City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 4 **Ordinance/Resolution#** 14-086

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of November 4, 2013 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: **A RESOLUTION AUTHORIZING AN ASSIGNMENT OF LAND LEASE FOR PARCEL 33 AT THE LAS CRUCES INTERNATIONAL AIRPORT FROM MMMR, LLC TO STUART M. HUTSON.**

PURPOSE(S) OF ACTION:

To authorize an assignment of land lease.

COUNCIL DISTRICT: 4		
Drafter/Staff Contact: Cheryl Rodriguez	**Department/Section:** Transportation/Airport	**Phone:** 541-2471
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

MMMR, LLC currently holds a land lease from the City of Las Cruces for Parcel 33 at the Las Cruces International Airport. The lease was originally approved on November 3, 2003 by Resolution No. 04-148. An amendment to the lease was approved on May 2, 2005 by Resolution No. 05-316. This amendment established a commencement and termination date for the lease, and also tied the time restrictions for the construction of the hangar to the completion of the taxiway in front of their parcel. An assignment of land lease from Michelle Gutierrez and Mark Lawrence to MMMR, LLC was approved on December 5, 2005 by Resolution No. 06-185. A 3,600 square foot hangar was constructed on the parcel.

The term of the land lease is 20 years running from May 1, 2005 through April 30, 2025, with 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. The terms of the lease permit assignment of the lease with City Council approval. MMMR, LLC has made such a request.

The assignee would be Stuart M. Hutson. The assignment of lease would permit Mr. Hutson to obtain Parcel 33 and all improvements thereon from MMMR, LLC with all terms and conditions of the lease remaining the same as the original.

(Continue on additional sheets as required)

The Airport Advisory Board (AAB) unanimously recommended approval of the lease assignment at their October 17, 2013 meeting.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Assignment of Lease, Legal Description, and Parcel Map.
3. Attachment "A", Original Lease with Lease Amendment and Assignment of Lease.
4. Attachment "B", E-mail from Mr. Russell Dent requesting the assignment of Lease.
5. Attachment "C", Draft Minutes from October 17, 2013 Airport Advisory Board Meeting.

SOURCE OF FUNDING:

Is this action already budgeted?			
N/A	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: _____ in the amount of ____ for FY14.
	No	☒	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

(Continue on additional sheets as required)

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will authorize MMMR, LLC to assign the land lease for Parcel 33 to Mr. Stuart M. Hutson.
2. Vote "No"; this will not authorize MMMR, LLC to assign the land lease for Parcel 33 to Mr. Stuart M. Hutson.
3. Vote to "Amend" the Resolution as deemed appropriate.
4. Vote to "Table" and direct staff accordingly.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Resolution No. 04-148
2. Resolution No. 05-316
3. Resolution No. 06-185

(Continue on additional sheets as required)

RESOLUTION NO. 14-086

A RESOLUTION AUTHORIZING AN ASSIGNMENT OF LAND LEASE FOR PARCEL 33 AT THE LAS CRUCES INTERNATIONAL AIRPORT FROM MMMR, LLC TO STUART M. HUTSON.

The City Council is informed that:

WHEREAS, Michelle Gutierrez and Mark Lawrence (Lessee) executed a lease agreement with the City of Las Cruces on November 3, 2003 pursuant to Resolution 04-148; and

WHEREAS, Michelle Gutierrez and Mark Lawrence requested an assignment of lease to MMMR, LLC on December 5, 2005 pursuant to Resolution 06-185; and

WHEREAS, Exhibit "C" Section 3a of the lease provides that the Lessee may request an assignment of lease and that such approval will not be unreasonably withheld by the City; and

WHEREAS, Mr. Russell Dent, representing MMMR, LLC, has asked that the City approve assignment of the lease to Stuart M. Hutson.

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

(I)

THAT the Mayor of the City of Las Cruces is hereby authorized to sign the assignment of lease currently held by MMMR, LLC to Stuart M. Hutson, attached hereto as Exhibit "A" and made a part of this Resolution.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2013.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

Exhibit "A"

ASSIGNMENT OF LEASE

RUSSELL DENT on behalf of MMMR, LLC, assignor herein and lessee of premises described as follows:

> A portion of the lease, that portion being all of Parcel 33 as shown on the attached map marked Exhibit "B" and described in Exhibit "B" of the original lease and made a part hereof,

which was demised by a lease designated to MMMR, LLC, by the Las Cruces City Council Resolution 06-185 on December 5, 2005. STUART M. HUTSON, assignee of the lease accepts the assignment and shall perform all the terms and conditions thereof, including payment of all rent applying to Parcel 33 required by the provisions of the lease. Assignee shall enjoy the same right and power to assign the lease as assignor enjoyed under the lease.

The CITY OF LAS CRUCES, NEW MEXICO, a municipal corporation, lessor under the lease, consents to the assignment of the lease to assignee, but does not waive any rights against assignor that lessor has under the lease.

In witness whereof, the parties have executed this assignment at Las Cruces, New Mexico the _____ day of _____, 2013.

RUSSELL DENT on behalf of MMMR, LLC,
Assignor

_____

ATTEST:

_____
(Seal)

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Russell Dent, on behalf of MMMR, LLC.

_____
Notary Public

My Commission Expires:

_____

Stuart M. Hutson, Assignee

_____

ATTEST:

_____
(Seal)

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Stuart M. Hutson.

_____
Notary Public

My Commission Expires:

_____

****

CITY OF LAS CRUCES, NEW MEXICO
A municipal corporation

By:_____
Ken Miyagishima, Mayor

ATTEST:

_____
(Seal)

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Ken Miyagishima, Mayor of the city of Las Cruces, New Mexico, a municipal corporation, on behalf of said corporation.

