraft.

4. Rental Rates and Other Fees. Lessee shall pay to the City the land rents and other fees specified in Exhibit "B". All land rents and fees shall be paid every six months, the due dates being the 25th day of January and the 25th day of July during the term of this lease. All other fees described in Exhibit "B" unless otherwise set forth therein shall be paid monthly by the Lessee to the City on or before the 25th day of the month following the month in which such fees accrued. Land rent for the period between the execution date of this lease and July 1, 1985, will be prorated.

5. Mandatory Clauses.

A. Right to Use Airfield. In addition to the premises specifically designated for its exclusive use, this Agreement grants Lessee the non-exclusive right to use the airfield and associated operational area in common with others so authorized which right shall be exercised in accordance with the laws of the United States of America and the State of New Mexico and the rules and regulations promulgated by their authority with references to aviation and air navigation and all pertinent directives, rules and regulations of the City and Airport Advisory Board.

B. Books and Records. Lessee shall keep and maintain true and accurate books and records of its operations under the terms of this lease in accordance with generally accepted

accounting principles, for inspection and copying by prior appointment at reasonable business hours during the terms of this lease and for two years thereafter.

C. No Discrimination. Lessee shall make its accommodations and services available to the public on fair and reasonable terms without unjust discrimination on the basis of race, color, religion, sex, age or national origin.

D. Pricing. Lessee shall furnish its accommodations and services on a fair, equal and not unjustly discriminatory basis to all users thereof and its shall charge fair, reasonable and non-discriminatory prices for each unit of service; provided, that Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates and other similar types of price reductions to volume purchasers.

E. Lawful Use. Lessee shall observe and obey all laws, ordinances and regulations of the United States of America, the State of New Mexico and the City of Las Cruces, which may be applicable to its operations at the Airport, and shall make no unlawful or offensive use of the leased premises.

F. Schedule and Key Personnel. Lessee shall provide the City with a schedule of hours of operation that Lessee will be open to the public and the names and telephone numbers of company officials who shall be available at all hours of company's operations at the Airport to perform required management functions.

G. Safety. Lessee shall conform to all applicable City safety, health and sanitary codes and agree to cooperate with the City in its fire prevention efforts.

H. Independent Contractor; Indemnification. Lessee is and shall be deemed to be an independent contractor in the conduct of its business and activities hereunder, and shall be responsible for its acts of omission or commission, and City shall in no way be responsible therefore. Lessee does hereby agree to indemnify, defend and hold harmless the City and its "Public Employees" as defined in the New Mexico Tort Claims Act from and against any and all liability, claims, judgments, demands or claims (including reasonable attorney's fees and costs of investigation) arising out of or allegedly arising out of the performance of this Agreement or any activities undertaken pursuant to this Agreement, other than any liability, claim, judgment, demand or cost arising from the negligence of the City or its "Public Employees" in carrying out the specific obligations undertaken by the City hereunder. So long as this indemnification requirement is in effect, the Lessee shall procure and maintain a policy of liability insurance as set forth in Exhibit "D" attached hereto. It is agreed and understood that this provision in no way modifies the New Mexico Tort Claims Act.

I. Compliance with Civil Rights Act. Lessee shall comply with the requirements of any Executive Order barring discrimination; further, in accordance with these requirements, Lessee shall not discriminate in any manner against any employee or applicant for employment because of political or religious opinion or affiliation, sex, race, creed, color or national origin; and further, Lessee shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. Lessee understands and acknowledges

that the City of Las Cruces has given to the United States of America, acting by and through the Federal Aviation Administration, certain assurances with respect to non-discrimination which have been required by Title VI of the Civil Rights Act of 1964, and by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, as a condition precedent to the Government making grants in aid of the City of Las Cruces, for certain Airport programs and activities, and that the City of Las Cruces is required under said regulations to include in every agreement or concession pursuant to which any person or persons other than the City operate or has the right to operate any facility on the Airport providing services to the public, the following covenant, to which Lessee agrees:

> "Operator, in its operation at and the use of the Airport covenants that it will not on the grounds of sex, race, color, or national origin: discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21; and in the event of such discrimination, Lessee agrees that the City has the right to take such action against the Lessee as the Government may direct to enforce this covenant."

J. Airport Development. The City reserves the right to further develop or improve the landing area of the Airport as it sees fit, and without unreasonable interference or hindrance from Lessee. If the physical development of the Airport requires the relocation, removal or alteration of Lessee's facilities, the City agrees to provide a comparable location without any unreasonable interruption to the Lessee's improvements and buildings from within the leased premises to the comparable premises at no cost to the Lessee or provided similar facilities for the Lessee at no cost

to the Lessee. If such relocation of facilities is impractical, City shall reimburse Lessee for any loss of revenue caused by such interruption/relocation.

K. Performance of Services. It is clearly understood by the Lessee that no rights or privileges have been granted which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any services on its own aircraft at locations other than the leased premises with its own regular employees (including, but not limited to the maintenance and repair) that it may choose to perform, provided, however, that performance of such services shall be subject to the Rules and Regulations established by the City and shall be consistent with the terms of any lease or sublease of hangar space.

