

CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: Aviation

AGENDA DATE: December 1, 2009

CONTACT PERSON/PHONE: Monica Lombrana -780-4724

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

Authorize the City Manager to execute the an Agreement among the City of El Paso, Honeywell International, Inc. and O.K. and B., a California general partnership, Marvin L. Oates, as Co-Trustee of the Marvin I. Oates Trust and Buzz Oates Development, L.P. which will allow Honeywell International Inc. to operate as a User Distribution Site Operator within Foreign Trade Zone No. 68.

BACKGROUND / DISCUSSION:

The City of El Paso is known as the Grantee and Operator of Foreign-Trade Zone (FTZ) No. 68, which is operated through the Aviation Department's FTZ Administrative office. Since that time, the City has been entering into FTZ User Agreement for FTZ No. 68. Under the FTZ User agreement, the company cannot admit shipments directly upon arrival to the Port of El Paso unless they are approved for Direct Delivery.

This year, on June 16, 2009, City Council approved FTZ No. 68's revised Tariff Schedule (Ordinance No. 017125) which allows a distribution operation to be recognized as a Site Operator permitting a high volume company to benefit from Direct Delivery procedures that streamlines the inbound process for shipments. By obtaining User Distribution Site Operator approval from the Grantee, the company will be able to request Direct Delivery.

As a result, Honeywell International Inc. is requesting permission to operate as a User and a Distribution Site Operator and will operate a FTZ facility for warehousing and distribution of raw materials and finished goods from foreign vendors for distribution worldwide of security products. The Honeywell operation employs over 100 in El Paso.

The Department of Aviation recommends approval of this agreement.

PRIOR COUNCIL ACTION:

The last related item was approved by City Council on June 16, 2009.

AMOUNT AND SOURCE OF FUNDING:

N/A

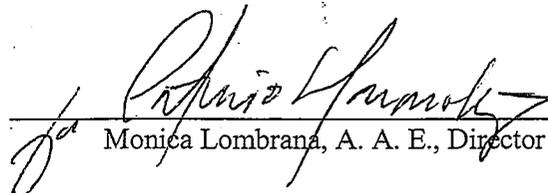
BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____
Deputy City Attorney

DEPARTMENT HEAD:



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

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

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

That the City Manager be authorized to sign a User Agreement among the City of El Paso, Honeywell International, Inc., and O.K. and B., Marvin L. Oates, and Buzz Oates Development L.P. to allow Honeywell International, Inc. to operate as a User and a Distribution Site Operator within the Foreign Trade Zone No. 68.

ADOPTED THIS ____ DAY OF DECEMBER 2009.

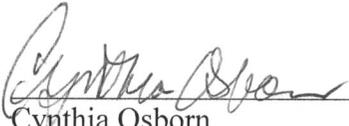
THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

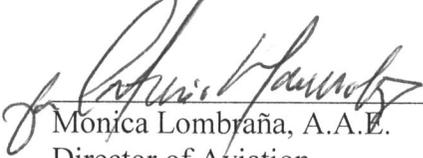
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



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

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**FOREIGN-TRADE ZONE
USER AGREEMENT**

THIS FOREIGN-TRADE ZONE USER AGREEMENT is made and entered into this ____ day of March 2009, by and between the Operator, the Owner, and the User, each as identified in Article I below.

WITNESSETH:

WHEREAS, Foreign-Trade Zone No. 68 (the "Zone") has been approved by the Foreign-Trade Zones Board; and

WHEREAS, the Premises described below are within the boundaries of the Zone; and

WHEREAS, it is the desire of the Operator, Owner, and User that the User be a designated user of the Zone in the location identified herein, in accordance with the terms hereof; and

WHEREAS, it is the further desire of the Operator, Owner, and User that the User also be designated as a Distribution Site Operator for the location identified herein, so that User may avail itself of direct delivery procedures.

NOW, THEREFORE, the Operator, Owner and the User, in consideration of the terms, covenants, and conditions contained herein, hereby agree as follows:

ARTICLE I – PARTIES, DEFINITIONS AND TERM

1.01 PARTIES.

- A. **OPERATOR:** Foreign-Trade Zone No. 68
City of El Paso, Department of Aviation
International Trade Processing Center
501 George Perry, Suite I
El Paso, Texas 79906
Attn: Jose Quiñonez, Manager
- B. **USER:** Honeywell International Inc.
Honeywell Security and Data Collection
12220 Rojas Dr., Suite A
El Paso, Texas 79936
Attn: James J. Medina

- C. **OWNER:** O.K. and B., a California general partnership, Marvin L. Oates, as co-Trustee of the Marvin L. Oates Trust, and Buzz Oates Development L.P., a California limited partnership
C/o Buzz Oates Management Services
8615 Elder Creek Road
Sacramento, CA 95828

