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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR**

SUNLAND INDUSTRIAL PARK

THIS DECLARATION is made this 3rd day of May, 1999 by SUNLAND JOINT VENTURE, a Texas partnership (hereinafter referred to as "Declarant").

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("this Declaration") INITIALLY AFFECTS ONLY THAT LAND IN SUNLAND INDUSTRIAL PARK, CITY OF SUNLAND PARK, COUNTY OF DONA ANA, NEW MEXICO, WHICH IS DESCRIBED ON THE ATTACHED EXHIBIT A. OWNERS OF OTHER LAND IN SUNLAND INDUSTRIAL PARK CAN SUBJECT THEIR LAND TO THIS DECLARATION IN THE MANNER PROVIDED IN ARTICLE I(a).

WITNESSETH:

WHEREAS, Declarant, as owner of the property described on the attached Exhibit A, believes that it will be advantageous to establish a plan for its improvement, development and maintenance;

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that the Property (as defined in Article 1 Section (1)) shall be held, sold, leased and conveyed subject to this Declaration, which shall constitute covenants running with the land and shall be binding upon each and every purchaser, grantee, owner or lessee of any portion of the Property, and upon the respective heirs, executors, administrators, devisees, successors and assigns of each purchaser, grantee, owner or lessee and shall inure to the benefit of each and every purchaser, grantee, owner or lessee of any portion of the Property and their respective heirs, executors, administrators, devisees, successors and assigns.

ARTICLE I

DEFINITIONS

The following terms, when used in this Declaration (unless the context shall otherwise indicate) shall have the following meanings:

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(b) "Building Site" shall mean and refer to any portion of a Lot within the Property, as designated by the Owner, which is not upon or within an easement, and upon which it shall be permissible under applicable City ordinances for an Owner to construct a building to be utilized for a permissible and intended use.

(d) "Industrial Park" shall refer to the property described on the attached Exhibit A, plus all other property which is subjected to this Declaration in the future.

(f) "Office" shall mean and refer to the use of any building located on any Building Site for the performing of professional, artistic, administrative or clerical services.

(h) "Ground Lessee" shall mean and refer to any person or entity who has leased from Declarant (or any successor entity) all or any portion of a Lot pursuant to a Ground Lease (but shall not mean or refer to any lessee of space in a building located on a Lot).

(1) "Plat" shall refer to the subdivision plat(s) which has been approved by the City of Sunland Park, New Mexico, which has been filed of record in Dona Ana County, New Mexico, and which includes and covers any portion of the Property.

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ARTICLE II
EASEMENTS AND APPURTENANCES

Section 1. Easements Created for Installation and Maintenance of Utilities. There are hereby created easements upon, across, over and under such portions of the Property as are shown on any subdivision map or Plat covering the Property or any portions thereof for ingress and egress for the purpose of installing, replacing, repairing and maintaining all utilities, including, but not limited to, drainage, water, gas, sanitary sewer, storm sewer, electricity, telephone and appurtenances thereto. By virtue of these easements, it shall be expressly permissible for the utility companies and other entities supplying service (and their agents and contractors) to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, above, across and under the portions of the Property within the public utility easements from time to time existing to and from service lines situated within such easements to the point of service on or in any structure situated on the Property. Any utility company furnishing service shall have the right to remove any landscaping situated within the utility easements, and to trim any landscaping located on portions of the Property abutting such easements. No person or entity exercising the rights granted in this Article II, Section 2 shall exercise such right in a manner which would unreasonably interfere with the use of a Building Site by the Owner thereof. If, in providing utility service to any Building Site, trenches are dug across any other Lot, or landscaping on any other Lot is disturbed or damaged, or the grade or drainage scheme of any other Lot is modified, then the Owner or Owners of the Building Site to which such utility service is provided shall be liable to the Owner or Owners of such other Lot so disturbed, for the refilling of trenches, the restoration of landscaping and the returning of such other Lot so disturbed to substantially the same condition existing prior to such disturbance.