L. City's Rights. The City reserves the right (but shall not be obligated to the Lessee) to maintain and keep in repair the landing area of the Airport against obstruction, together with the right to prevent the Lessee from erecting or permitting to be erected any building or other structure on the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

M. Subordination. This lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States relative to the operation or 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. This

subordination includes, but is not limited to, the right, of the City during time of war or national emergency, to lease for military or naval use, and if any such lease is made, the provisions of this lease and all obligations of Lessee hereunder shall be suspended. The lease term shall be extended for the same amount of time as the time of the suspension and all monetary obligation under this lease shall abate during such suspension period. Any monetary awards received from the United States attributable to the premises leased herein shall be paid over to Lessee in accordance with the formula set forth in paragraphs 24F (i).

N. Right to Entry. The City or the Airport Manager, may enter upon the premises leased to the operator at any reasonable time for any purpose necessary, incidental to or connected with the performance of the Lessee's obligations under this agreement or in the exercise of their function as City and Manager.

O. Termination. Upon the expiration or other termination of this agreement, the Lessee's rights to the premises, facilities, other rights, licensed services and privileges granted in this agreement shall cease, and the Lessee shall, upon expiration or termination, immediately and peaceably surrender the premises to the City.

P. Assignment. All covenants, stipulations and provisions in this lease shall extend to and bind the legal representatives, successors and assigns of the parties.

Q. Exclusive Right. It is understood and agreed that

nothing herein shall be constructed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958, as amended.

R. Affirmative Action Program. The Lessee assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E. The Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Lessee assures that it will require that its covered sub-organizations provide necessary assurances to the City that they will require assurances from the suborganizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

6. Access. Subject to the Rules and Regulations established by the City, the Lessee has the right of free access, ingress to and egress from the leased premises for Lessee's employees, agents, patrons, and invitees, its suppliers of materials and furnishers of services and its equipment, vehicles, machinery; provided, however, aviation fuel suppliers must enter into the standard fuel supplier contract with the City prior to supplying fuel to any user or Lessee at the Airport. The City may, at any time, temporarily or permanently close or consent to or request the closing of any roadway or other right-of-way for such access, ingress, and any other area at the Airport or in its environs presently or hereafter used as such, so long as a means of access, ingress and egress reasonably equivalent to that formerly provided is substitute therefore and is concurrently made

available therefor.

7. Recommendations. Lessee agrees to submit to the City upon request by the City, and the City agrees to receive from Lessee upon request by Lessee any report or reports or information regarding Lessee's operations at the Airport for the purpose of keeping the City informed of any operational problems and of any suggested improvements at the Airport.

8. Structure Repair and Maintenance. Lessee agrees at its expense, without cost or expense to the City, during the term hereof, to keep the leased premises and improvements thereto and thereon in good and useable repair and maintenance and in a safe, sanitary, orderly and sightly condition. Such premises shall at all times be maintained in accordance with any applicable Building Code of the City of Las Cruces, as adopted, amended or modified from time to time as required by law. Lessee's failure to keep and maintain the premises and improvements thereto in good and useable repair and maintenance and in a safe, sanitary, orderly, and sightly condition shall constitute a breach of this agreement and subject Lessee to the cancellation and termination thereof.

A. Removal of Waste. Lessee shall not knowingly permit rubbish, debris, waste materials or anything obnoxious or detrimental to safety or health or likely to create objectionable odors, a fire hazard, or conducive to deterioration, to remain on any part of the primary leased premises or to be disposed of improperly. The Lessee shall not knowingly permit any waste, liquids, or other material to become a part of the influent to its sewage plant or system which would cause malfunction of the plant equipment or system or impede the normal chemical and

biological workings of the plant or septic tank process system. Any violation of this provision shall constitute a breach of this agreement for which, in addition to the termination and cancellation thereof, Lessee shall be liable to the City for any and all damages said City may sustain.

B. Obstruction Lights. Lessee shall provide and maintain obstruction lights on the leased premises and all similar equipment or devices now or at any time required by any applicable state or federal regulations.

C. Paved and Landscaped Area; Maintenance. Lessee shall maintain the cleanliness of all ramp and ramp taxiways, taxiways and paved area around the leased premises.

D. Automobiles and Support Vehicles. The City reserves the exclusive right to control, by security gate or otherwise, all automobile ingress and egress to the aircraft ramp areas on the leased premises. However, Lessee shall have the right to implement its own security measures at all other locations on the leased premises.

E. Limitation Upon Use. The Lessee shall not use or permit the use of the leased premises for any purpose or use other than those expressly and specifically authorized by this lease or hereafter authorized in writing by the City and upon such terms and conditions as may be set out herein and, the Lessee shall not herein and, the Lessee shall not commit or permit any nuisance from or upon said premises.

9. Title to Improvements. All permanent buildings erected and constructed on the leased premises by Lessee shall remain the property of Lessee and title thereto shall continue in the Lessee

until the termination of this lease and the conclusion of any renewal hereof by Lessee unless Lessee should elect, in its sole discretion, to transfer such title to the City at some earlier date. Upon the termination of this lease and the conclusion of any renewal hereof by option or the failure of Lessee to exercise said option, whichever occurs last, or upon Lessee's earlier election described in the preceding sentence of this paragraph, if exercised, all permanent buildings erected and constructed on the leased premises shall immediately become the property of the City and title thereto shall vest in the City, and all rights, obligations and duties, associated with or related to such buildings shall thereafter be borne by the City. If Lessee elects to transfer such title to the City at any time prior to the termination of this lease, such transfer shall be subject to a continued right of occupancy and use by Lessee and its sublessees for the then remaining term of this lease and until the conclusion of any renewal hereof by option unless Lessee should fail to timely exercise said option, provided further that it is expressly understood and agreed by the parties hereto that City has no obligation to accept the transfer of title to it of any of the improvements prior to the termination of this lease and agree and state that any acceptance of a transfer, if the same shall occur, shall not constitute an assumption or an agreement to pay any obligation of debt that may be outstanding against such improvements.