_____
Notary Public

My Commission Expires:

_____

Approved as to form:

_____
City Attorney

City of Las Cruces, New Mexico, International Airport. Airport Land Lease
MICHELLE GUTIERREZ AND MARK LAWRENCE, 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, Michelle Gutierrez And Mark Lawrence ("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, that certain parcel of real Property located in the NW 1/4 of Section 26, T.#23S., 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, described as Parcel 33 on the Plat Showing Lease Properties At The Las Cruces International Airport, and more particularly described in Exhibit "B" 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 twenty (20) years (hereinafter "Lease Term") commencing on the "Commencement Date," as hereinafter defined, and terminating on the twentieth (20th) anniversary of the Commencement Date. The Commencement Date shall be the 1st day of July, 2004, and the twentieth anniversary date shall be the 30 day of June, 2024 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:

a. **Earnest Money.** Lessee has made an earnest money deposit with the City of Las Cruces in the sum of Two Hundred Fifty Dollars and no cents ($250.00), which shall be part of the annual rent for the first year of the Lease. However, this fee shall revert to the City should the Lessee fail to execute this Lease within sixty (60) days of its approval by the City Council.

b. **Closing and Processing Fee.** Lessee shall pay a one-time closing and processing fee of Five Hundred Dollars and no cents ($500.00), which is due with the first annual rent payment on the Commencement Date.

c. **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 seven and one half cents ($0.075) per square foot per year which equals seven hundred fifty dollars and no cents ($750.00) for the Parcel per year for the first five years of the Initial Lease Term. The rent shall be adjusted on the fifth, tenth, and fifteenth anniversary of the Commencement Date 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 choose to renew the lease for two additional five year terms, the rent shall be the land lease rent in effect at each five year renewal. Should the lessee remain in possession of the Parcel as a hold-over Lessee, the rent shall be adjusted to the Fair Market Value of the land and building in effect after the initial lease term and the two five year renewals.

ML
(Lessee's Initials)

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.

5. **No Refunds.** Lessees 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. **Public Liability.** Lessee shall maintain general public liability insurance insuring against such claims. Such insurance shall name the City as an additional insured. This insurance shall have an aggregate limit in the minimum amount 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. **Fire and Casualty.** Lessee shall maintain property and casualty insurance covering the improvements to the Parcel, and the contents thereof. Such insurance shall be a fire insurance policy with extended coverage endorsement, including vandalism, and malicious mischief. The insurance shall be on a replacement cost basis and shall name the City as an additional insured, as its interests may appear.

c. **Proof of Insurance Required.** Such insurance shall be with a company licensed and authorized 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. Lessee shall provide the City with notice of any change thereof, and furnish to the City evidence of acquirement of a substitute therefore, and payment of the 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 charge.

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 **construction of a hangar of at least 3,600 square feet and the housing and maintaining of personal non-commercial aircraft** as well as for the construction, maintenance, and operation of said hangar in connection with these uses.

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, 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) **Proposed Improvements.** The Lessee is required to construct improvements on the Parcel as summarized in Exhibit "B", attached hereto and incorporated herein by this reference. Lessee shall begin such process with no less than submission of a building permit application to the City, not later that six (6) months following the Commencement Date of this Lease, that date being Jan 1, 2005

(3) **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.

(4) **Septic Systems.** Lessee shall be allowed to use and maintain an easement on common City Property to the east of 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.

(5) **Time Restrictions.** All building construction described in Exhibit "B" must be completed on or before the second anniversary date of the Commencement Date of the Lease, that date being July 1, 2006

(6) **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 Accepts Parcel "As-Is."** Lessee acknowledges that it has fully inspected the Parcel and hereby accepts the Parcel and any buildings, improvements and appurtenances thereto as is, in their present state and condition, as suitable for the purpose for which the same are Leased. Lessee agrees to allow for changes in such condition, occurring by reasonable deterioration between the Commencement date and the date such changes shall occur.

(2) **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.

(3) **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.

(4) **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.

(5) **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

MG MC
(Lessee's Initials)

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.

(6) **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 will, at the direction and sole discretion of the City, either remain intact on the Parcel and become the property of the City, or be removed by 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 for 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.

j. **Signs.** Lessee must obtain City consent to paint or construct any exterior signs; including approval for 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.

k. **Rest rooms.** Lessee shall maintain all rest rooms on the Parcel, or improvements thereto in a sanitary and clean condition, using proper odor control devices and providing and maintaining an adequate supply of paper towels, soap and toilet tissue.

l. **City to provide specific infrastructure.** The City warrants that it will provide a minimum fifty foot wide taxiway, the western edge of which shall be fifty five feet east of, and parallel to, the lease's east boundary, within 12 months of the lease commencement date.

8. **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

Michelle Gutierrez and Mark Lawrence
PO Box 6160
Las Cruces NM 88006

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

A. **EXHIBIT "A": LEASE APPLICATION.**

B. **EXHIBIT "B": LEGAL DESCRIPTION OF PARCEL.**

C. **EXHIBIT "C": ADDITIONAL LEASE CONDITIONS.**

D. **EXHIBIT "D": DESIGN STANDARDS FOR THE LEASEHOLD.**

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

William Mattiace, Mayor PRO TEM *(Date)*

LESSEE

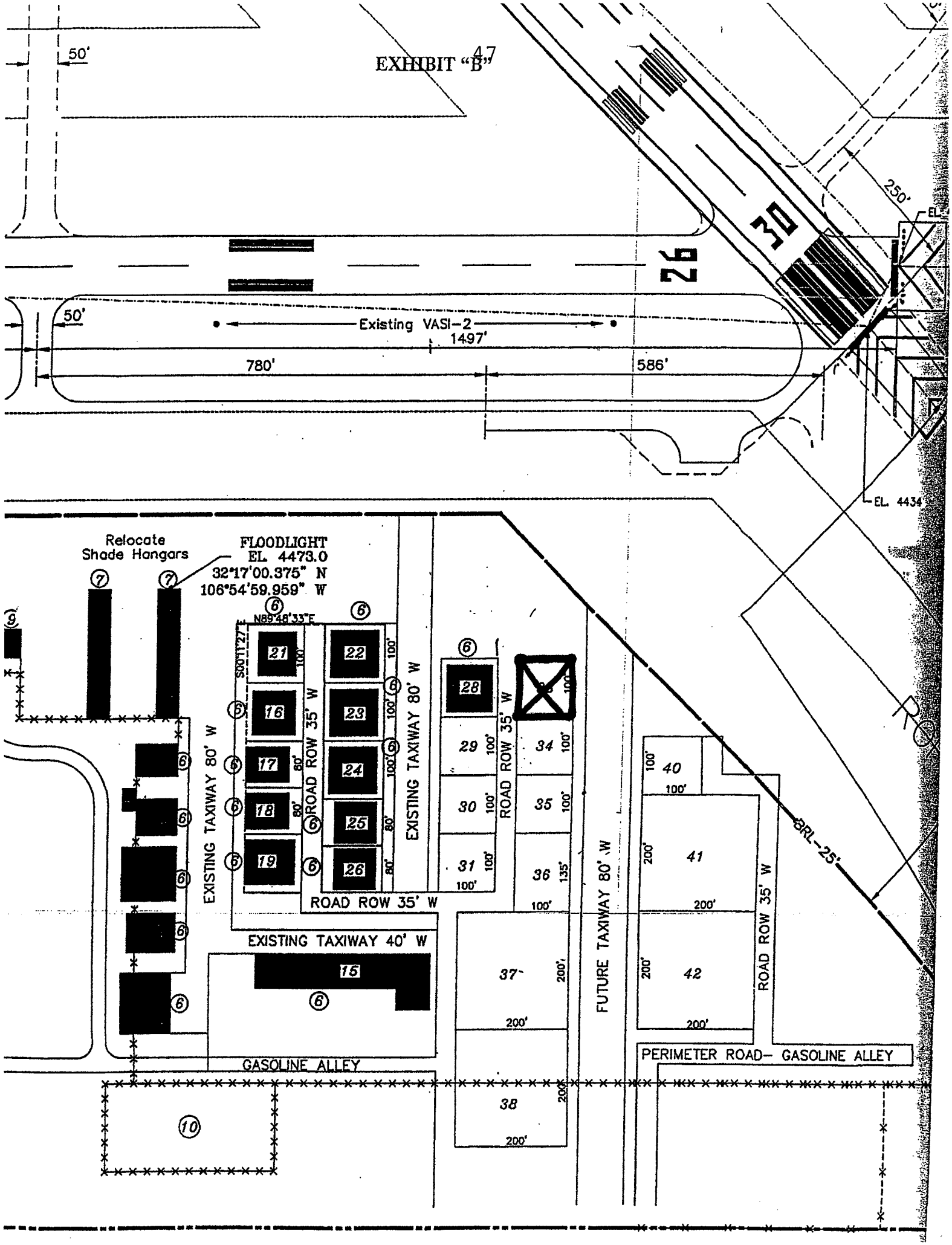
Michelle Gutierrez 11-22-03
Michelle Gutierrez *(Date)*