Section 2. Use of Easement Areas. The surface of easement areas for underground utility services may be used for paved parking areas or for landscaping provided, however, that neither Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner for any damage done by either Declarant or such supplier, or their respective agents, employees, representatives or assigns, to any of such paved parking areas or landscaping as a result of any activity relating to the construction, maintenance or repair of any facility in any such easement area.

ARTICLE III
USES OF PROPERTY;
CONSTRUCTION; APPEARANCES; ENVIRONMENTAL MATTERS;
ENFORCEMENT

Section 1. Compliance with Requirements of Plat and of Municipal Ordinances. Since standards and requirements have been imposed on all the Property by municipal ordinance and by Plat relating to matters such as zoning, set back requirements, uses, drainage of surface water, use of

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grinder pumps for sewage disposal, and other matters, each Owner agrees to become familiar with all these requirements so that full compliance thereto is assured. Violation of any municipal or Plat requirement will constitute a violation of this Declaration. The requirements of this Declaration are in addition to the requirements of the Plat and of the municipal ordinances, and Declarant shall have the right, but not the obligation, to enforce any provision contained not only in this Declaration but also in the applicable Plat and applicable municipal ordinances. Two of the major requirements contained in the Plat and in applicable municipal ordinances are the following:

- (a) **Sanitary Sewer Facilities.** Because of groundwater conditions, the sewer disposal system requires lot owners of lots 13, 14, 15, 16, 17, 19, 21, 26, 33, 34, 44, 45, 46, 47 in phase I to provide appropriate lift stations and grinder pumps for sewage generated on each lot. The general configuration of sanitary sewer services is shown in Exhibit 1. Grinder pump stations require approximately 40 square feet of surface area to install and operate on conventional electric power at either 120 or 240V, single phase. Operating costs are approximately \$3-10 per month depending on actual flow rates. Equipment purchase and installation costs are estimated at \$3,000-6,000 depending on actual flow rates.

The sanitary sewer design is based upon a small diameter pressure sewer system as manufactured by Environmental One Corporation. System sizes will vary depending on the size of facility to be constructed and the number of employees. Sanitary sewer service for flows up to 18 gallons per minute per lot have been authorized by the City of Sunland Park. Prior approval must be obtained from the City for any proposed discharge rate that will exceed that amount. Specific information regarding the sanitary sewer components can be obtained from:

Manufacturer: Environmental One Corporation
P. O. Box 91793
Albuquerque, NM 87199-1793
505-872-8904
Alfred Lucero, Regional Manager

Local Sales &
Service Rep.: James, Cooke & Hobson
4709 Ripley Drive
El Paso, TX 79922
915-581-5438
Jerry Hobson, Sales Engineer

Lot owners may use any equivalent system of their choice. Other manufacturers may be available at the time of lot purchase.

- (b) **Drainage.** Sunland Industrial Park is an area designated "zone X" on the flood insurance rating map (panel 1050 of 1050 dated September 27, 1991). The area has been determined to be out of the 100 year flood zone. However, since there are

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Grading plans for individual lots shall be submitted to the City of Sunland Park as part of the building permit process. Lot grading plans shall provide for the containment of water shed within the property limits of the lot. No water shed from individual lot will be permitted to enter the roadway right of way. Building pads shall be constructed to the minimum elevations as shown in the following table. The required retainage pond volumes and building pad elevation shall be as shown in the following table unless otherwise approved by the City of Sunland Park as part of the building permit process. The scheduled pond volumes represent the total volumes required for each lot. Actual pond configurations may vary, but the total pond volumes provided must be as scheduled for each lot. Earth borders shall be constructed (see Exhibit 1) by the lot owners at the rear and sides of property to contain all water shed generated on the property permanently or until such time that other lot boundaries such as walls or site grading insure that no water will leave the site.

