

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MILO DISTRIBUTION CENTER - PHASE 1

504490

THE STATE OF TEXAS
COUNTY OF WEBB

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KNOW ALL MEN BY THESE PRESENTS:

INTRODUCTION AND DECLARATION

WHEREAS, MILO DISTRIBUTION CENTER, L.C., a Texas limited liability company (the "Declarant") is the owner of a tract of land situated in Webb County, Texas, more particularly described in Exhibit "A" attached hereto and made a part hereof for all relevant purposes (the "Property" or the "Subdivision"); and,

WHEREAS, the Declarant desires to establish a business and distribution center named MILO DISTRIBUTION CENTER - PHASE 1 on the Property as is depicted on a plat of the Property (the "Plat") recorded in Volume 13, pages 47-49 of the Plat Records of Webb County, Texas; and,

WHEREAS, it is deemed to be in the best interest of the Declarant and all future purchasers of the Property or any part thereof, that there be established and maintained a uniform plan for the improvement and development of the Property; and,

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities of the Property and for the maintenance of any future improvements and equipment within the Property, and desires to subject the Property, together with any additional property as defined in Section 1.2, to the covenants, restrictions, easements, charges and liens, hereinafter set forth (the or these "Restrictions"), each and all of which is and are for the benefit of the Property and each owner thereof;

NOW, THEREFORE, KNOW ALL BY THESE PRESENTS, that the Restrictions, which shall be taken and deemed as covenants to run with the land, shall be binding upon all parties (such parties being referred to herein as "Lot Owners" where plural, and "Lot Owner" where singular) acquiring ownership of any lot or tract of land out of the Property (hereinafter referred to as a "Lot" or "Lots") and upon tenants or lessees of such parties. If the Declarant, or any of its successors or assigns, or any Lot Owner, either as primary or subsequent purchasers, or any other person, shall violate or attempt to violate any of the Restrictions herein set forth, it shall be lawful for the Declarant, its successors and assigns, or any Lot Owner, or the Association (as herein defined), or the Committee (as herein defined) to prosecute any proceedings at law or in equity, against the person, or entity, violating or attempting to violate any such covenants either to prevent same from so doing or to recover damages and/or pursue other remedies for such violations.

Furthermore, it is desirable for the efficient preservation of the values and amenities of the Property to create an entity to which the common areas, if any, may be conveyed and transferred and to which will be delegated and assigned the powers of maintaining and administering those common areas, administering and enforcing the Restrictions and collecting and disbursing the assessments and charges hereinafter created. For that purpose, an

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unincorporated association (the "Association"), to be known as "THE PROPERTY OWNERS ASSOCIATION OF MILO DISTRIBUTION CENTER" (or some similar name if such name is not available) is hereby created, which entity shall be subject to the provisions herein as to membership, voting rights and other relevant matters. The members of the Association may cause the Association to be incorporated as a non-profit corporation under the laws of the State of Texas, and, in connection with such incorporation, may adopt such by-laws as are not inconsistent with the duties, power and authority of the Association as set forth herein. Until such time as the Association is incorporated (if ever), the Association shall take title to property (if the taking of title to property is necessary or desirable) in the name of an individual as Trustee for the Association, said individual to be chosen by the Association to act as Trustee for such purpose, provided that said individual consents to being named as Trustee for such purpose.

To further the general purposes herein expressed, the Declarant, for itself, its successors and assigns, hereby declares that the Property, and any Additional Property (as defined below), whether or not these Restrictions are referred to in any deed of conveyance of such properties, at all times is and shall be held, transferred, sold, conveyed and occupied subject to these Restrictions. The provisions of these Restrictions are intended to create mutual equitable servitudes upon the property becoming subject to these Restrictions; to create privity of contract and privity of estate between and among Declarant and the grantees of such property or any part thereof, their heirs, successors and assigns; and to operate as covenants running with the land for the benefit of the property made subject to these Restrictions, and the respective owners of such property, present and future.

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ARTICLE I

EXISTING PROPERTIES - ADDITIONS THERETO

PROHIBITION AGAINST CERTAIN FURTHER SUBDIVISION

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1.1. EXISTING PROPERTIES. The Property, as used herein, is the real property described in Exhibit "A".

1.2. ADDITIONS TO EXISTING PROPERTIES. The Declarant is the owner of additional acreage adjacent to the Property. The Declarant, its successors and assigns, in accordance with its general plan for development shall have the right to bring within the scheme of these Restrictions in future stages of development any part or all of said lands which are not included within the Property at this time (the "Additional Property"). The additions authorized under this Article shall be made by filing of record a Supplemental Declaration of Covenants, Conditions and Restrictions ("Supplemental Restrictions") with respect to the Additional Property which shall extend the scheme of these Restrictions to such Additional Property. Any Supplemental Restrictions may contain such complementary additions and modifications of the covenants and restrictions contained in these Restrictions as may be necessary to reflect the different character, if any, of use of the Additional Property, as are not inconsistent with the scheme of the Restrictions. Said additions and modifications, if any, set forth in any

Supplemental Restrictions shall apply only to the Additional Property to which such Supplemental Restrictions pertain. The Additional Property, when made subject to the scheme of these Restrictions, will become subject to assessments for its just share of Association expenses in accordance with the scheme of these Restrictions. In no event shall any such Supplemental Restrictions revoke, modify or add to the covenants established herein with respect to the Property.