10. Approved Regulations for Construction.

A. Construction of Improvements. Lessee may construct improvements on the leased premises for the uses specified in

Exhibit "C" hereto or for other uses otherwise agreed to by the City. Except as hereinafter provided, such construction must respect the applicable Building Restriction Line and be done pursuant to plans and specifications submitted to and approved by the City in writing prior to the commencement of construction. The City shall have the right to approve or disapprove said plans and specifications after investigation and inspection provided that such approval shall not be unreasonably withheld.

B. Construction Standards.

(i) General Requirements. All improvements, alterations, additions, removal and relocation of structures and construction projects constructed by Lessee on the leased premises (hereinafter "improvements"), shall conform to the City's Development Guidelines, shall in all respects be accomplished in a good and workmanlike manner, in accordance with applicable plans and specifications; in accordance with the City of Las Cruces Building Code; pursuant to a Building Permit, when applicable, to be obtained from the City's Engineering Department and according to the customary terms and conditions thereof; and, in a manner consistent with State and Federal Requirements, and subject to the requirements of the City of Las Cruces.

(ii) Contractor. Lessee covenants and agrees that if the Lessee wishes, at any given time to construct the improvements on the leased premises at a cost of $25,000 or more, Lessee will require the contractor to furnish and deliver to the City a bond with good and sufficient surety to be approved by the City, in a sum equal to the full contracted amount, to insure the City against loss by any reason of any lien or liens which may be filed against the leased premises or improvements located thereon. The Lessee shall include in all construction contracts entered into by it in connection with any or all of the construction work aforesaid, a seciton requiring the contractor and its "Public Employees" as defined in the New Mexico Tort Claims Act from and against any and all liability, claim, judgment, demand or cost (including reasonable attorney's fees and costs arising out of the performance of the construction

contract or the contractor's operations in connection therewith, including the contractor's use or occupancy of the leased premises, other than arising from the negligence of the City or its "Public Employees" in carrying out the construction contract. The Lessee shall require the contractor to furnish liability insurance in such amounts as may be required by the City. Lessee shall also include in any construction contract such provisions as may be required by the City regarding the operations of the contractor on the Airport. Lessee shall provide to the City a copy of all construction contracts entered into in connection with the leased premises.

(iii) Completion. When construction work involving structural components or structural modification has been completed, the Lessee shall deliver to the City a certificate stating that said improvements have been constructed in accordance with the approved plans and specifications and in strict compliance with all laws, rules, ordinances, and governmental rules and regulations and orders.

(iv) Waiver by the City. Notwithstanding the foregoing, Lessee may perform interior non-structural redecorating, refurbishing and remodeling without the approval of the City. In addition, the City Council, in its sole discretion, may waive in writing any or all of the additional requirements set forth above for specific improvements to be constructed by Lessee on the leased premises.

11. Signs. Lessee shall not erect, paint or maintain any signs or advertising displays, including banners, balloons and similar visual devices whatsoever, upon portions of the leased premises visible from outside the buildings located thereon, without first securing the prior written consent of the City. The City shall have the right to approve or disapprove said signs or advertising displays after investigation and inspection provided that such approval shall not be unreasonably withheld.

12. Taxes, Compensation Insurance, Licenses. Lessee covenants and agrees to pay when due all valid taxes, special assessments, excises, license fees and permit fees of whatever nature applicable

to its operation or levied or assessed against leased premises and to take out and keep current all licenses (City, County, State and Federal) required for the conduct of its business at and upon the Airport, and further agrees not to permit any of said taxes, excises or license fees to knowingly become delinquent. Any such taxes assignments or fees hereafter assessed Lessee, shall be no greater than comparable fees assessed any other comparable operator at the Airport. Lessee shall at all times maintain adequate Workmen's Compensation insurance in accordance with any present or future state law with authorized insurance company, or through the New Mexico State Compensation Insurance Fund, or through a self-insurance program approved by the State of New Mexico, insuring the payment of Workmen's Compensation to all its employees at the Las Cruces International Airport. Lessee shall furnish to the City, upon request, duplicate receipt or other satisfactory evidence showing the prompt payment by it of Social Security, Unemployment Compensation and Workmen's Compensation Insurance, all required licenses, and all taxes. Lessee shall pay promptly when due all undisputed bills, debts and obligations incurred by it in connection with its operation of said business on the leased premises, and to protect the City from any lien, judgment or execution filed against said property or improvements thereon which could in any way impair the rights of the City.

13. Insurance. Lessee agrees to provide to City certificates of insurance providing the coverages and in the amounts specified in Exhibit "D" hereto.

14. Removal of Equipment. All trade fixtures, portable buildings, equipment and other personal property brought, installed,

erected or placed by Lessee in, on or about the leased premises shall be deemed to be personal and shall be and remain the property of Lessee, except as otherwise provided herein; and Lessee shall have the right at any time during the term hereof when not in default and when not prohibited by any mortgages of Lessee to remove any or all of its property, subject to Lessee's obligation to repair all damage, if any, resulting from such removal. All such portable buildings, trade fixtures, improvements or other property of Lessee (but not fixtures, improvements or other property acquired and installed by the City) shall be removed by Lessee from the leased premises at the expiration of this lease or the expiration of any renewal hereof, whichever comes last, unless this lease is earlier terminated as provided for herein.