11-21-03
Mark Lawrence *(Date)*

Shirley Clark
CITY CLERK
(SEAL)

MG ML
(Lessee's Initials)

EXHIBIT "B"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EL. 4473.0
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106°54'59.959" W
N89°48'33"E
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EXISTING TAXIWAY 80' W
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BRL-25'
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PERIMETER ROAD- GASOLINE ALLEY
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LAS CRUCES INTERNATIONAL AIRPORT LEASE APPLICATION

RETURN THIS COMPLETED APPLICATION TO:

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

Use this Application Form to request a Lease of Land, Facilities, or Commercial Rights at the Las Cruces International Airport. Complete all blocks with the appropriate information; mark blocks "N/A" when they do not apply to your request. Continue on separate sheets if additional room is required.

1. INITIAL THE LEASE OR LEASES FOR WHICH YOU ARE APPLYING:

_____ COMMERCIAL LEASE: All persons (other than transient aircraft operators) using the Las Cruces International Airport for commercial purposes are required to enter into a non-exclusive lease agreement with the City for the right to conduct such commercial activities on City property (e.g., the Airport).

MG LAND LEASE: All persons wishing to construct improvements at the Airport must first enter into a Land Lease for a suitable Parcel. Return this form, with $250.00 earnest money to the Airport Manager who will initiate the lease approval process, which will include approval/disapproval by the City Council.

_____ FACILITY LEASE: All persons wishing to occupy City-owned improvements at the Airport must first enter into a Facility Lease for the desired facility. Return this form, with $250.00 earnest money to the Airport Manager who will initiate the lease approval process, which will include approval/disapproval by the City Council.

2. APPLICANT INFORMATION:

Name: Michelle Gutierrez + Mark Lawrence

Address: PO Box 6160
Las Cruces NM 88006

Phone: (505) 522-4151

Fax: (_____) _____-_____

E-mail: mlgutierrez@zianet.com

If applying as a business or other legal entity: Business Name: _____

President/CEO: _____ .d.b.a. _____

3. ACTIVITIES PROPOSED: Initial activities proposed to be conducted. For commercial activities, you will be required to conduct those activities proposed, and must also obtain a City of Las Cruces Business Registration, when required by law.

_____ Customer Services:
- _____ Food services including catering, restaurants, etc.
- _____ Temporary lodging, such as hotel and motel operations.
- _____ Transportation services, such as rental cars, shuttle buses, and taxies.

_____ Airline Operations:
- _____ Air Carrier or Air Taxi Operations.
- _____ Transportation of cargo and/or mail by aircraft.
- _____ Other scheduled air transportation services or patrol activities.

_____ Aircraft Support Services:
- _____ Aircraft manufacture, maintenance, repair and storage (as defined by the FARs):
  - _____ Aircraft painting and/or washing using chemicals.
  - _____ Aircraft major and minor repair and maintenance.
  - _____ Manufacture, repair, or reconditioning of either new and/or used aircraft and/or parts.
  - _____ Specialized repair services for aircraft appliances or aircraft components.
  - _____ Warranty or guarantee service or supply.
- _____ Flammable liquid storage and/or sales.
- _____ Preventive Maintenance for aircraft.
- _____ Sales, leasing, financing, insuring and/or brokerage of aircraft, airframes, engines, and/or other aeronautical items.
- _____ Storage of aircraft and parts.

_____ Line Services (see Commercial Policy).

_____ On-Demand Flying Services:
- _____ Aerial photography or survey.
- _____ Agricultural operations (including "crop dusting").
- _____ Aircraft Charter operations for any purpose.
- _____ Aircraft rental to the public.
- _____ Banner towing.
- _____ Corporate Flight Operations.
- _____ Dropping objects from aircraft.
- _____ Fire fighting (water and chemical applications) and 'smoke jumping'.
- _____ Pilot instruction conducted independently of an FAR Part 141 certified flight school.
- _____ Pilot Schools conducted in accordance with FAR Part 141.
- _____ Parachute jumping.
- _____ Sightseeing flights.

X Other (list): Hanger Private A/C

_____ _____

_____ _____

The City Council may elect to review any application for approval, modification, or disapproval.

MG
(Applicants Initials)

LAS CRUCES INTERNATIONAL AIRPORT LEASE APPLICATION

4. Aircraft to be based on the Leasehold (if any):

Class	Category	How Many	Proposed Use

5. Toxic or hazardous chemicals/substances, subject to regulation, permitting, and inspection by the EPA or NM State Environment Department, to be used/stored on the leasehold or other location on the Airport:

N/A

6. Briefly Describe Your Proposed Land or Facility Requirements and Location on the Airport:

Parcel 33 100' x 100'

7. FOR FACILITY LEASES ONLY: What Lease Terms do You Desire:

_____ Maximum. Initial Term: One (1) year, with four (4) one (1) year optional extended terms.

_____ Other. Describe:

8. FOR LAND LEASES ONLY: Briefly Describe the Proposed Improvements You Plan to Construct:

Add 60 x 60 A/C Hanger

The City Council may elect to review any application for approval, modification, or disapproval.