1.3. PROHIBITION AGAINST CERTAIN FURTHER SUBDIVISION. Declarant retains the absolute right to divide any platted Lot owned by it within the Subdivision into two or more Lots. By acceptance of a Deed of a Lot covered by these covenants, conditions and restrictions, the grantee therein and its successors, assigns, executors, administrators and beneficiaries are hereby deemed to have given consent to Declarant's subdivision. However, any person or entity acquiring land within the Subdivision, either as a primary or subsequent purchaser is expressly prohibited from the division or subdivision of any such land acquired, without the written consent of the Declarant. Declarant shall not be under any duty or obligation to grant such consent, but rather this right of consent shall be a property right of the Declarant.

1.4. PROHIBITION AGAINST EASEMENTS FOR ABOVE-GROUND UTILITIES. Except for the installation of above-ground utilities on the easements shown on the Plat, the granting of any easement for above-ground utilities by a Lot Owner is expressly prohibited.

ARTICLE II

THE ASSOCIATION AND THE ARCHITECTURAL CONTROL COMMITTEE

2.1. ASSOCIATION MEMBERSHIP. Membership in the Association of every Lot Owner is mandatory. There shall be two classes of membership, Class A and Class B. Every Lot Owner as shown by the Real Property Records of Webb County, Texas shall be a Class A member. The Declarant shall be a Class B member. The members of the Association shall be referred to as "Members" where plural and "Member" where singular. Any person or entity who holds an interest in a Lot merely as security for the performance of an obligation shall not be a Member.

2.2. VOTING. With respect to voting by the Members, each Class A Member shall have one vote and the Class B Member shall have three votes for each acre of land out of the Property and/or Additional Property owned by such Member, rounded to the nearest one-hundredth of an acre (with five-thousandths of an acre being rounded up to one-hundredth of an acre). For example, if a Member owns 1.345 acres of the Property, that Member shall have 1.35 votes. In determining the acreage owned by the Declarant for voting purposes, any acreage lying and being in a dedicated street or roadway as shown on the Plat shall be excluded. With respect to a Lot or Lots, title to which is held in undivided interests by more than one Member, the vote for the Lot shall be exercised as the Members among themselves shall determine, but in no event shall more than one vote (based on acreage) be cast with respect to the Lot. Except where otherwise specifically stated herein, action by a vote of the Members of the Association shall be by a majority

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vote, and a "majority vote" shall mean a majority of votes timely cast (as opposed to a majority of votes eligible to be cast). The votes cast on any matter that is put to a vote of the Members will be tallied fifteen (15) days after ballots or other written vote solicitations are mailed to the Members, with votes received after such time not being counted. Upon receipt of a written petition signed by Members holding fifty percent (50%) of the votes eligible to be cast, the Committee (as defined below) shall be required to put any matter specified in such petition to a vote by the Association.

2.3. ARCHITECTURAL CONTROL COMMITTEE. There shall be and is hereby created an architectural control committee (the "Committee") which shall be initially composed of three persons (said persons being herein referred to as the "Committee Members" where plural, and "Committee Member" where singular) to be initially appointed by the Declarant. One member of the Committee may be selected as Chairman by the Committee by a majority vote of the Committee Members. The Committee, by a majority vote, may designate a representative or representatives to act on its behalf (the "Committee Representative"). In the event of death or resignation of any Committee Member, the Declarant shall appoint a successor Committee Member, and such successor Committee Member shall have the full right, authority and power to carry out the functions of the Committee as provided herein. The initial Committee Members shall be as follows:

- (1) Eduardo Brittingham
- (2) Tomas Brittingham
- (3) Lula Morales

The address of the Committee shall be as follows:

Architectural Control Committee
Milo Distribution Center - Unit 1
c/o Lula Morales Realty, Inc.
5615 San Dario
Laredo, Texas 78041

Attention: Mrs. Lula Morales

The address of the Committee may be changed from time to time, with the Committee giving the Members written notification of such change of address.

2.4. APPROVAL OF PLANS. No building, structure, fence, wall, sign, pole or other improvements shall be commenced, erected, constructed, demolished, placed or maintained, nor shall any exterior addition to or change or alteration therein be made until the detailed plans and specifications therefor shall have been submitted to the Committee in duplicate, and approved in writing as to compliance with these Restrictions by the Committee. Said plans and specifications shall be receipted for by the Committee, and the date of receipt indicated thereon shall be the commencement date of the fifteen (15) day period set out in subparagraph C. hereinbelow.