LOT GRADING REQUIREMENTS (Phase 1 only)		
LOT	REQUIRED PAD ELEVATION	REQUIRED POND VOLUME FT3
13	3634.3	9,264
14	3735.3	9,369
15	3735.0	8,737
16	3736.0	8,737
17	3735.0	12,211
19	3734.8	10,527
21	3735.1	10,527
23	3734.3	11,053
25	3733.3	10,948
26	3733.1	10,527
27	3734.1	3,369
24	3734.3	8,843
44	3736.3	24,920
45	3736.3	28,739
46	3738.0	39,687
47	3738.0	26,634
79	3733.3	34,844

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These requirements are in addition to typical infrastructure needs such as water, gas, electricity, and communication utilities that lot owners or ground lessors may require.

Section 2. Prohibited Uses of the Property. The following operations and uses shall not be permitted on any Lot or any part thereof whether or not such use might at any time be permitted by local zoning or ordinances: Ammonia, chlorine, and bleaching powder manufacture, except that the manufacture of such by-products shall be permitted; Animal slaughtering; Bone, coal and wood distillation; Cement, lime and gypsum extraction and refinement; Explosives manufacture and storage; Fertilizer manufacture; Foundries or the smelting of ferrous metals, plating operations, and steel mills and boiler works; Disposal of garbage, sewage, dead animals and refuse incineration or reduction; Glue manufacture; Hydrochloric, nitric and sulphuric acid manufacture; Lampblack manufacture; Rock, sand and gravel excavating and distributing; Rubber manufacture; Soap manufacture, except cold mix. Stock yards, cattle feeding yards, hog ranches, kennels or other animal raising operation; Junk and Salvage yard and other waste material in reclamation operations; Temporary buildings other than construction offices and structures; Tallow, grease, fat or lard manufacture, rendering or refining; adult book stores, stripper bars, or other activities with pornographic aspects. No illegal, noxious or offensive activity shall be conducted on any portion of the Property, nor any which is hazardous by reason of excessive danger of fire or explosion or any use which may produce a nuisance as to any other portion of the Property. No oil or gas exploration, drilling or development operations, oil or gas refining, quarrying, or mining operations of any kind shall be permitted upon or within any portion of the Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or within any portion of the Property. No derrick or other structures designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the Property. Underground storage tanks are prohibited.

Section 3. Construction. At all times prior to, during and following the construction of Improvements on each Lot, the Owner of such Lot shall have the responsibility of keeping the Lot, building, improvements, appurtenances and landscaping located on his Lot (including, but not limited to the portion(s) of such Lot which are within any public or private easement(s) and any building set back lines) in a well maintained, safe, clean, and attractive condition at all times; and each Owner shall make every effort to insure that the roadways within the Property are not littered with construction debris and refuse from the construction of Improvements on any Lot.

All temporary structures used for construction purposes must be appropriate for the Industrial Park with regard to location and appearance, and must be removed promptly upon completion of construction and that portion of the Lot from which such structures are removed shall be restored to such condition as is otherwise required by this Declaration. Under no circumstances shall an Owner, his agents, representatives, contractors, licensees or invitees dispose of or allow or permit the disposal of any construction debris or refuse into or around any of the easements. Every effort shall be made by each Owner to insure that all construction debris, refuse and loose materials are stored or disposed of properly so as not to cause pollution of the adjoining Lots or elsewhere in or about the Property. The Owner responsible for such pollution shall bear the cost of clean-up, disposal and restoration.

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Section 4. Appearance. The primary objective for appearance of the Property is that all property in the subdivision shall present a **CLEAN, WELL MAINTAINED AND NEAT APPEARANCE**. Therefore, each Owner is hereby required to maintain all property owned by him at all times in such a way as to enhance the above objective and to prevent any unsightly conditions. Specifically, no Owner shall allow weeds, rubbish, debris, objects or materials of any kind, plants or seeds infected with noxious insects or plant diseases, to be placed, grown or permitted to accumulate upon any portion of such Owner's Lot which renders such portion of the Lot unsanitary, unsightly, offensive or detrimental to any Lot in the vicinity thereof, or to the occupants of any Lot in such vicinity, and all rubbish, trash, garbage and debris shall be regularly removed from the Lot and shall not be allowed to accumulate thereon.