NB
(Applicants Initials)

LAS CRUCES INTERNATIONAL AIRPORT LEASE APPLICATION

9. FOR COMMERCIAL LEASES ONLY:

- What is Your Proposed Occupancy on the Airport?

_____ Tenant of the City _____ Sub-let from another Lessee or Tenant _____ Non-Resident ("Through-the-Fence")

- City of Las Cruces Business Registration/License Number: _____ Expiration Date: _____.

- List any Positions Which Will Require FAA or EPA Certification or Licensure:

Number	Job Title	License or Certificate Required
_____	_____	_____
_____	_____	_____
_____	_____	_____

- List the Hours of Proposed Operation for Your Business. You will be Required to Operate No Less Than at Those Times Listed. (FBOs offering Line Services must be open 7:00 a.m. - 7:00 p.m. daily):

Monday:	_____ or 24 HOURS	Friday:	_____ or 24 HOURS
Tuesday:	_____ or 24 HOURS	Saturday:	_____ or 24 HOURS
Wednesday:	_____ or 24 HOURS	Sunday:	_____ or 24 HOURS
Thursday:	_____ or 24 HOURS	Holidays:	_____ or 24 HOURS

10. Amount and Types of Insurance Coverage to be Obtained (see current Airport Policies for required coverage):

TYPE INSURANCE	MINIMUM AMOUNTS		AMOUNT TO BE OBTAINED
General Liability:	Each Incident	$1,000,000	1,000,000
Fire Casualty:	Each Accident	$ 300,000	300,000
Environmental Remediation:	Each Incident	$1,000,000	
Other:			

APPLICANT'S CERTIFICATION: The above application is true and complete to the best of my knowledge.

10-02-02
(Date of Application)

Michelle Gutierrez
(Printed or typed Name of Applicant)

(Signature of Applicant)

Return this form to the Airport Manager for processing, with the following attached:

- Any additional information continued from the application, referenced by question number.
- Proof of Insurance.
- If sub-letting, a copy of the sub-letting agreement.
- If operating an FAA Certified business, a copy of the Certificate.

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(Applicants Initials)

LAS CRUCES INTERNATIONAL AIRPORT LEASE APPLICATION

CONTINUATION SHEET.

Please continue any narrative from the application on this page.
Please reference your continuation by number.
Please attach additional continuation pages as required.

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(Applicants Initials)

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

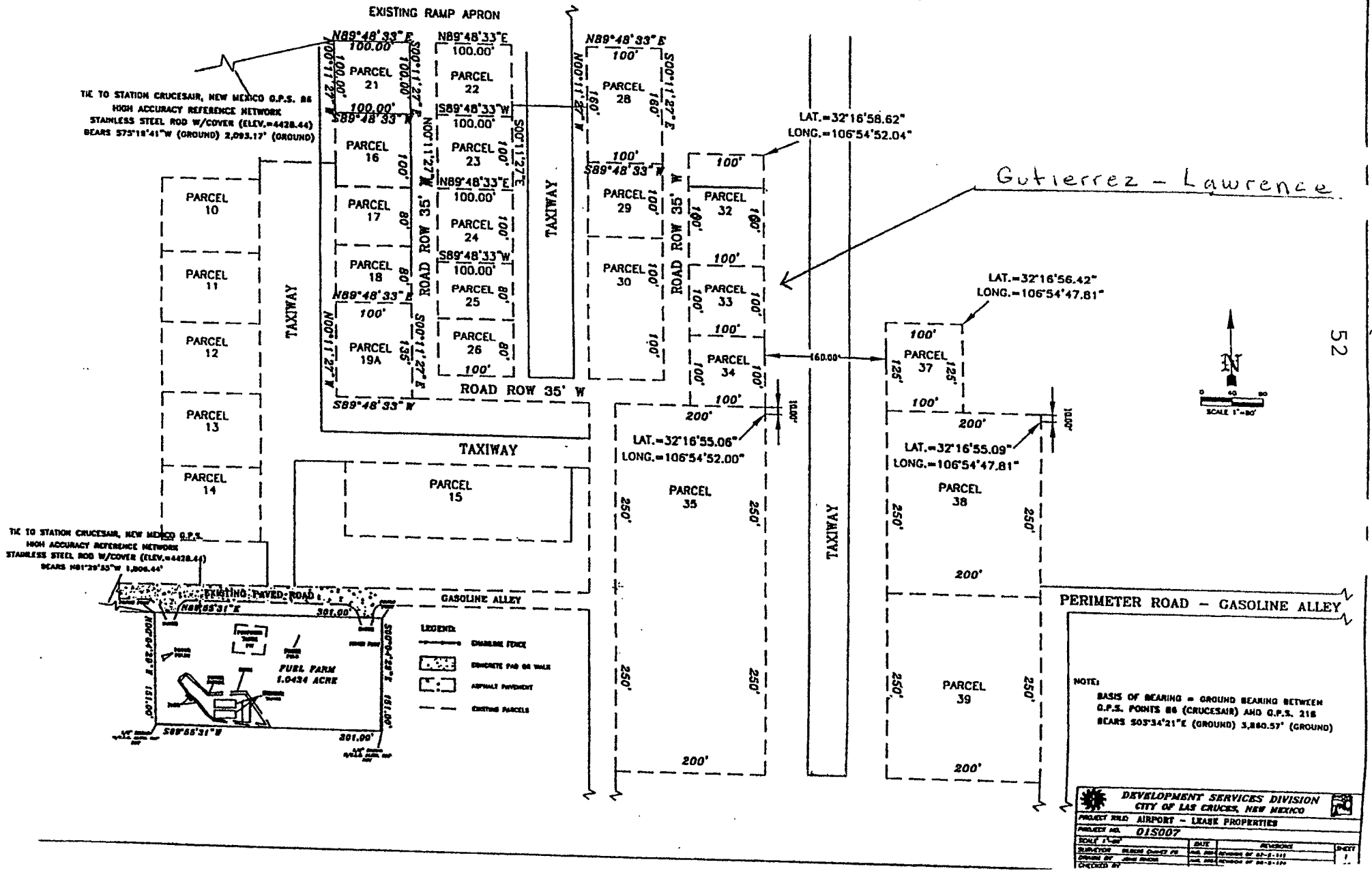

Exhibit B

EXHIBIT C
City of Las Cruces, New Mexico, International Airport.
Additional Lease Conditions. MICHELLE GUTIERREZ AND MARK LAWRENCE , LESSEE

1. 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.