A. The submitted plans and specifications shall include, at a minimum, a site plan showing proposed grading, drainage, paving/curbing, building locations, driveways, parking and maneuvering areas, fencing,

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utility connections, site lighting, and landscaping; building elevations showing all exterior elevations of proposed structures, indicating materials and colors; and shall specify, as the Committee may reasonably require, structural, mechanical, electrical and plumbing detail, and the materials to be used for and incorporating into, and location of the proposed improvements or alterations thereto.

B. The plans and specifications, after action by the Committee, shall be returned to the Applicant within the time limit prescribed, with approval or disapproval by the Committee evidenced by a cover letter either (i) enclosing one set of the plans and specifications marked "Approved"/"Approved with Conditions" or (ii) explaining the reasons for disapproval. Incomplete plans and specifications shall be disapproved. In the discretion of the Committee, plans and specifications may be returned by the Committee to Applicant with a conditional approval. Such conditions for approval will be indicated on the documents submitted, and no further approval action will be required provided all conditions are met by the Applicant. A disapproved application must be re-submitted.

C. In the event the Committee fails to approve or disapprove such plans and specifications within fifteen (15) days after the said plans and specifications have been submitted to it, approval will not be required and the provisions of this Section will be deemed to have been fully complied with; provided, however, that the failure of the Committee to approve or disapprove such plans and specifications within such fifteen (15) day period shall not operate to permit any structure to be commenced, erected, placed, constructed, demolished or maintained on any Lot in a manner inconsistent with any provision of this Declaration or in violation of these Restrictions.

D. The Committee shall have the power and authority to reject any plans and specifications that do not comply with the Restrictions herein imposed or meet the construction or architectural design requirements set forth herein, or that are not compatible with the design or overall character and aesthetics of the Property, including, but not limited to color scheme, finish, style of architecture or appropriateness of any structure.

2.5. COMMUNICATIONS WITH COMMITTEE MEMBERS. In communicating with the Committee Members, the Committee shall use the address for each Committee Member as reflected in the records of the Committee. Each Committee Member may designate his (her) address by written notice to the Committee. The Committee may, but shall not be required to, send communications to the Committee Members by certified mail, return receipt requested.

2.6. COSTS AND EXPENSES OF THE COMMITTEE AND COMPENSATION OF THE COMMITTEE MEMBERS. Except as otherwise specifically stated herein, all reasonable costs and expenses incurred by the Committee in connection with the discharge of its responsibilities hereunder, and reasonable compensation for the Committee Members, shall be expenses for which assessments may be made under Paragraph 5.2 of Article V of this Declaration. Any such assessment shall describe with a reasonable degree of specificity the costs and expenses to which such assessment pertains. Such costs and expenses shall include, but not necessarily be limited to, expenses incurred for

supplies, postage, secretarial and bookkeeping help, legal and accounting fees, reasonable compensation for the Committee Representative, all of which must be related directly to Committee and/or Association matters, and costs and expenses (including, without limitation, court costs and attorney's fees) incurred by the Committee in the enforcement of these Restrictions. The Committee Members shall receive reasonable compensation for acting as Committee Members in amounts to be determined from time to time by a vote of the Members.

2.7. **LIMITATION OF LIABILITY.** Neither the Committee nor any consultants assisting the Committee shall be liable for damages to anyone submitting plans and specifications for approval, or to any other person, by reason of mistake in judgment, negligence or inaction or failure to approve or to disapprove any plans or specifications. Approval by the Committee of any plans and specifications shall not constitute an approval or endorsement of the architectural or engineering soundness of the improvements described by such plans and specifications, nor shall such approval constitute an opinion as to the legality of such improvements or the intended use thereof.

2.8. **TRANSFER OF AUTHORITY TO THE ASSOCIATION.** The duties, rights, powers and authority of the Committee may be assigned at any time, at the sole discretion of a majority of the Committee Members, to the Association, and from and after the date of such assignment, the Association shall have the right, authority, power, and be obligated to perform the functions of the Committee, including the right to designate a representative or representatives to act for it.

ARTICLE III

USE RESTRICTIONS

3.1. **BINDING UPON OWNERS AND OCCUPANTS.** The provisions of this Article III shall be binding upon the owner and/or occupant of any Lot comprising the Property. "Occupant", as that term is used herein, shall include lessees, tenants, licensees and invitees.

3.2. **PERMITTED USES.** Use of the Property shall be restricted to:

A. The following light industrial uses with all processes occurring entirely within an enclosed facility: fabrication and assembly of components, packaging of products, plumbing, heating, and air conditioning shops, printing and publishing, food product manufacture, bottling plants, research and development facilities, bulk laundry and dry cleaning, tool and die shops, and ice plants;

B. The following warehousing related activities in an enclosed space: storage of products, wholesale distribution, cold storage plants, freight terminals, household goods storage and public warehouse (excluding mini-warehouses);

C. Truck/container freight uses: trucking terminals, trailer parking lots; washing, maintenance, and repair of tractors and trailers in an enclosed space; duly permitted fueling facilities (all above-ground fuel storage shall have a concrete containment dike). Overseas containers and enclosed tractor trailers may be stored without visual screening, provided

none are unsightly or in a state of disrepair. Flatbed trailers with new materials or machinery may be stored without visual screening.