1.02 **DEFINITIONS.**

- A. **ACT:** Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. Sections 81a - 81u).
- B. **BOARD:** Foreign-Trade Zones Board, United States Department of Commerce, Washington, D.C., which consists of the Secretary of the Department of Commerce and the Secretary of the Treasury or their designated alternates.
- C. **CUSTOMS SERVICE:** The United States Customs and Border Protection, a division of the Department of Homeland Security, or its successor agency.
- D. **MANAGER:** Foreign-Trade Zone Manager, designated by the City of El Paso.
- E. **PORT DIRECTOR:** The Port Director of Customs, El Paso, Texas, U.S. Customs and Border Protection.
- F. **PREMISES:** Approximately 270,000 square feet of building space located on that certain real property described as 12220 Rojas Drive, City of El Paso, El Paso County, Texas 79936 which is owned by Owner and is more fully described in **Exhibit "A"**, which is attached hereto and incorporated herein by reference for all purposes.
- G. **ZONE:** Foreign-Trade Zone No. 68 approved by the Foreign-Trade Zones Board on April 14, 1981, and expanded on May 2, 1984, January 3, 1991, January 20, 1999, September 8, 2000, and June 16, 2006.
- H. **ZONE OFFICES:** FOREIGN-TRADE ZONE No. 68
CITY OF EL PASO
EL PASO INTERNATIONAL AIRPORT
INTERNATIONAL TRADE PROCESSING CENTER
501 GEORGE PERRY, SUITE I
EL PASO, TEXAS 79906

1.03 TERM. Unless otherwise terminated as herein provided, this Agreement shall remain in effect for two (2) years commencing on the date of this Agreement (the "Initial Term"). At the end of the Initial Term, this Agreement shall automatically renew for successive one-year terms (the "Renewal Term(s)"), unless either party provides written notice of its desire not to renew at least ninety (90) days prior to the end of the Initial Term or Renewal Term; provided, however, that such ninety (90)-day notice period shall not commence unless and until (i) a written plan for deactivation is supplied to the Grantee and a planning meeting is held with the Customs Service on the deactivation; and/or (ii) the Zone Operator has transferred, or secured an agreement to transfer, sponsorship of the Zone Site to another Foreign Trade Zone. Grantee will not unreasonably withhold authorization for deactivation during such ninety (90)-day notice period or at any time in the event that a shorter period is required by FTZ laws and/or the U.S. Customs Service. In the event the Zone Operator seeks to transfer sponsorship of the Zone Site to another Foreign Trade Zone, Grantee will cooperate and support the Zone Operator in seeking and timely completing such transfer. If the U.S. Customs Service requires deactivation of the Zone Site "Term" shall hereinafter be used in this Agreement to refer to the Initial Term or the applicable Renewal Term, as the case may be.

ARTICLE II - OPERATOR OBLIGATIONS

2.01 ADMINISTRATION OF ZONE. In accordance with the terms of this Agreement, the Operator shall be responsible for operating the Zone and shall provide all personnel, services, and materials it deems necessary for the proper administration and operation of the Zone. The Operator shall conduct all of its operations hereunder in an orderly and business-like manner. The Operator shall not discriminate in the application of any rules, regulations, or procedures adopted by the Board and the laws and regulations of the United States, and the Tariff as referenced herein, in effect for the Zone. The Operator shall keep its Zone Offices open for business during such times as are set forth in the applicable Zone Tariff in effect and on file with the Board. The Operator shall be entitled to enter upon the Premises for Zone business. All such entries should be in accordance with the established security procedures of the User. By execution of this Agreement the User and Owner have consented in advance to entrance upon the Premises by the Operator, its agents and employees and the agents and employees of the Customs Service.

2.02 DESIGNATION OF USER AS DISTRIBUTION SITE OPERATOR. Operator hereby designates User as a Distribution Site Operator in order that User may apply for direct delivery status pursuant to 19 CFR 146.39.

2.03 NOTICE OF CHANGE IN OPERATING RULES. The Operator shall provide the User with copies of applicable laws, regulations, directives, rules, rates, or procedures

adopted by it at least five (5) days before the User shall be required to comply therewith.

2.04 ZONE TARIFF. Pursuant to and in compliance with instructions of the Board, the Operator has issued certain rates, rules, charges and regulations, known as the Tariff, which applies to operations within the Zone. The Tariff has been issued by the Operator following its approval by the Board.

The Operator shall, pursuant to the Act and the rules and regulations issued thereunder, abide by and apply such Tariff uniformly and without prejudice and shall at all times provide reasonable notice to User of all changes in said Tariff.