15. Surrender of Premises. The Lessee covenants that upon the termination of this lease, for whatever reason, it shall quit and peaceably surrender the leased premises in good state of repair and condition, reasonable wear and tear and depreciation excepted, and any improvements not removed by Lessee pursuant to Paragraph 13 of this lease. The City shall have the right on such termination to enter upon and take possession of the leased premises, with or without process of law, without liability for trespass.

16. Force Majeure. Neither the City nor Lessee shall be deemed to be in breach of this lease by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to embargos, strikes, shortages of materials, acts of God, acts of a public enemy, acts of superior government authority, rebellion or any other condition or circumstance,

which is beyond the controll of Lessee or the City or which could not be prevented or remedied by reasonable effort and at reasonable expense.

17. Cancellation and Termination by the City.

A. General. The City may cancel and terminate this Lease and Agreement and may enter and reposses the premises, with or without process of law, without liability, in the event of any breach or default of any term, condition or covenant or any installment of rent or other payment provided for herein, is in arrears and remains unpaid or not cured for a period of thirty (30) days after same is due or such default in any condition or breach of any term, condition or covenant contained herein is uncorrected, upon giving thirty (30) days written notice to Lessee of its intention to so terminate, at the end of which time all the rights of Lessee hereunder shall terminate unless such payment or default, which shall have been stated in such notice, shall; have been paid or cured within such thirty (30) days; provided, however, Lessee will be allowed only two (2) such notices within any thirty-six (36) month period to cure within the time specified in this paragraph. The fifth such notice in any thirty-six (36) month period to cure within the time specified in this paragraph. The third such notice in any thirty-six (36) month shall be final and shall cancel and terminate all of the rights hereunder of Lessee without any right on the part of Lessee to cure such default after receiving such notice.

Further, in the event Lessee shall engage in any activity or practice which hinders or interferes with the proper use and operation of the Airport, then the City may order Lessee to forth-

with cease and desist from such activity or practice and should Lessee fail or refuse to comply with any such order, the City may, at its option, cancel and terminate this Lease and Agreement.

B. Bankruptcy. Except as hereafter provided, the City may cancel and terminate this lease and reposses the leased premises with or without process of law and without liability for trespass, if during the term hereof Lessee shall:

(i) Apply for or consent to, in writing on behalf of Lessee by any of its officers or its duly authorized attorney, the appointment of a receiver, trustee or liquidator of Lessee or of all a substantial part of its assets.

(ii) File a voluntary petition in bankruptcy, or admit in writing its inability to pay debts as they come due.

(iii) Make a general assignment for the benefit of creditors.

(iv) File a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any insolvency law.

(v) File an answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization, or insolvency proceedings; or if during the term of this lease, an order, judgment or decree shall be entered by any court of competent jurisdiction on the application of a creditor adjudicating Lessee bankrupt or approving a petition seeking reorganization of Lessee or appointing a receiver, trustee, or liquidator to marshall all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days. In any such event as described above in subparagraph 17 B (i) through (v), the City may give Lessee a written notice of intention to end the term of this lease after the expiration of thirty (30) days from the date of service of such notice, and on the date set forth in such notice the term of this lease and all right, title and interest of Lessee hereunder shall expire as fully and completely as if that day were the date herein

specifically fixed for the expiration of the term, and Lessee will then quit and surrender the leased premises to the City, provided, however, and notwithstanding any provision of this paragraph to the contrary, the City shall not have the right to terminate this lease because of the commencement of maintenance by Lessee of a proceeding for reorganization or arrangement under Chapters X and XI of the Federal Bankruptcy Act (or any equivalent or comparable proceeding under Federal Bankruptcy Laws that may be amended from time to time) if Lessee continues to comply with all other provisions of this lease.

C. Obligations Following Termination. Except as otherwise provided herein, in the event of cancellation and termination of this lease by the City as hereunder provided, the parties shall have no further obligations hereunder, except that Lessee shall remain liable to the City for all damages, rents and fees accrued to the date of termination.

D. Rights Cumulative. The rights and remedies of the City specified in subparagraph A above are not intended to be, and shall not be, exclusive of one another. The City shall have all rights and remedies provided herein (including the right to exercise any landlord's or similar lien upon property of Lessee located on or used in connection with the leased premises), and all such rights and remedies may be exercised by the City or by its designee. Neither the delay nor the omission to exercise any right or power nor the exercise of any right or power accruing to either party shall impair any such right or power, or shall be construed to be a waiver thereof, or relieve the other party of any of its responsibilities or obligations under this lease or from any liability resulting therefrom, or in any way amend, modify, alter, limit or otherwise affect the rights of the parties hereunder.

18. Notice. All notices required to be given to the City hereunder shall be in writing and be hand-delivered or sent by certified mail with return receipt requested to the City of Las Cruces, P.O. Drawer CLC, Las Cruces, New Mexico 88004, or 201 N. Church. All notices required to be given to Lessee hereunder shall be in writing and hand-delivered or sent by certified mail with return receipt requested in duplicate to Lessee, one copy to the attention of Airspace, Inc., P.O. Box 2215, Las Cruces, New Mexico 88004. It is further provided that the parties, or either of them, may designate in writing from time to time supplementary persons or addresses in connection with said notices. Effective date of service of any such notice shall be the date such notice is hand-delivered or received by Lessee or the City.