2. Obey Federal Non-Discrimination Requirements. Lessee, itself and its successors in interest, and assigns, will abide by the following requirements of the various federal statutes affecting the Airport:

a. No Discrimination in Service. Furnish services on a fair, equal, and not unjustly discriminatory basis to all users thereof. No person on the grounds of race, sex, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said business. Further, that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, sex, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

b. No Discrimination in Pricing. Charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided, that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. Comply with Federal Law. Lessee shall conduct business in compliance with all other requirements imposed by or pursuant to 48 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation and as said Regulation may be amended.

d. No Exclusive Rights Granted. Lessee agrees that no exclusive right for the use of the Airport by any persons is intended or implied by this document.

3. 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. 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.

4. 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.

EXHIBIT C
City of Las Cruces, New Mexico, International Airport.
Additional Lease Conditions. MICHELLE GUTIERREZ AND MARK LAWRENCE , LESSEE

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 thirty (30) 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 fifth notice of default within any 36 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.

5. **Relinquishment And Termination.** At any time, upon forty-five (45) days prior written notice, provided all rentals, fees and assessments then due and owing have been fully paid and Lessee is not in default under this Lease, Lessee may relinquish this Lease to the City whereupon the Lease shall be terminated. Lessee shall not be entitled to a refund of any rentals or fees of any kind paid.

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

a. **Reasonable Substitute to be Provided.** In the event such development interferes with the Lessee's customary use of the Airport for business purposes, the City shall make available a reasonable substitute location or process.

b. **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.

c. **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.

d. **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).

7. **Destruction o f F acilities.** If the Airport is so damaged by casualty, without Lessee's fault, so as to effectively constitute a total destruction of the Airport, this Lease shall terminate and the rent shall be apportioned to the time of the damage. In all other cases of damage without Lessee's fault, the City shall repair the damage with reasonable dispatch, and if the damage has rendered the Airport wholly untenable, the rent shall be apportioned until the damaged is repaired. In determining what constitutes reasonable dispatch, consideration shall be give to delays caused by strikes, adjustment of insurance, and other causes beyond the City's control.

8. **Scope Of Agreement.** This Lease incorporates all the previous and current agreements, covenants, and understandings between City and Lessee concerning the use of the Airport. However, any future regulation of the Airport by law, code, regulation or other instrument of law binding upon the Airport or any operation thereon shall also apply to the Lessee. This Lease does not incorporate or supersede any other Lease of real property for the exclusive use of the Lessee.

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

10. **Only Signed Waivers Apply.** No waiver of any breach or default by a Lessee of any of the terms, conditions or covenants of the Lease shall be held to be a waiver of any subsequent breach. No waiver shall be valid or binding unless the same is in writing and signed by the City.

EXHIBIT C
City of Las Cruces, New Mexico, International Airport.
Additional Lease Conditions. MICHELLE GUTIERREZ AND MARK LAWRENCE , LESSEE

11. **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.

12. **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. This subordination includes, but is not limited to the following:

a. **When Required to Obtain Federal Funding.** Conditions precedent to the expenditure of federal funds for the development of the Airport.

b. **During Time of War or National Emergency.** The City may transfer of the landing area, or any part thereof, to the United States for military or naval use during times of war or national emergency.

13. **Indemnify the City.** Lessees shall save and hold harmless, indemnify and defend the City of Las Cruces, its elected officials, employees and agents, in their official and individual capacities, of and from any and all liabilities, claims, losses, or damages arising out of, or alleged to arise out of, or indirectly connected with the negligent operations of the Lessee under this Lease, or arising out of the presence at the place of business, or improvements thereto, of any agent, guest, customer, supplier, contractor or subcontractor of Lessee. The amounts of insurance maintained by the Lessee shall not be deemed a limitation on Lessee's agreement to indemnify the City. If the City becomes liable for Lessee's act in an amount in excess of the insurance, Lessee shall indemnify the City for the whole thereof.

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.

EXHIBIT C
City of Las Cruces, New Mexico, International Airport.
Additional Lease Conditions. MICHELLE GUTIERREZ AND MARK LAWRENCE , LESSEE

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 free access, ingress to and egress from those parts of the Airport authorized for the Lessee's use by this Lease. 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 shall be substituted and concurrently made available.

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. **Paragraph Titles and Gender.** The titles given to the paragraphs in this document are inserted for reference purposes only and are not to be considered as forming a part of the document in interpreting its provisions. All words used in this document in any gender shall extend to and include all genders and in numbers when the context or facts so require, and any pronouns shall be taken to refer to the person or persons intended regardless of gender or number.

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EXHIBIT C
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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. Paragraph Titles and Gender. The titles given to the paragraphs in this document are inserted for reference purposes only and are not to be considered as forming a part of the document in interpreting its provisions. All words used in this document in any gender shall extend to and include all genders and in numbers when the context or facts so require, and any pronouns shall be taken to refer to the person or persons intended regardless of gender or number.

EXHIBIT "D"

City of Las Cruces, New Mexico, International Airport. Design Standards for Improvements.

MICHELLE GUTIERREZ AND MARK LAWRENCE , LESSEE

1. **Design Standards.**

a. **Setbacks from Aircraft Operating Surfaces.** No above ground portion of any building nor any fences, landscaping, or walls taller than 24 inches shall be placed within twenty (20) feet of any taxiway.

b. **Landscaping.** All landscaping shall be designed to discourage the nesting and aggregation of birds and animals.

c. **Exterior Lighting.** Obstruction lighting shall be installed when required to meet FAA safety standards. Exterior illumination, including that in illuminated signs, shall never be angled above the horizontal, nor extend into flight patterns or other aircraft operating surfaces, unless designed and approved specifically for the purpose of aiding aircraft navigation or safety. Area lighting of buildings, vehicle parking areas and walkways shall be shielded so as not to shine above the horizontal, and shall not produce glare on adjacent streets, aircraft operating surfaces, or building sites.

d. **Off-Street Parking and Loading.** Off-street parking shall be required as per the City Zoning Code. No truck loading or unloading area shall be located on a building wall fronting on a major arterial or collector, or in the front setback of the Property.

e. **Utility Construction.** All utilities to be constructed at the Airport including water, wastewater, natural gas, telephone, electric and cable TV, shall be constructed underground from the point of service to the parcel or improvement thereon.

f. **Architectural Standards.**

(1) Improvements on parcels bordering the West Mesa Industrial Park, or fronting Crawford Boulevard, shall adhere to the West Mesa Industrial Park Overlay Zone.