ARTICLE III - USER OBLIGATIONS

3.01 OCCUPANCY OF PREMISES. Through the Term of this Agreement, the User shall be either the owner of the real estate, which comprises the Premises or tenant in possession of the Premises pursuant to a lease by and between the Owner and the User (Lease Agreement). If requested by the Manager, the User shall provide copies of any leases or other agreements affecting the Premises including any and all attachments and amendments.

3.02 COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.

- A. Tariff. The User shall use the Zone in accordance with the provisions of this Agreement, the Act and the Tariff, as the Act and the Tariff might be modified from time to time during the term of this Agreement.
- B. Ordinances, Statutes and Regulations. The User shall observe and obey (and require its officers, employees, guests, invitees, and those doing business with it in the Zone to observe and obey) all applicable laws, rules, and regulations including but not limited to those of the City of El Paso, the State of Texas, the United States of America, the Board, and the Customs Service.
- C. Operating and Reporting Procedures. In conducting its business and operations within the Zone, the User shall adopt such operating and reporting procedures as are necessary to assure its compliance with the requirements of the Act, the Board and the Operator. The User shall keep its books, records and accounts in accordance with generally accepted principles of accounting, and in compliance with any requirements of Federal, State or local governmental agencies having appropriate jurisdiction. All such books, records and accounts shall be kept on the Premises and shall be made available to the Operator, its agents, employees and representatives during normal business hours. Additionally, the User shall provide any and all reports requested by the Operator in a timely manner. Failure to prepare and submit such reports

and to keep the books, records and accounts in the manner and location required herein shall be deemed an event of default.

- D. Inventory Control System ("I.C.S."). The User shall also prepare and maintain an I.C.S. in a form acceptable to the Operator and to the Customs Service. The User shall maintain records indicating a constant total of active Zone space in its use, as well as records indicating the quantity, value and type of merchandise processed by the User. The I.C.S. shall be delivered to and approved by the Operator and the Customs Service prior to the execution of this Agreement.
- E. Maintenance. The User and/or the Owner, as applicable, shall at all times maintain the structures, fixtures, equipment and personal property and other facilities within the Zone in first-class operating order, condition and appearance at all times. The User's Failure to make repairs and replacements within thirty (30) days of receipt of written notice from the Manager shall be considered an event of default under the Agreement and may, at the Operator's option, result in termination of this Agreement. In the event the Board or the Customs Service assesses penalties for failure to make such repairs, the User and/or the Owner, as applicable, covenants and agrees that it shall be responsible for paying such penalties. The obligations of the User and the Owner to the Operator shall be apportioned as set forth in the Lease Agreement.
- F. Cooperation with Government Personnel. The User and Owner shall reasonably cooperate with United States Government personnel having jurisdiction over the Zone, and the employees, representatives and agents of the Operator in every respect.
- G. Responsibility for Appeals. By execution of this Agreement the User acknowledges that the Operator in its dual role as a Foreign-Trade Zone Grantee and Operator is ultimately responsible for all communications with the Customs Service and Board in all matters involving the operation of the Zone. Therefore, any correspondence with the Customs Service and the Board concerning the Zone shall be made through the Operator.

In the event a penalty is assessed in connection with the User's operations within the Zone, the Operator will inform the User as soon as practicable. The User covenants and agrees that it will make payment of any such fines, penalties and liquidation damages in accordance with the instructions by the Customs Service and/or the Board. If the User desires to appeal the amount of penalty as permitted by the Act, the User must coordinate all such communications through the Operator.

3.03 MARKETING OF THE ZONE. Neither the User nor the Owner shall promote or market the Zone on behalf of, or as a representative of, the Operator, without the prior

written consent of the Operator. Nor shall the User or the Owner warrant or imply that the User or Owner represents the Operator in any manner or to any extent other than as specifically provided for in the Foreign-Trade Zone laws and regulations and as mutually agreed pursuant to this Agreement.

3.04 PAYMENT OF FEES. By execution of this Agreement, the User covenants and agrees to pay the following fees to the Operator:

- A. Activation Fee. Upon execution of this Agreement the User shall pay an activation fee in the amount of TWO THOUSAND AND 00/100 DOLLARS (\$2,000.00) to the Operator for the purpose of covering administrative expenses incurred in commencing Zone operations.

- B. User Fees. The Operator shall provide a statement each calendar month itemizing charges for each transaction, which occurred during the preceding month. At the time of the execution of this Agreement, the transaction fee is FIFTEEN AND 00/100 DOLLARS (\$15.00) per transaction. However, the transaction fee shall be the amount enumerated within the Tariff as may be amended from time to time. The transaction fee is subject to modification during the term of this Agreement by action of the El Paso City Council. Failure of User to make payment in full within thirty (30) days following the date these fees are accrued will result in an assessment of a past due penalty equal to the maximum allowed by law from the date when the same was due and may result in termination of this Agreement without further notice or demand. Further, in the event of User's continued failure to make any such payment, the Operator may choose to not process any transactions for the User until such time as the default in payment has been cured. In the event the default continues for more than thirty (30) days the User will be required to pay a new Activation Fee at the prevailing rate in effect at the time of such re-activation.