19. Conditions to Transfer.

A. Transfers.

(i) No transfer of this lease shall be made without prior written approval of the City, and the Federal Aviation Administration. The City shall have the right to approve or disapprove said transfer of lease after investigation and inspection provided that such approval shall not be unreasonably withheld.

(ii) If at any time Lessee desires to make such a transfer to a successor, Lessee shall give thirty (30) days prior written notice to the City of the identity of the successor and the approximate price and general terms of transfer. Upon satisfaction of the provisions of (i) above, the City shall promptly approve such transfer; provided, that approval to such transfer has been approved by the Federal Aviation Administration.

(iii) Notwithstanding the provisions of (i) and (ii) of this paragraph, Lessee may assign this lease to a subsidiary which is wholly owned by Lessee without the City's consent and this lease may be held by said subsidiary; provided, however, that any transfer of the lease by such subsidiary shall be subject to the provisions

of said subparagraphs (i) and (ii) above and provided further that such assignment shall not relieve Lessee of its duties, liabilities and obligations under this lease.

B. Prohibition Against Leasehold Pledge. Without the City's prior consent in writing, Lessee shall not pledge, mortgage, hypothecate, or otherwise encumber or grant or give any other security interest in the leased premsies, except as follows: If the City agrees to the construction or improvements on the leasehold by Lessee, the City, upon request by the Lessee, shall permit Lessee to encumber the leasehold interest granted by this lease for the purpose of financing such improvements, in a manner acceptable to the City, but only on the separate parcel of land on which such improvements are to be constructed, together with such additional lands as may be necessary for automobile parking in connection with the use and occupancy of such improvements. The City agrees that this lease shall be subordinate to the construction and permanent financing of such improvements. Provided, however, that in the event of a foreclosure of any mortgage or other security document granted by Lessee concerning all or any part of the leased premises created by this lease, the foreclosing party following such foreclosure shall have no greater rights with respect to the leased premises than are granted to Lessee under this lease and all other operations, if any, conducted by the secured foreclosing party shall be consistent with the terms of this lease. Any mortgage or security document given by Lessee shall provide that all notices of default given to the City and, in the event Lessee fails to cure such default, the City shall have the right, but not the obligation,

to cure such default within the same period granted to Lessee under such mortgage or security document.

C. Violation of Prohibitions Against Transfer. Any attempt to transfer any interest in violation of the provisions of subparagraphs A or B above, shall be void. In addition, any such transfer shall constitute a default under the provisions of this lease so as to entitle the City to exercise all remedies available to it upon default hereunder.

20. Covenants of the City. The City agrees that during the term of this lease and any renewal thereof:

A. Maintenance. The City shall at all times fulfill its obligations to the general aviation public to maintain in good operating condition the runways, ramps and paved areas at the Airport, and shall stripe all runways and taxiways at the Airport.

B. Parking Areas. Lessee and Lessee's officers, agents, employees, customers, and invitees may use such public parking facilities as are provided by the City at the Airport.

C. Quiet Possession. The City covenants that Lessee, upon payment of rent reserved herein and the performance of each of the covenants, agreements and conditions on the part of Lessee to be observed and performed, shall and may, peaceably and quietly have, hold and enjoy the leased premises for the term hereof, free from molestation, eviction or disturbance by the City or any person claiming by, through, or under it, subject to the terms and conditions of this lease and the following:

(i) The City hereby reserves, for the use and benefit of the public, a right of flight for the passage

of aircraft in the navigable airspace above the surface of the leased premises, as determined by the regulations and technical standards promulgated by the Federal Aviation Administration, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now or hereafter used for navigation of or flight in air, using said airspace for landing at, taking off from, or operating on the airport.

(ii) The City reserves the right to take such action as may be reasonably necessary to protect aerial approaches to the Airport against obstruction, including the right to prevent Lessee from erecting or permitting to be erected any improvements on the Airport which would constitute a hazard to aircraft.

(iii) The City reserves, subject to the BLM Patent, from this lease, all water, gas, oil, hydrocarbon and mineral rights in and under the surface of the leased premises; provided, however, that the City shall not conduct any operations on the surface of the leased premises for the exploration, development or recovery of the rights and substances reserved which would unreasonably interefere with Lessee's use and occupancy of the leased premises.

D. Continuation of Operations. Subject to applicable federal, state, county and municipal statutes, resolution, ordinances, rules and regulations, the City shall not impose any rule, regulation or standard at the Airport which would not generally apply to all operators and other authorized users or which would unreasonably impede, impair or restrain general aviation usage or operations at such Airport, nor shall any such rules, regulations or standard derogate, contradict or conflict with any provision contained herein without the City first having obtained the express written consent of Lessee.

21. Cancellation and Termination by Lessee. This lease may be cancelled and terminated by Lessee upon sixty (60) days written

notice to the City, if such cancellation and termination is by reason of the City's permanent abandonment of the Airport or the breach of the City or any of the provisions of this lease and the failure of the City to (i) commence compliance with such provisions within sixty (60) days after receipt of written notice of such breach from Lessee; or (ii) to pursue diligently after such commencement the faithful performance, keeping or observation of such provisions; then Lessee shall have the right to recover from the City all actual damages sustained by Lessee as a result of such abandonment or breach.