(2) **Hangars.**

a. Stand-alone hangars (one single open bay) shall contain no less than 3,600 square feet of total floor area, including aircraft parking space capable of containing, with the entry door closed, an aircraft with a wingspan of 41 feet, a nose-to-tail length of 35 feet, and a tail height of 13 feet. The aircraft entry door shall open no less than 44 feet wide and 14 feet high.

b. Multiple bay hangars (T-Hangars and the like) shall have no fewer than five bays. Each bay shall be capable of containing, with the entry door closed, an aircraft with no less than the following dimensions: Wingspan of 37 feet, nose-to-tail length of 29 feet, and tail height of 11 feet. Each bay shall have an aircraft entry door which shall open no less than 40 feet wide and 12 feet high.

c. All hangars shall be commercial grade metal buildings, but shall be painted, or permanently colored by manufacture. Natural metal is not acceptable as a finish. Hangars shall have a reinforced concrete pad no less than four (4) inches thick as a floor, and weatherproof, closing aircraft entry doors, and be provided with electrical service. Each stand-alone or T-hangar building shall have water service, fire extinguishers and other protection required by the City Fire Code.

d. Each hangar shall have an emergency eyewash and shower for chemical accidents. For stand-alone hangars, this may be located inside or on the exterior of the hangar. For multiple-bay hangars, this emergency facility shall be mounted on the exterior of the hangar, and there shall be at least one clearly marked facility located on at least one end of the building.

e. All hangars shall be connected to the Airport's paved aircraft movement surfaces by a paved surface, matching the grade of the aircraft movement surface, and no less **than 25 feet** wide, and of construction suitable for the type of aircraft hangared, but no less than two (2) inches of asphalt over a six (6) inch base course of 95% compaction, or four (4) inches of reinforced concrete.

(3) **Standards for Buildings fronting Zia Boulevard, Wingspan Drive, Gasoline Alley or Crawford Drive.**

a. The sides of all buildings facing any street shall be faced with concrete or brick masonry, stone, or other material approved by the City. The facing shall be to a minimum height of four (4) feet and extend across the full front of the building.

b. Those other sides of the building not facing streets shall be finished in an attractive manner in keeping with the accepted standards used for industrial buildings.

h. **Height of Buildings.** Buildings shall not exceed a height which penetrates the FAR Part 77 planar surfaces. Lessee shall adhere to FAR Part 77 requirements for notice of construction, including submission of FAA Forms 7460-1 "Notice of Proposed Construction of Alteration" prior to beginning construction.

i. **Wind Resistance.** All buildings shall be designed to withstand winds of eighty-five (85) miles per hour.

j. **Aircraft Parking Areas and Aprons.** All aircraft parking surfaces shall be paved. Such surfaces shall be either reinforced concrete of no less that four (4) inches in thickness, or asphalt of no less than two (2) inches of asphalt with six (6) inches of base course with 95% compaction.

k. **Minimum Improvement Areas.**

(1) Each parcel adjoining the aircraft operating surfaces upon which buildings are to be constructed, shall be developed so that the buildings cover no less than 36% of the parcel.

(2) Each parcel upon which aircraft parking areas are to be established shall be developed so that those surfaces cover no less than 75% of the parcel, including that area upon which buildings are constructed. In addition, all such aircraft parking areas shall be connected to the established aircraft movement areas with a taxiway or direct abutment no less than 40 feet wide and constructed to the same standards as the apron.

l. **Limit Erosion.** The City encourages all Lessees or Tenants to limit grading and clearing activities on a site to the actual physical area planned for facility development, to limit soil erosion and blowing sand and dust.

m. **Seasonal Restrictions.** The City may, in the approval of the building and site permits, impose any reasonable condition on activities, such as landscaping, or regulation of grading during certain months of the year, to mitigate the effects of the activity's appearance, noise, traffic, dust and similar impacts.

2. **Maintenance.**

a. **Orderliness.** Lessees and Tenants shall keep and maintain the buildings, structures, parking areas, landscaping, signs and other improvements to the Airport under their care or control in an orderly and well maintained condition.

b. **Blowing Dust to be Controlled.** All areas of disturbed earth not in landscaped areas shall be maintained with ground cover plants and grasses to reduce blowing dust.

c. **Outside Storage and Trash.** All rubbish, trash, garbage, debris and other wastes, all loading docks and garbage collection facilities, and all other articles, goods, materials, incinerators, trash bins, storage tanks or like equipment shall be stored at the side or rear of the building and the improvements with which same are associated. All such storage shall be screened from public view or from a view from adjacent buildings in a manner approved in writing by the Airport Manager. Screening materials shall be maintained in a sound and sightly condition and be constructed and designed in such a manner so that they equal a height equal to that of the materials or equipment being stored but in no event less than four (4) feet in height.

d. **Hazardous Materials.** All storage of toxic or hazardous materials and waste will be in accordance with environmental statutes and regulations, and shall be protected from inadvertent public access (by fencing, under lock and key, etc.).

e. **Security.** When a parcel or proposed improvement is located in such a position as to form the boundary of a legally required safety or security perimeter, the Lessee may be required to construct and maintain the required barrier. The lessee shall permit the City to construct any such barrier without interference.

3. **Temporary Structures.** No temporary building or structure other than construction offices and structures for related purposes during the construction period shall be installed or maintained on any Building Site without the prior written approval of the Airport Manager. All temporary structures used for construction purposes must receive approval by the Airport Manager with regard to location and appearance. All such buildings shall be removed promptly upon completion of construction and that portion of the Building Site from which same are removed, restored to its original condition or to such condition as is otherwise required by these standards.

Airport Land Lease Amendment
City of Las Cruces, New Mexico, International Airport.
MICHELLE GUTIERREZ AND MARK LAWRENCE, LESSEE

This Amendment to the Airport Land Lease is made by and between the City of Las Cruces (Lessor), and Michelle Gutierrez and Mark Lawrence (Lessee).

Recitals

1. The parties executed the Airport land lease (the Lease) on March 15, 2004.

2. The lessee's performance pursuant to the lease has become impossible in that;

A. It cannot construct the improvements as set forth in Paragraph 7. d. (2) of the Lease because it cannot access the leased area as described in paragraph 1. of the Lease.

B. Without access to the leased area it cannot have quiet enjoyment of said area as set forth in paragraph 7. and 7. a. of the Lease.

C. Lessor is unable to guarantee that it can construct the specific infrastructure within the time constraints as set forth in paragraph 7.J of the Lease.

3. The matters set forth in Recital paragraphs A and B above have created a dispute between Lessor and Lessee concerning the rent as set forth in Rent Payments in paragraph 3.c. of the Lease.