Section 5. Screening. If it is reasonably determined by Declarant or Committee that any garbage collection facilities, storage areas, loading docks, or other auxiliary facilities are so unsightly as to defeat the objective of the next preceding subparagraph, the Owner thereof may be required to screen such items from public view, and all such screening shall be maintained in a sound and sightly condition.

Section 6. Signs and Exterior Illumination. All temporary and permanent signs and graphics shall be of a size and nature so as to enhance the overall quality and attractiveness of the Industrial Park. No temporary or permanent sign placed upon any Lot shall contain or utilize any flashing, blinking, intermittent or moving light, nor shall any such sign create or attempt to create or simulate the effect of any flashing, intermittent, or moving light by mechanical or other means. If an Owner desires to provide exterior illumination for the improvements located on a Lot, such exterior illumination shall be designed to light only buildings, parking areas and walkways and shall not produce glare on adjacent streets or Lots.

Section 7. Enforcement.

(a) **Right of Declarant to Require and Perform Work.** In the event of default on the part of any Owner in observing any requirement set forth in this Declaration, Declarant, its successors and assigns, and the Committee appointed pursuant to paragraph (d) of this Section 7, and the Declarant's or Committee's agents or representatives, may give any Owner written notice specifying with particularity the nature of the work or act which Declarant or Committee considers necessary for compliance with this Declaration, and Owner shall have a period of seven (7) days after receipt of such written notice within which to commence such work or act and to proceed with due diligence to completion. In the event Owner does not so commence such work or act or in the event he fails to proceed with due diligence to completion of the work or act, then the Declarant or committee, without liability to such Owner (or any contractor, tenant, invitee, customer or licensee of Owner) for trespass or otherwise, may but shall not be required to cause to be done the work or act necessary to secure compliance with this Declaration, and may charge such Owner for the cost of any such work or act.

(e) **Assessments.** The Declarant for each Lot owned by it within the Property and each owner of any Lot in the Property by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other covenant, covenants and agrees to pay assessments of no more than \$50 per Lot per month to Declarant to be used exclusively for such maintenance, upkeep and improvements of the Industrial Park as is reasonably required for protection of the Industrial Park and property values therein; such assessments to be fixed, established and collected from time to time as provided by notice in writing to each Owner. The assessments, together with reasonable interest thereon and costs of collection thereof shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made, within the provisions of subparagraphs (b) and (c). Each such assessment, together with such interest, and costs, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. If an Owners' Committee is appointed pursuant to subparagraph (d), it shall have power to increase the assessments which the Declarant could levy pursuant to the first sentence of this subparagraph.

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Plat and this Declaration will apply to all Lots thereafter sold in Phase I. Hereafter, the Declarant intends to file Plats for additional portions of the Industrial Park, and at that time will also subject such additional land to these or similar Declarations, and Declarant shall have the right to file such Plats and future Declarations without action of any other party except such municipal approvals as are required. Declarant agrees, however, that all future Declarations will be designed so as to provide for development of the Industrial Park in as consistent and unified manner as possible, so as to protect and enhance the value of all Property in the Industrial Park; and none shall materially impair or adversely affect vested property rights of any other party.

Section 5. Additional Restrictions. Declarant may make additional restrictions applicable to any Lot by appropriate provision in the deed or Ground Lease conveying or leasing such Lot to the Owner, without otherwise modifying the general plan set forth in this Declaration, and any such other restrictions shall inure to the benefit of and be binding upon the parties to such deed or Ground Lease in the same manner as if set forth at length in this Declaration.