22. Arbitration. The parties must submit all controversies under this lease to arbitration in Las Cruces, New Mexico, according to the rules and practices of the American Arbitration Association then in force. This submission and agreement to arbitrate shall be specifically enforceable. Arbitration may proceed in the absence of any party if notice of the proceedings has been given to such party. The parties agree to abide by all awards rendered in such proceedings. Such award shall be final and binding on all parties to the extent and in the manner provided by the New Mexico Rules of Civil Procedure. All awards may be filed with the clerk of one or more courts, state or federal, having jurisdiction over the party against whom such an award is rendered or his property as a basis of judgment and of the issuance of execution for its collection. No party shall be considered in default hereunder during the pendency of arbitration proceedings relating to such default.

23. Attorney's Fees and Costs. If, notwithstanding any

provision herein appearing to the contrary, suit is brought by either the City or Lessee to enforce any provision of this lease, or to recover damages for the breach of any provision in this lease, the prevailing party shall be entitled to recover from the non-prevailing party in such lawsuit all costs of preparation for and conduct of such lawsuit, including reasonable attorney's fees.

24. Miscellaneous.

A. Governing Law. This lease shall be deemed to have been made in and shall be construed in accordance with the laws of the State of New Mexico.

B. Paragraph Heading and Table of Contents. The paragraph headings and Table of Contents contained herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this lease.

C. No Personal Liability. No Councillor, officer, or employee of the City nor any officer, agent or employee of the Las Cruces International Airport, or officers and agents of Lessee shall be held personally liable under this lease or because of its enforcement or attempted enforcement.

D. Entire Agreement. This lease covers and includes the agreement between the parties and there are no promises, representations, warranties, condition, terms or obligations other than those contained herein. Lessee has read and understands the whole of this Agreement and now states that no representations, promises or agreements not expressed herein have been made to induce the Lessee to enter into it. This lease may not be altered, changed,

amended or in any way modified without the express written consent of both parties.

E. Severability. Any covenants, condition or provision herein contained that is held to be invalid by any court or competent jurisdiction shall be considered deleted from this lease, but such deletion shall in no way affect any other covenant, condition or provision herein contained, so long as such deletion does not materially prejudice the City or Lessee in their respective rights contained in the valid covenants, condition, or provisions of this lease.

F. Eminent Domain.

(i) In the event that all or substantially all of the leased premises or any material portion of the Airport premises or facilities outside the leased premises which Lessee is entitled to use pursuant to this Agreement shall be appropriated or taken under the power of eminent domain, or by purchase in lieu thereof, at any time during the lease term so as to substantially interfere with Lessee's operations as an operator, this agreement may be terminated by Lessee as of the date that title to the property taken vests in such condemning authority. In the event of a condemnation of, or including the leased premises, Lessee shall be entitled to the monetary award attributable to the condemnation or purchase of the lease. In the event the parties cannot determine whether or not substantial interference has occured, the parties shall submit the matter to arbitration.

(ii) In all instances of an appropriation or taking of a portion of the leased premises under the power of eminent domain, or purchase in lieu of this agreement, Lessee shall restore as promptly as practicable and to the extent permitted by application of the proceeds paid by the condemning authority pursuant to any exercise of such power of eminent domain, the remaining portion of the leased premises to a condition which will permit Lessee to substantially carry on its operations as an operator. Any condemnation proceeds not required for the purposes of restoration shall belong to Lessee. In the event Lessee elects not to terminate this Agreement, effective as

of the date of such taking, the rental payable hereunder shall be wholly abated during any time Lessee is unable to substantially carry on its operations, and upon restoration and resumption of Lessee's operations as an operator, the rental payable hereunder shall be reduced in the same proportion which that portion of the leased premises so taken bears to the entire area of the leased premises prior to such taking.

(iii) In the event of any taking of the leased premises by a condemning authority, the City agrees to make available to Lessee for similar activities other property in an amount substantially similar to the amount taken (to the extent available) at the Airport. Such property, if desired by Lessee, will be leased to Lessee pursuant to terms and conditions similar to those contained herein.

G. Utilities: Burden of Installation. Lessee shall obtain and install underground at its own expense any necessary electrical and any other utility service, subject to the Development Guidelines, rules and regulation or building codes of the State of New Mexico and the City of Las Cruces.

H. This agreement shall be dated and become effective immediately following the approval by the Las Cruces City Council.

I. Holding Over. No holding over by Lessee after the expiration of this lease, whether with or without the consent of City, shall operate to extend or renew this lease, and any such holding over shall be construed as a tenancy from month to month at the rental which shall have been payable immediately prior to the commencement of such holding over.

IN WITNESS WHEREOF, the parties hereto have caused this lease to be executed as of the date first above written.

CITY OF LAS CRUCES, NEW MEXICO

Mayor

ATTEST:

Karen Stevens
City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney

STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me this 22nd day of May, 1985, by David M. Steinborn, Mayor of the City of Las Cruces, New Mexico.

Carolyn J. Duran
Notary Public

My Commission Expires: 2-2-89

AIRSPACE, INC.