D. Outdoor yard storage (paved), provided that stored materials are neatly arranged, not stacked over 10 feet in height, and substantially screened from view. New rolling stock equipment such as tractors, farm equipment, construction equipment and similar products may be stored without visual screening.

E. Administrative offices.

3.3. PROHIBITED USES. The following uses are specifically prohibited:

A. Storage of any hazardous material or waste (as defined in Section 3.5) without the consent of the Committee.

B. Dwelling and residences of any kind, except quarters for security personnel or truck drivers; such quarters shall be allowed only as approved by the Committee.

C. Mobile homes, portable, or temporary buildings, except those used specifically as a temporary construction office.

D. Retail sales of any kind, including flea markets or used clothing sales.

E. Detention or correctional facilities.

F. Schools.

G. Quarrying or stockpiling of coal, sand, gravel, dirt or similar products.

H. Stockyards or slaughtering of animals.

I. Poultry or meat processing.

J. Chemical manufacture or processing.

K. Junk yards or the storage of scrap, junk materials or inoperative equipment or machines.

L. Garbage dumps, incineration or radiation facilities, or handling of any waste material.

M. Smelting of metals.

N. Telecommunication antennas, except satellite dish and microwave antennas used as an accessory to another business, and totally screened from view.

O. Gasoline or other liquid fuel or petroleum storage, distribution or sales, except as allowed under Section 3.2 C.

P. Automobile, truck, trailer, tire or equipment repair, except within an enclosed space as allowed under Section 3.2 C.

Q. Storage of animal hides.

R. Any act prohibited by City, State and Federal laws and ordinances.

3.4. UNENUMERATED USES. Certain industrial operations and uses may be neither specifically prohibited nor specifically permitted above. In these cases, approval in writing of the operation and use must be obtained from the Committee prior to approval of plans and specifications for construction of the facility. Approval or disapproval shall be granted within fifteen (15) days from the date of receipt of the request. Should

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Committee fail to approve or disapprove the request within fifteen (15) days, it shall be conclusively presumed that the Committee has disapproved said operation and use. The basis for approval of any such operation and use shall be the similarity, compatibility and harmony of the proposed operation and use with other existing and proposed operations in the Subdivision, considering all external environmental effects of the operation on the surrounding property.

3.5. DISPOSAL OF HAZARDOUS SUBSTANCES. It shall be prohibited to dispose of, through any drainage ditches or other means of disposal, within the Property any hazardous substance or hazardous waste. For purposes of this Section, the term "dispose of" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous substance or hazardous waste onto or into any land, and/or streets within and/or adjacent to the Property, or water, drainage ditches, and any other available means of discharge, so that such hazardous substance or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including surface waters and underground waters. The terms "hazardous substance" and "hazardous waste" for purposes of this Declaration shall include, but are not necessarily limited to, those substances as are defined in Texas Revised Civil Statutes Annotated, Article 4476-13 Section 4; 15 U.S.C.S. Section 1261(f) 1.(A), (B), and (C); 42 U.S.C.S. Section 6903(5); as said statutes now exist or may be hereafter amended or succeeded.

3.6. HEALTH AND ENVIRONMENTAL LAWS. The Property or any part thereof, and the owner or owners, or occupants, shall be in full compliance with applicable State and/or Federal health and environmental laws and rules promulgated pursuant thereto, including, but not limited to, laws and rules covering the handling of "hazardous substances" and/or "hazardous wastes" as those terms are defined in the statutes referred to in Section 3.5 hereinabove.

3.7. TRASH FACILITIES. Each Lot shall be equipped with sanitary receptacles for trash or litter, and owners and/or occupants shall provide for the disposal thereof off the Property, in a lawful manner, through a private contractor or otherwise. Garbage and refuse containers shall either be screened or placed behind buildings so that such containers cannot be seen from the streets.

3.8. SANITARY, SAFE AND ATTRACTIVE CONDITION. The owners or occupants of the Property shall at all times keep the buildings and structures thereon in a sanitary, safe, healthful, clean and attractive manner. Vacant Lots, or vacant portions thereof, shall be kept mowed, on a regular basis, so as not to constitute a fire hazard and so as not to appear unkempt and unattractive. If the Committee determines that any Lot or portion thereof is not being maintained in conformity with these Restrictions such that grass and/or weeds on such Lot or portion thereof are in excess of eighteen inches (18") high or trash or debris has accumulated thereon, and in the further event that the owner and/or occupant of the Lot in question is notified in writing of such determination at the last known address of such

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owner and/or occupant, according to the records of the Committee, and in the further event that no action is taken to remedy the violation within fifteen (15) days from the date such notification is mailed, or in the event that action to remedy is commenced within said fifteen (15) day period, but not thereafter pursued to completion, in good faith, with reasonable diligence, and without interruption, then, the Committee may enter upon such Lot, or cause employees or contractors to enter upon such Lot, and to take such steps as may be reasonably necessary to restore the Lot in question to a condition that complies with these Restrictions. Such steps may include, but shall not necessarily be limited to, the mowing of grass, weeds and brush and the removal of trash and debris. The expenses incurred by the Committee in this regard shall constitute a personal obligation of the owner and/or occupant, as well as a charge and lien upon such Lot. An affidavit, executed by a Committee Member, describing the Lot in question and the costs incurred pursuant to this Section, filed in the Real Property Records of Webb County, Texas, shall be conclusive evidence of the amount and existence of said charge and lien. Said charge and lien shall, however, be subordinate to any mortgage or deed of trust covering the Lot in question, and any foreclosure pursuant to such mortgage or deed of trust, or any transfer in lieu of such foreclosure, shall extinguish such lien with respect to costs and expenses incurred prior to such foreclosure or transfer.