4. In order to amicably resolve the dispute and to clarify the lease terms, the parties desire to amend the Lease.

Now, Therefore, it is mutually agreed as follows:

1. Paragraph 2. a. of the Lease is stricken and a new paragraph 2.a. is hereby inserted in the Lease to read as follows:

> **2. Terms. a. Initial Lease Term.** The term of this Lease shall be twenty (20) years (hereinafter "Lease Term") commencing on the "Commencement Date," as hereinafter defined, and terminating twenty years from the commencement date. The commencement date being the first day of May, 2005, and the termination date shall be the 30th day of April, 2025. Possession of the Parcel by the lessee shall begin on the date that this amendment is executed.

2. Paragraph 7. d. (2) of the Lease is stricken and a new paragraph 7.d. (2) is hereby inserted in the Lease to read as follows:

MG ML
(Lessee's Initials)

7. Quiet Enjoyment. d. Construction and Ownership of Improvements.

(2) Proposed Improvements. The Lessee is required to construct improvements on the Parcel in accordance with Exhibit "B", Design Standards for Improvements attached hereto and incorporated herein by reference. Lessee shall commence such process by submitting a building permit application to the Lessor, not later that six (6) months following the completion of the taxiway by Lessor. The completion date is the first day of the month following the Lessor's receipt of a Certificate of Completion or similar document proving completion of the taxiway.

3. Paragraph 7. d. (5) of the Lease is stricken and a new paragraph 7.d. (5) is hereby inserted in the Lease to read as follows:

(5) Time Restrictions. Construction by Lessee of a minimum 3600 square foot Hangar in accordance with Exhibit "B". The Hanger construction shall be completed by Lessee on or before the second anniversary date of the Completion of the taxiway, as set forth in paragraph 7.(d).2 above.

4. Paragraph 7. d. (6) of the Lease is stricken and a new paragraph 7.d. (6) is hereby inserted in the Lease to read as follows:

(6) 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, initial construction of a 3600 square foot hangar must be completed within two years of completion of the taxiway.

5. Paragraph 7. j. of the Lease is stricken from the Lease.

6. All other terms and conditions of the lease except as specified in this amendment remain in force and effective.

7. This Lease amendment resolves any and all disputes between the parties concerning the lease up to the date of execution of this amendment.

MG ML
(Lessee's Initials)

Airport Land Lease Amendment
City of Las Cruces, New Mexico, International Airport
MICHELLE GUTIERREZ AND MARK LAWRENCE, LESSEE

IN WITNESS WHEREOF, City and Lessee have executed the Lease to be in effect as of the later date set forth below.

CITY OF LAS CRUCES, LESSOR

William Mattiace, Mayor

(Signature) (Date) 5/16/05

LESSEE

Michelle Gutierrez

(Signature) (Date) 5-6-05

Mark Lawrence

(Signature) (Date) 5-6-05

Shirley Clark
City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney

This amendment is a draft, subject to legal review and the City of Las Cruces City Council Approval.

MG mc
(Lessee's Initials)

ASSIGNMENT OF LEASE

Michelle Gutierrez and Mark Lawrence, private individuals, assignor herein and lessee of premises described as follows:

A portion of the lease, that portion being all of Parcel 33 as shown on the attached map marked Exhibit "A" and made a part hereof,

which was demised by a lease designated to MICHELLE GUTIERREZ and MARK LAWRENCE by the Las Cruces City Council Resolution 05-316 on May 2, 2005. MMMR, LLC, assignee of the lease accepts the assignment and shall perform all the terms and conditions thereof, including payment of all rent applying to Parcel 33 required by the provisions of the Lease. Assignee shall enjoy the same right and power to assign the lease as assignor enjoyed under the lease.

The CITY OF LAS CRUCES, NEW MEXICO, a municipal corporation, lessor under the lease, consents to the assignment of the lease to assignee, but does not waive any rights against assignor that lessor has under the lease.

In witness whereof, the parties have executed this assignment at Las Cruces, New Mexico the 16th day of December, 2005.

MICHELLE GUTIERREZ, a private individual
Assignor

MARK LAWRENCE, a private individual
Assignor

ATTEST:

(Seal)

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

The foregoing instrument was acknowledged before me this 16th day of December, 2005, by Michelle Gutierrez and Mark Lawrence.

Esther Martinez
Notary Public

July 15, 2008

My Commission Expires:

July 15, 2008

MICHELLE GUTIERREZ, Assignee

MARK LAWRENCE, Assignee

RUSSELL DENT, Assignee

MARNIE DENT, Assignee

ATTEST:

(Seal)

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

The foregoing instrument was acknowledged before me this 16th day of December, 2005, by Michelle Gutierrez, Mark Lawrence, Russell Dent, and Marnie Dent.

Notary Public

My Commission Expires:

July 15, 2008

****

CITY OF LAS CRUCES, NEW MEXICO
A municipal corporation

July 15, 2008

By:
William Mattiace, Mayor

ATTEST:

Shirley Clark
(Seal)

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

The foregoing instrument was acknowledged before me this 7th day of December, 2005, by William Mattiace, Mayor of the city of Las Cruces, New Mexico, a municipal corporation, on behalf of said corporation.

Yolanda M. Valenzuela
Notary Public

My Commission Expires:

January 20, 2008

Approved as to form:

City Attorney

Attachment "B"

Cheryl Rodriguez

From: Russell Dent <dentrg@gmail.com>
Sent: Friday, August 23, 2013 10:22 AM
To: Cheryl Rodriguez
Subject: Hangar Lease 745 White Lightning

Cheryl,

I am planning to sell my hangar at 745 White Lightning. I'd like to initiate the approval process for assignment of my lease to Stuart M. Hutson, PO Box 39, Mesilla, NM 88046.

Also, I have moved to Colorado and my new address for your records is:

Russell Dent
3790 Coralbell Ct
Wellington, CO 80549
(575) 312-1592

Please let me know if there's anything else you need from me.

Russ

Attachment "C"

City of Las Cruces®

DRAFT

AIRPORT ADVISORY BOARD MEETING
City of Las Cruces, New Mexico
October 17, 2013

Members Present: Robert Wood, Val Maltese, John Muir, Joe Dearing, Barry Flesher, Dennis Zaklan, Gill Sorg – City Council Liaison

Members Absent: Jerry Leyendecker

Others Present: Cheryl Rodriguez, Airport Manager; Susan Pfeiffer, Airport Administrative Assistant; Ted Sweetser, Fire Marshal; Nathan Wilcox, Lynco Flight Services; Hal Kading, Southwest Aviation; Bill Madden, WAM/EAA; Gary Milne, pilot.

CALL TO ORDER:
Airport Board Chairman, Rob Wood, called the meeting to order at 12:30 p.m. in the Airport Terminal Conference Room; and a quorum was noted.