Miles W Malone

ATTEST:

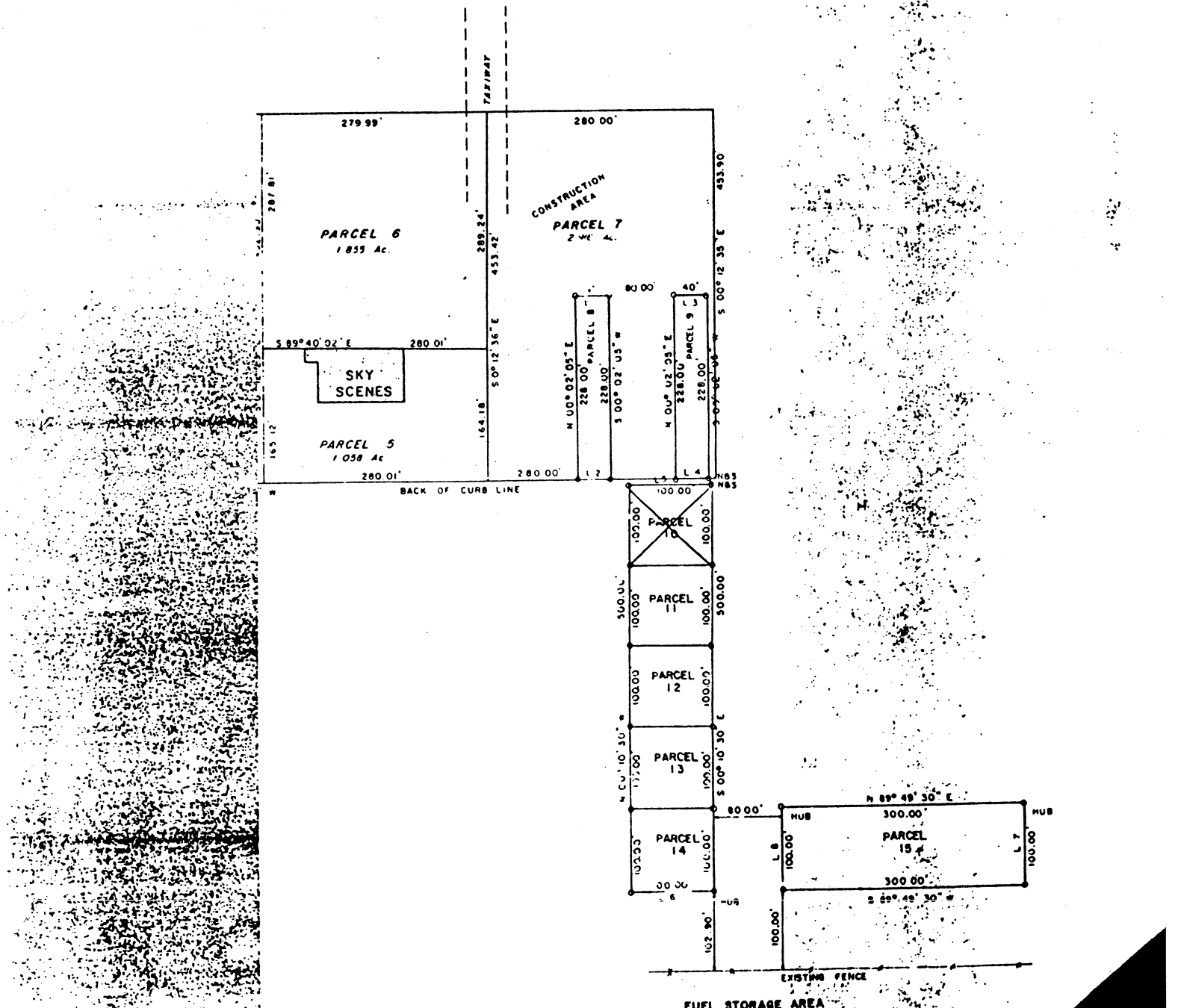
STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me this first day of August, 1985, by Miles W. Malone.

Johnnie Tittle
Notary Public

My Commission Expires: July 6, 1988

LINE	BEARING	DISTANCE
1	S 89°57'55" E	40.00
2	N 89°57'55" W	40.00
3	S 89°57'55" E	40.00
4	N 89°57'55" W	40.00
5	N 89°49'30" E	100.00
6	S 89°49'30" W	100.00
7	S 00°10'30" E	100.00
8	N 00°10'30" W	100.00



REVISED AIRPORT LEASE PARCEL 10

A parcel of land situate in the northwest quarter of Section 26, T.23S., R.1W., N.M.P.M., Dona Ana County, New Mexico; within the limits of the Las Cruces International Airport; more particularly described as follows:

Beginning at the northeast corner of the herein described parcel, whence the northwest corner of Section 26 bears N 57 deg. 08' 31" W 2013.30 feet;

Thence S 00 deg. 10' 30" E 100.00 feet;

Thence S 89 deg. 49' 30" W 130.26 feet;

Thence N 00 deg. 10' 30" W 100.00 feet;

Thence N 89 deg. 49' 30" E 130.26 feet to the beginning corner;

Containing 13026 square feet (0.299 Acre) more or less.

RESOLUTION NO. 86-115

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF LAS CRUCES TO SIGN AN ASSIGNMENT OF LEASE IN FAVOR OF WAYNE WALLACE FOR A PORTION OF A LEASE BETWEEN THE CITY OF LAS CRUCES AND AIRSPACE, INC.

The City Council is informed that:

Airspace, Inc., executed a lease agreement with the City of Las Cruces on May 20, 1985. Paragraph 19 of the lease provides that the City may assign the lease.

Airspace, Inc., has requested that the City assign a portion of the lease, that portion being Parcel 10, to Wayne Wallace.

THEREFORE, The City Council of the City of Las Cruces, New Mexico, determines, resolves and orders as follows:

I

THAT the Mayor is hereby authorized to sign the assignment of lease in favor of Wayne Wallace for a portion of the lease between the City of Las Cruces and Airspace, Inc., that portion being all of Parcel 10, as shown on the attached map marked Exhibit "A" and made a part thereof.