3.9. PROHIBITED ACTIVITIES. In addition to the prohibited uses enumerated in Section 3.3 of these Restrictions, the owners or occupants of the Property or any part thereof shall not use same to conduct activities that have or might result in any of the following consequences, in amounts or levels that can be detected from the boundary of the Lot in which such activities are conducted and which adversely affect adjoining landowners to such an extent that such activities constitute a nuisance:

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- A. The emission of dust and/or smoke;
- B. The generation of gases, vapors and smells;
- C. The production of noises exceeding the decibel levels in

the designated octave bands shown below:

<u>Octave Band (Cycles/Sec.)</u>	<u>Maximum Permitted Sound Level in dB</u>
0 - 300	75
301 - 1200	55
1201 - 4800	45
Over 4800	40

the production of vibration or shock perceptible to a person of normal sensibilities, the production of fire and explosive hazard, electrical disturbance and/or the emission of radioactive radiation in amounts in excess of levels allowed by any federal or state statutes, regulations or rules concerning the emission of radioactive radiation which are applicable to the Property, measured at the boundary line of such Lot (the production of noises and/or vibrations and the emission of radioactive radiation in amounts above such stated levels being deemed to be a nuisance).

3.10. UNLAWFUL ACTIVITIES IN GENERAL. In addition to any specific prohibitions set out herein, the use of the Property for any unlawful purpose whatsoever is expressly prohibited.

ARTICLE IV
BUILDING STANDARDS

4.1. CONSTRUCTION REQUIREMENTS AND BUILDING MATERIALS

A. Only new construction materials shall be used and utilized in constructing any structures situated on the Property.

B. The construction of any structure, and any other appurtenances or appendages of every kind or character on the Property shall be completed no later than one (1) year following the commencement of construction which shall be deemed to mean the date on which the foundation forms are set. Once commenced, construction on any such structure must be carried out with diligence and without cessation.

C. The following building systems are acceptable for building exteriors:

1. Painted or exposed aggregate concrete panels (tilt-up or precast).

2. Brick masonry.

3. Synthetic stucco exterior insulation and finish system (EIF) by accepted manufacturers (Dryvit, STO Industries, Thorowall, or equal).

4. Glass and aluminum curtainwall system.

5. Painted concrete block.

6. Prefinished metal siding, provided that it is a part of a pre-engineered building system by an accepted manufacturer (Butler, CECCO, Southern Structures, Varco-Pruden, or equal). Such metal siding must be of solid color, and color selected must be in aesthetic harmony with the general character of the surrounding buildings. The Committee shall be allowed to limit colors to insure compatibility.

7. Only exteriors described in 1, 2, 3 and 5 shall be allowed in Lots 1, 2 and 3 in Block 1; Lots 1 and 2 in Block 4; and Lots 1 and 16 in Block 2.

D. All electrical and telephone lines installed within the Subdivision shall be run underground, except for the electrical primary distribution lines which are installed in the initial construction of Phase 1.

1. All wiring for floodlights shall be similarly run underground.

4.2. BUILDING AREA AND LOT COVERAGE.

A. Building locations on each Lot shall conform to the setback requirements shown on the Plat of the Subdivision or required by the applicable ordinances of the City of Laredo.

B. If a building occupies more than one Lot, the side setback lines that otherwise would be applicable to the common boundary line or lines for the Lots shall not apply so long as the building is occupying the Lots.

C. On corner Lots, the Committee shall determine which sides of the Lot shall be considered the front and street side respectively for setback requirements.

4.3. BUILDING, ELECTRICAL, PLUMBING AND FIRE CODES, AND ZONING ORDINANCES. All construction work on any portion of the Property shall be done in compliance with the Building, Electrical, Plumbing and Fire Codes of the City of Laredo, and zoning and other ordinances adopted by the City of Laredo applicable to property zoned for industrial use in the City of Laredo regardless of whether the Property has been annexed by the City of Laredo, and the provisions of said codes and ordinances (as amended from time to time) are incorporated herein by reference.

4.4. APPEARANCE.

A. Once any portion of a Lot is used for any permitted use, all areas of a Lot not covered by a building must be paved or landscaped. Properly installed decorative stone ground cover may be substituted for landscaping.