APPROVAL OF MINUTES:
Mr. Wood asked if there were any corrections to the minutes, and if not for a motion to approve the minutes of the August 15, 2013 Board meeting. Mr. Flesher moved, seconded by Mr. Muir, to approve the minutes as submitted; motion carried unanimously.

Mrs. Rodriguez asked to amend the Agenda to remove item number two under New Business, and carry it over to the next Airport Advisory Board meeting.

UNFINISHED BUSINESS: None

NEW BUSINESS:

Review and Recommendation for Assignment of Lease – Parcel 33 from MMMR,LLC to Stuart Hutson: Mrs. Rodriguez gave a brief review of Parcel 33's Land Lease including its Amendment and previous Assignment of Lease. She stated that she received an e-mail from Russell Dent, representing MMMR, LLC, requesting an Assignment of Lease to Stuart Hutson. Mrs. Rodriguez reported that the terms and conditions of the current land lease would not change with the assignment of

lease. Mr. Dearing asked what the land lease rate was when the original lease was entered into. It was reported that the original lease rate was $0.075 per square foot per year, but had a couple of CPI (Consumer Price Index) adjustments raising the current yearly payments to a little over $800.00. Mrs. Rodriguez said that this assignment of lease had to go to City Council for approval, and that staff did not have a problem with the assignment. **Mr. Dearing moved, seconded by Mr. Flesher, to recommend approval of the Assignment of Leases to Stuart Hutson; motion carried unanimously.**

Airport Manager's Report: Mrs. Rodriguez stated that she did not have a written Manager's Report, but wanted to cover several items.

Navy Detachment: Mrs. Rodriguez reported that the Training Air Wing 5 Navy Detachment out of Corpus Christi, Texas, committed to go to Roswell without doing due diligence to check with us on our current rate offers. She said that they used information from last year to make their decision and several things had changed. Mrs. Rodriguez went on to say that Training Air Wing 4 (TAW 4) out of Pensacola, Florida is making inquiries about coming to Las Cruces in January through March. She said that she worked with the Convention & Visitors Bureau (CVB), Interim Economic Development Administrator, and the Fire Department to come up with an extremely reasonable offer for the Navy. She said that the cost of using the Airport would be $15,530, and that included: Hangar, Offices, Utilities, Custodial services, Internet, Ramp Fees, and Misc/Parking. Mrs. Rodriguez stated that in years past the Navy has paid the Police Department approximately $40,000 for security services, but the CVB has agreed to pick up the costs of paying a private security company to provide those services. She said that per diem rates in Las Cruces are much higher than in Roswell, and would normally cost the Navy an extra $100,000 to come to Las Cruces. She reported that the CVS contacted hotels to see if they would be willing to make a special rate offer to the Navy, and Springhill Suites and Staybridge Suites came up with prices that are below the Navy's per diem rate. Mrs. Rodrigues stated that Fire Chief Travis Brown came up with three options for the Navy, and reviewed each option. The first two options would not cost the Navy anything, and option #3 would cost a maximum of $35,000 for overtime for three (3) firefighters to be on dedicated standby for the Navy. Mrs. Rodriguez reported that the Economic Development Department will work to come up with vendors to provide lunch each day at the Airport, and the hotels are offering a free full hot breakfast. Mrs. Rodriguez said that TAW 4 is planning on a site visit next Tuesday before making their decision. She said that TAW 5 is willing to reconsider their decision after looking at our current proposal.

Mr. Kading stated that Mrs. Rodriguez had received the call from the Navy only yesterday, and was very impressed with her quick response and ability to work with different agencies to come up with such a reasonable offer.

State Aviation Conference: Mrs. Rodriguez stated that the Las Cruces International Airport received an award for the most improved airport in 2013 at the State Aviation Conference. She said that part of the reason we received the award was because of all the ramp work we did without any State or Federal money. Mrs. Rodriguez reported that the State of New Mexico hired a consultant to do a pavement maintenance study on all the airports in New Mexico, and that we get a new pavement maintenance plan for our airport when the study was completed. Mr. Zaklan said that PSL would like to give a presentation on UAS operations at the next conference, and Mrs. Rodriguez stated that Ms. Jane Lucero with the NMDOT State Aviation knows about their request and is making plans for them to speak at the next conference.

National Guard: Mrs. Rodriguez stated that the National Guard is in the middle of a Master Plan phase to determine necessary facility requirements. She said that their current facilities at the airport are inadequate, and have asked what areas are available to build new facilities. She said that Option #1 is to build a new hangar and ramp on the three (3) acre parcel next to the PSL parcel, and new office space on the other side of Zia Boulevard, opposite the hangar. Mrs. Rodriguez showed the parcel on the eALP map, and also the location of Option #2. She stated their second option would place their proposed hangar and ramp area closer to the National Guard Armory. She said the problem with the second option is that their flight operations might present a problem being so close to approach and take off patterns for Runways 8/26 and 4/22. Mrs. Rodriguez stated that they are only beginning the process, so it will be some time before we know what their final plans will be. She said that one of the advantages to Option #1 is that utilities are available, except for sewer which they would be responsible for hooking into the existing lines.

Fuel Farm: Mrs. Rodriguez announced that at the November 4th City Council meeting they will be awarding the bid for the construction of the Fuel Farm, and also accepting the NMDOT State Aviation Grant for the project.

OTHER BUSINESS:

There was a brief discussion on whether the FAA had announced the locations of the six (6) UAS Test Centers that Congress had selected. Mr. Zaklan said that PSL's Test Center would be one of seven (7), because it would be grandfathered in, but that there has been no money appropriated by Congress as of yet. Mr. Zaklan stated that PSL will try to do things to separate themselves from the other six (6) Test Centers.

Mr. Wood asked what happened with the Board's recommendation on the TriCounty BLM Land Disposal Plan. Mrs. Rodriguez stated that she forward their recommendation to the City Manager who pass it on to the TriCounty Committee and included it in a newsletter to the City Council.

Mr. Wood stated that at the last meeting the subject of tours of the airport was brought up, and he asked for suggestions on how to coordinate them. Mrs. Rodriguez stated that she could get a vehicle large enough for everyone to fit in, and suggested that the tour be given at the close of the next board meeting in November since the agenda would be light. The Board agreed to the tour at the close of their next meeting.

Councillor Sorg asked about the Open House that was planned to be held this month. Mrs. Rodriguez responded that it had been cancelled.

Mr. Dearing asked if an eALP 11 x 17 GIS map of the airport could be made for each of the Board members. Mrs. Rodriguez said that she would get with our GIS Department to see if they would do it for them.

PUBLIC COMMENT: None.

With no further business to conduct, the meeting was adjourned at 1:17 p.m.

_____ _____

Chair Recording Secretary