II

THAT City staff and officials are hereby authorized and directed to execute appropriate documentation and to do all acts and deeds necessary in the accomplishment of the hereinabove.

DONE AND APPROVED this 16 day of December, 1985.

MAYOR

ATTEST:

CITY CLERK

(SEAL)

Moved by: Gunaji

Seconded by: Barba

VOTE:
Councillor Ferralez: Aye
Councillor Gunaji: Aye
Councillor Barba: Aye
Councillor Valencia: Aye
Councillor Shelley: Aye
Councillor Tomlin: Aye
Councillor Steinborn: Aye

APPROVED AS TO FORM:

CITY ATTORNEY

February 9, 2010

Lisa Murphy
Airport Manager
City of Las Cruces
P.O. Box 20000
Las Cruces, NM 88004

Dear Ms. Murphy,

I am writing to request thirty (30) year lease agreements with two five year options at the current rental rates for the following parcels at the Las Cruces Airport:

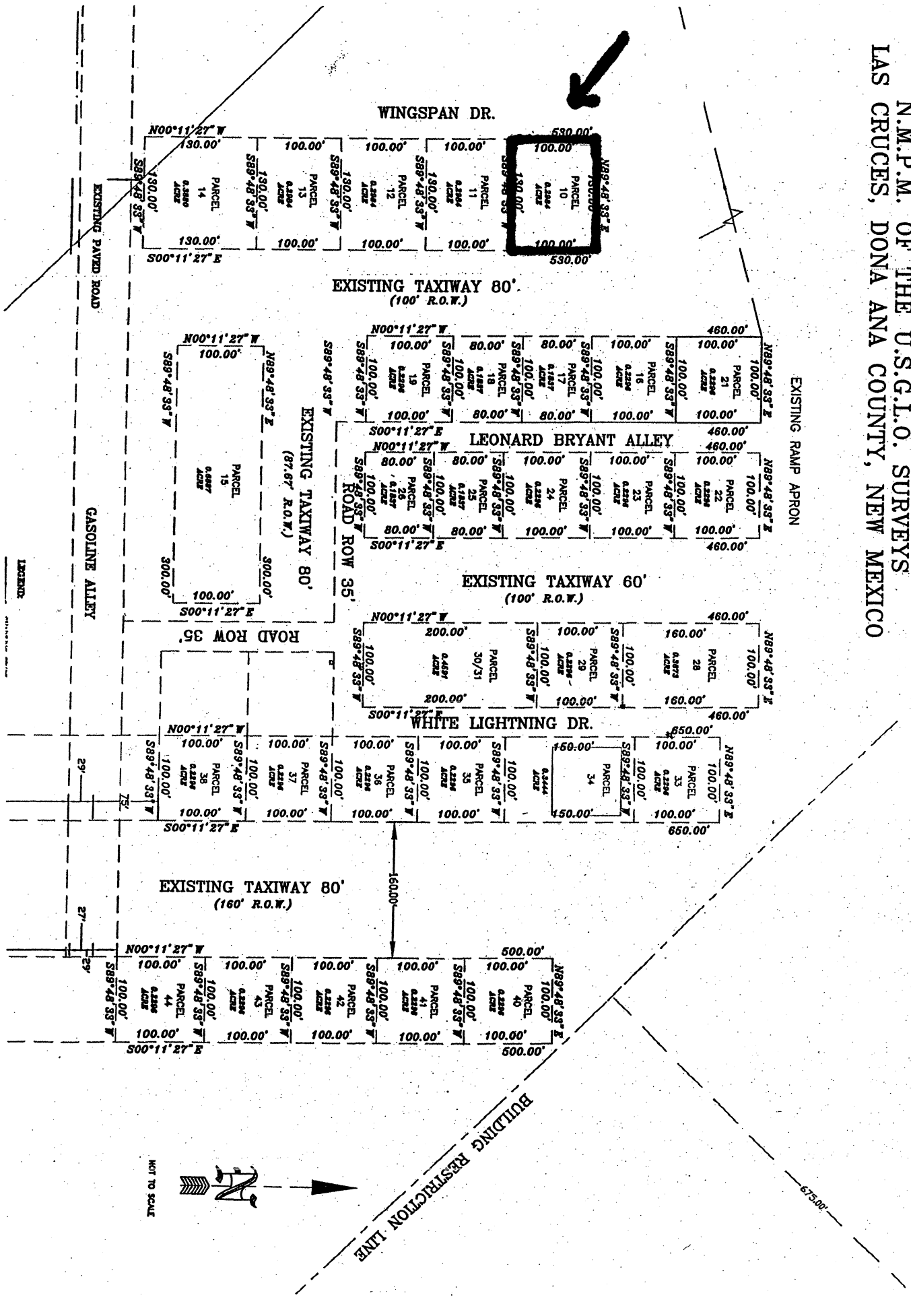
Parcel 10 Wayne Wallace
Parcel 16 Wallace-Westwind, Inc.

Thank you for your consideration.

Yours truly,

Wayne Wallace

p.o. box 758 [redacted]
Las Cruces, New Mexico 88004

Wayne Wallace

PRELIMINARY
PLAT SHOWING LEASE PROPERTIES
AT THE LAS CRUCES INTERNATIONAL AIRPORT
NW 1/4 OF SECTION 26, T.23S., R.1W.,
N.M.P.M. OF THE U.S.G.L.O. SURVEYS
LAS CRUCES, DONA ANA COUNTY, NEW MEXICO