Section 6. Release. Each Owner of a Lot, by his claim or assertion of ownership or by accepting a deed or Ground Lease to such Lot, is hereby conclusively deemed to have released and discharged Declarant, its officers, directors, shareholders, agents, employees, successors and assigns, as well as any real estate broker involved herein, from any and all claims, demands, causes of action, losses, liabilities, accountings, judgments, awards, executions, costs and expenses, incurred in or arising directly or indirectly, in whole or in part, out of Declarant's actions, taken in good faith, in connection with the imposition of these covenants, and with performance of rights and duties under this Declaration and the promotion, sale, subdivision, improvement, development, platting or replatting of any portion of the Property.

Section 7. Disclaimer. Declarant has not made and shall not be required to make any representations or warranties whatsoever, either express, implied or statutory relating to the Property or its condition. Each owner of a Lot, by accepting a deed or Ground Lease to such Lot, is hereby conclusively deemed to agree that such Owner has not relied on any warranty or representation or statement of Declarant or of Declarant's agent, including real estate agents, and that such Owner shall have determined on such Owner's own behalf prior to accepting such deed or Ground Lease (a) whether the Lot is suitable for such Owner's intended purposes, and (b) that all environmental conditions relating to the Lot are acceptable to such Owner.

Section 8. Notices. Any notice required to be sent to any Owner or Declarant or any Ground Lessee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of such person or entity at the time of such mailing.

Section 9. Terminology. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, male or females, shall in all cases be assumed as

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though in each case fully expressed. Any reference to an "Article" in this Declaration shall be to provisions in this Declaration, unless expressly provided to the contrary.

Section 10. Severability. Invalidation of any one or more of the covenants, restrictions, conditions or provisions contained in this Declaration shall in no manner affect any of the other covenants, restrictions, conditions or provisions of this Declaration, which shall remain in full force and effect.

Section 11. Construction. This Declaration shall be construed in accordance with the laws of the State of New Mexico.

Section 12. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation thereof.

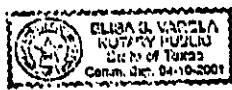
IN WITNESS WHEREOF, Declarant has executed this Declaration to be effective this 3rd day of May, 1999.

SUNLAND JOINT VENTURE

By: [Signature] V.P.
Declarant
Its: [Signature]

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on May 3, 1999, by
of SUNLAND JOINT VENTURE, on behalf of said partnership.



[Signature]
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

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EXHIBIT A

Lots 13, 14, 15, 16, 17, 19, 23, 25, 26, 33, 34, 44, 45, 46, 47, 79 of Sunland Industrial Park
Subdivision, Phase I, City of Sunland Park, Dona Ana County, New Mexico.

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EXHIBIT B

Hazardous or toxic chemical, material, substance or waste as defined in the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.*, any applicable state laws (including, without limitation, the New Mexico Air Quality Control Act, §§74-2-1 *et seq.* NMSA 1978 (1992 Repl.), the New Mexico Radiation Protection Act, §§74-3-1 *et seq.* NMSA 1978 (1992 Repl.), the New Mexico Hazardous Waste Act, §§74-4-1 *et seq.* NMSA 1978 (1992 Repl.), the New Mexico Radioactive and Hazardous Materials Act, §§74-4A-1 *et seq.* NMSA 1978 (1992 Repl.), the New Mexico Water Quality Act, §§74-6-1 *et seq.* NMSA 1978 (1992 Repl.), the New Mexico Ground Water Protection Act, §§74-6B-1 *et seq.* NMSA 1978 (1992 Repl.) and New Mexico Solid Waste Act, §§74-9-1 *et seq.* NMSA (1992 Repl.), or any other New Mexico law or under any regulation adopted pursuant to any of the foregoing; (b) asbestos in any form which is friable, (c) urea formaldehyde foam insulation, (d) transformers or other equipment containing dielectric fluids containing levels of polychlorinated biphenyls, in excess of fifty parts per million, (e) any other chemical, material or substance the exposure to which is prohibited, limited or regulated by any governmental authority or agency or may or could pose a hazard to health and safety.

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