B. All paving must include concrete curbing.

C. The area between the street curb and the property lines shall be covered entirely by the abutting Lot Owner with concrete except for 2 tree islands. A Southern Live Oak tree of at least 3.5 inch caliper shall be planted by the abutting Lot Owner in each island. The location of the tree islands shall be designated by the Committee to insure uniformity within the Subdivision. The location of driveways shall be approved by the Committee and duly permitted by the City of Laredo. All driveways shall utilize a concrete apron design.

4.5. SIGNS. The placements of signs, displays or advertisements on any Lots or buildings, within the Property will be allowed only if such signs, displays or advertisements have the exclusive purpose of identifying the entity using such Lot or building, either through lease or ownership. Such signs, displays and advertisements shall be constructed and maintained in a first-class manner and shall preserve the quality and atmosphere of the area. No temporary signs, displays or advertisements or signs employing flashing lights or mechanical action shall be permitted on any Lot. Lettering painted directly on a building shall not be allowed. The Committee must approve the size and design of each sign, display and advertisement to be placed on any Lot as being in compliance with these Restrictions in accordance with Section 2.4 of these Restrictions. The use of the emblems, logos, monograms or trademarks generally used by the entities located on the Property shall be allowed on such signs, displays and advertisements.

4.6. ACCESS. Access to public streets and highways shall be in conformity with all statutes, regulations, rules and ordinances promulgated by governmental entities having authority over the Property. The Committee shall be allowed to reasonably limit driveway locations which may interfere with street intersections or existing driveways.

4.7. PARKING. With respect to each Lot, upon construction of a building thereon, such Lot shall have no less than the minimum number of parking spaces specified by the ordinances and codes of the City of Laredo

applicable to areas zoned for industrial use. All parking areas shall be curbed, covered with asphalt or concrete paving, and shall have appropriate surface markings and proper drainage. No Lot Owner, nor such Lot Owner's employees, tenants or visitors, nor customers of such Lot Owner or Lot Owner's tenant, shall park on any street (including, without limitation, parking for loading or unloading). Each Lot Owner shall provide off-street parking for its employees. All trailer parking and loading areas shall be designated so that maneuvering room is provided on-site with no allowance for use of the public street or landscaped areas for maneuvering.

4.8. TEMPORARY STRUCTURES. No temporary building or structure (including trailers) shall be permitted on any Lot except temporary structures used during and in connection with the construction of improvements on any Lot or Lots.

4.9. EXCAVATION. No excavation work shall be permitted on any Lot except in connection with the construction of improvements on the Lot.

ARTICLE V

RAIL-SERVED LOTS EASEMENTS

5.1. RAIL SPUR EASEMENTS. Certain lots within the subdivision are adjacent to a railroad track side spur; which switches onto and off of a railroad tract main spur; which switches onto and off of the Union Pacific Railroad Company main railroad line. Each such lot shall be referred to as "rail served lot". Each rail served lot shall have an easement of ingress and egress over and across the railroad tract main spur, as may be necessary or convenient for the use and enjoyment of railroad transportation services. In addition, each rail served lot served by a railroad track side spur shall have an easement of ingress and egress over and across the particular railroad tract side spur serving each respective rail served lot. These easements shall not be exclusive, but rather shall be in common with Declarant; owners of rail served lots in additions to existing properties; and railroad common carriers for purposes of picking up cars, dropping off cars, and switching cars within the subdivision. These easements may be setout on subdivision plats, may be included in deeds of conveyance, or may be evidenced by separate instrument. However, regardless of whether further evidenced or not, such easements are hereby created and shall be, and are hereby made, subject to the provisions and limitations setout herein.

5.2. STANDARD OF FAIR DEALING. Each owner of an easement discussed in 5.1 shall be and is hereby bound by a duty of good-faith, fair dealing and reasonable cooperation to each and every other owner of such an easement.

ARTICLE VI

ASSESSMENTS

6.1. RIGHT TO ASSESS. The Association, acting through the Committee, shall have the right to assess the Lot Owners for their proportionate share of expenses (based on acreage) in accordance with the categories and purposes set out in 6.2, 6.3 and 6.4. Any such assessments shall constitute personal obligations of the Lot Owners as well as a charge

and lien upon the land which shall be evidenced by an affidavit signed by a Committee Member filed in the Webb County Real Property Records. Said charge and lien shall, however, be subordinate to any mortgage or deed of trust covering the Lot in question, and any foreclosure pursuant to such mortgage or deed of trust, or any transfer in lieu of such foreclosure, shall extinguish such lien with respect to costs and expenses incurred prior to such foreclosure or transfer.

6.2. CATEGORIES OF ASSESSMENTS. There shall be two categories of assessments, being one category for rail served lots only, and another category for all lots in the subdivision, including rail served lots and non-rail served lots ("general lots").

6.3. GENERAL LOT ASSESSMENTS. The assessments levied by the Association against all lots shall be used for maintenance of the temporary railroad crossing, the cost of liability insurance, of the common areas, if any, for subsidizing appropriate governmental authorities in the maintenance of the public street, drainage facilities, easements and rights-of-ways; for enforcement of these Covenants, Conditions and Restrictions in general; and for administrative expenses incidental thereto.

6.4. RAIL SERVED LOT ASSESSMENTS. The assessments levied by the Association against rail served lots only shall be used exclusively for the maintenance of the railroad tract switches, main spurs, and side spurs situated within the subdivision, the cleaning, clearing and otherwise maintaining the rail served lot easements, and incidental and administrative expenses attributable thereto.

6.5. ALLOCATION OF RAIL SERVED LOT ASSESSMENTS. The amount of the rail served lot assessments shall be the amount of money actually required from time to time for any legitimate purpose as set out in 6.4. The total cost shall be divided by the total number of acres in rail served lots. The amount of assessment as to each respective rail served lot (depending upon the number of acres in each such lot) shall be calculated as follows:

- A. Total Cost
- B. Total Number of acres in rail served lots
- C. Number of acres in each respective rail served lot
- D. Amount of Assessment as to each respective rail served

lot

$$A \div B \times C = D$$

6.6. ANNUAL GENERAL LOT ASSESSMENTS. The annual general lot assessment to be paid by the Lot Owners shall be determined on the basis of a budget approved by the Association acting through the Committee on an annual basis for the subsequent year. At the end of any fiscal year, the Association may not accumulate a surplus which exceeds two times the annual assessment for that year. Any accumulated surplus in excess of that amount shall be applied to the annual budget for the subsequent year.

6.7. SPECIAL GENERAL LOT ASSESSMENTS. The Association acting through the Committee shall have the power to levy a special assessment to cover the cost of any maintenance, construction, repair or enforcement action which was not anticipated at the time of the annual budget. Any special

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assessments exceeding the above amounts must be approved by a vote of the Members of the Association.

6.8. ASSESSMENTS FOR NEGLIGENT ACTS. The cost of any work or repair required to be done by the Association as a result of the action or negligence of a Lot Owner or Lot Owners shall be assessed only against the responsible Lot Owner or Lot Owners. The decision of the Association relative to responsibility or negligence shall be conclusive.

6.9. INTEREST, REMEDIES OF THE ASSOCIATION. Delinquent assessments shall bear interest at the maximum lawful per annum rate from the date of delinquency. The Association may bring either an action at law against the Lot Owner personally obligated to pay the same, or to foreclose the lien against the Lot and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest as provided and reasonable attorney's fees to be fixed by the court, together with the costs of such action.

6.10. PROOF OF PAYMENT OF ASSESSMENTS. The Association, upon request, for a service fee of not more than \$20.00 at any time shall furnish any Lot Owner liable for any assessment a certificate in writing signed by a Committee Member setting forth what assessments, if any, which have been made with respect to a Lot are unpaid. Such certificate shall be conclusive evidence with respect to the matters certified therein.

ARTICLE VII

RIGHT TO REPURCHASE

7.1. FAILURE TO CONSTRUCT. In the event that a Lot Owner does not commence construction of a building on its Lot within five (5) years from the date of the execution by Declarant of the Deed to the Lot, Declarant shall have the right (but not the obligation) to repurchase the Lot for the same purchase consideration paid by Lot Owner. Declarant shall exercise its right to repurchase by giving Lot Owner notice in writing designating the closing date on the repurchase of the Lot. At closing, Lot Owner, at its expense, shall provide Declarant with a General Warranty Deed and a Title Policy subject only to those title exceptions which burden the Lot on the date of its conveyance from Declarant to Lot Owner. Upon request by a Lot Owner, Declarant may waive its right to repurchase and/or grant an extension on the commencement of construction of a building on the Lot. All expenses incurred in the waiving of Declarant's right to repurchase and/or the granting of an extension to commence construction shall be paid by the Lot Owner.

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ARTICLE VIII

GENERAL PROVISIONS

8.1. VARIANCES. Notwithstanding any provision herein to the contrary, the Committee shall have the discretion to grant provisional variances from any of these Restrictions, provided that to do so will not create a situation inconsistent with the overall quality and scheme of the Property. The Lot Owner seeking a variance shall pay all costs and expenses

incurred by the Committee in connection with such Lot Owner's application for a variance.

8.2. DURATION. The covenants and restrictions of these Restrictions shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Declarant, its successors or assigns, the Association, the Committee or any Member, their respective legal representatives, heirs, successors and assigns, for an initial term commencing on the effective date of these Restrictions and ending twenty-five (25) years later. Upon expiration of such initial term, these Restrictions (as amended) and the enforcement rights relative thereto, shall be automatically extended for successive periods of ten (10) years. During such ten (10) year extension periods, these Restrictions may be terminated by an instrument signed by Members holding not less than seventy-five percent (75%) of all eligible votes of the Association properly recorded in the appropriate records of Webb County, Texas.

8.3. ENFORCEMENT. The Declarant, the Association, the Committee or any Member, shall have the right to enforce, by proceedings at law or in equity, these Restrictions. The failure of the Declarant, the Association, the Committee or of any Member to take any action upon any breach or default of or in respect to any of the foregoing shall not be deemed a waiver of their right to take enforcement action upon any subsequent breach or default. Actions for enforcement may be brought against the owner and/or occupant of any Lot. Upon written request by any Member, the Committee shall prosecute any violation of these Restrictions for which no variance has been or is granted.

8.4. REMEDIES NOT EXCLUSIVE. The remedies provided for herein for breach of these Restrictions are not exclusive, but rather, are cumulative; that is, they are in addition to any other rights or causes of action which the Declarant, the Association, the Committee or any Member may have at common law, by statute, at law or in equity. Furthermore, it is hereby expressly provided that the Declarant, the Association, the Committee and/or any Member shall have a cause of action against any owner and/or occupant of any Lot for damages to person or property resulting from any breach of these Restrictions.

8.5. INDEMNIFICATION FOR BREACH. The owner and/or occupant of any Lot which may be in breach of any of these Restrictions, shall indemnify, defend and hold harmless the Declarant, the Association, the Committee and any owner or occupant of any Lot, for all costs, including but not limited to, reasonable attorney's fees, which may be incurred as a result of any such breach.

8.6. AMENDMENTS BY DECLARANT. The Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of any Lot Owner, to amend this Declaration by any instrument in writing duly signed, acknowledged and filed of record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan of development as evidenced by this

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Declaration and shall not impair or adversely affect the vested property or other rights of any Lot Owner or its mortgagee.

8.7. AMENDMENTS BY ASSOCIATION. The Association may, by a majority vote of the Members, amend these Restrictions, and upon such amendment, the Committee shall cause a written memorandum of such amendment to be filed in the Real Property Records of Webb County, Texas, at which time such amendment shall become effective, provided that any such amendment shall be consistent with and in furtherance of the general plan of development as evidenced by these Restrictions. Any such amendment shall not apply retroactively to then existing uses and permanent buildings on any Lot or Lots.

8.8. INTERPRETATION. If these Restrictions or any word, clause, sentence, paragraph, or other part thereof, shall be susceptible of more than one or conflicting interpretations, then the interpretation which is the most nearly in accordance with the general purposes and objectives herein contained shall govern.

8.9. OMISSIONS. If any punctuation, word, clause, sentence, or provision necessary to give meaning or validity to these Restrictions should be omitted herefrom, it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

8.10. NOTICES. Any notice required to be sent under the provisions of these Restrictions by the Committee to any Member or any owner or occupier of any portion of the Property shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person required to be notified according to the records of the Association or the Committee at such time.

8.11. GENDER AND GRAMMAR. 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, males or females, shall in all cases be assumed as though in each case fully expressed.

8.12. SEVERABILITY. Invalidation of any one or more of the covenants, restrictions, conditions or provisions contained in these Restrictions, or any part thereof, shall in no manner affect any of the other covenants, restrictions, conditions or provisions hereof, which shall remain in full force and effect.

8.13. NO LIABILITY. Neither the Declarant, the Association, the Committee, Committee Members, nor their respective representatives and successors shall be liable for damages to any Lot Owner, lessee, tenant or other occupant of the Property or any improvement covered by this Declaration, or to any other person or entity, in connection with exercise of or failure to exercise the powers set forth in this Declaration by reason of mistake in judgment, negligence or inaction. No express or implied duty on the part of the Declarant, Association, Committee, Committee Members or their respective representatives and successors to inspect the Property (or any portion of the Property) or to familiarize itself (himself) with the activities thereon shall arise by reason of this Declaration.

EXECUTED this 25th day of October, 1993.

DECLARANT:

MILO DISTRIBUTION CENTER, L.C., a
Texas limited liability company

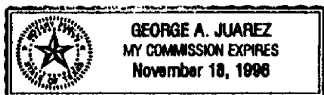
By: *Tomas Brittingham*
TOMAS BRITTINGHAM

By: *Eduardo Brittingham*
EDUARDO BRITTINGHAM
Managers

THE STATE OF TEXAS §

COUNTY OF WEBB §

THIS INSTRUMENT was acknowledged before me on this the 25th day of October, 1993, by TOMAS BRITTINGHAM and EDUARDO BRITTINGHAM, Managers of MILO DISTRIBUTION CENTER, L.C., a Texas limited liability company on behalf of such company.



George A. Juarez
Notary Public in and for the State of
T e x a s.

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COUNTY CLERK
COUNTY, TEXAS
FILED

A tract of land containing 120.4994 acres, more or less, out of a 2,370.1165 acre tract known as "San Isidro Ranch" and situated in Porcion 20, Porcion 21, Porcion 22 and the Northeast part of Survey 2415, Webb County, Texas; the 120.4994 acre tract is described by metes and bounds in the Plat of Milo Distribution Center - Phase 1 recorded in Volume 13, pages 47-49 of the Plat Records of Webb County, Texas; SAVE and EXCEPT the acreage within the Proposed Future Inner Loop and that portion of Grand Central Blvd. situated Southwest of Lot 1, Block 4, which is owned by Blackstone Dilworth, et al.

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EXHIBIT "A"