ARTICLE IV - ADDITIONAL CHARGES

4.01 CUSTOMS SERVICE CHARGES AND LIENS.

- A. Operational Expenses. If ever assessed, charges for services rendered by the Customs Service in connection with User's operations within the Zone shall be paid for by User and also shall be passed on, if billed directly to Operator, to the User incurring such charges. Failure to pay such charges within ten (10) days from receipt of notification shall be an event of default and cause for termination.

- B. Fines and Penalties. The User shall reimburse the Operator for any fees, penalties or other charges assessed against the Operator by the Board,

the Customs Service or any other governmental entity resulting from the User's operations within the Zone. Failure to reimburse the Operator within thirty (30) days of receipt of written notice shall be an event of default and may be cause for termination. This Agreement may be terminated and may result in the Operator's taking action to collect the amount owed.

4.02 SECURITY EXPENSES. The Board, Customs Services and/or any federal agency can impose and revise security requirements for the Premises as a Zone site. The parties agree that the Premises shall be maintained in accordance with those requirements. The User shall pay for the expenses incurred in satisfying the security requirements imposed by the Board, the Customs Service and/or any other federal agency.

4.03 LIENS AND TAXES. The User shall pay all taxes and governmental charges of any kind that may be lawfully assessed against the User or the Operator, with respect to the Premises.

ARTICLE V - BONDS

5.01 PAYMENT BOND Upon execution of this Agreement, the User shall deliver a payment bond in the amount of ONE HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$125,000.00), issued by a surety approved by the Operator. The purpose of the bond is to secure payment of any fees or penalties assessed against the User or Operator resulting from the User's activities within the Zone. Twelve (12) months from the effective date of this Agreement and every twelve (12) months thereafter the Operator shall review the records of Zone activity by the User to determine whether the amount of the bond stated herein is sufficient. Based upon the number of transactions, the value of the merchandise routinely moved through the Zone, and any events of default, the Operator may adjust the amount required for said payment bond; provided however the bond shall never be less than ONE HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$125,000.00).

5.02 PROOF OF BOND. Upon execution of this Agreement the User shall provide the Manager appropriate evidence that such a bond has been acquired and has been paid for. Corresponding evidence of renewal shall be delivered at least ten (10) days prior to the expiration date of any policy. The bond shall be written by a company authorized to do business in the State of Texas and approved by the Operator. Such bond shall be written in favor of the Operator and shall provide that the surety will pay the Operator, up to the amount of the bond, the amount of any fines, penalties or liquidated damages assessed against the User or the Operator resulting from the User's activities within the Zone and which are not promptly paid by the User.

5.03 CUSTOMS BOND. In the event the Port Director approves an application by User for direct delivery pursuant to 19 CFR 146.39, as may be amended, User shall be

required to obtain a Customs 301 Bond, in an amount set by U.S. Customs, as a guarantee for the payment by the Zone Operator of all duties and taxes on such merchandise as may be removed or otherwise missing from its specific Zone site without proper Customs permits. This Customs 301 Bond shall be in addition to the Payment Bond referred to in 5.01 above and shall be effective on the date User's application for direct delivery is approved by the Port Director, and shall be a "Continuous Bond".

ARTICLE VI - INDEMNIFICATION AND INSURANCE

6.01 INDEMNIFICATION. USER AGREES TO INDEMNIFY AND HOLD THE OPERATOR, ITS OFFICERS, REPRESENTATIVES, ASSIGNS, AGENTS AND EMPLOYEES HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF USER'S BUSINESS ON THE PREMISES, INCLUDING BUT NOT LIMITED TO ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF USER OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF USER, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES, **INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF THE OPERATOR.** IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST THE OPERATOR BY REASON OF ANY SUCH CLAIM, USER, UPON NOTICE FROM THE OPERATOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO THE OPERATOR.

6.02 FIDELITY OBLIGATION. To the extent that the losses described in the above paragraph (6.01) are recovered by the User under insurance policies in force, and to the extent that any such losses arise directly or indirectly from or out of any act or omission of the User or any act or omission of the User's agents, employees or invitees as authorized by the User, and that occurs in the User's operations within the Zone, the User agrees and covenants, during the term of this Agreement, to indemnify the Operator, its officers, employees, representatives, assigns, and agents against all loss of money or other personal property belonging to the Operator, or in which the Operator has a pecuniary interest, or which is held by the Operator in any capacity.

6.03 NOTICE. The parties hereby agree that prompt and reasonable notice shall be given to all parties concerning every demand, notice, summons or other process received in any claim, allegation or legal proceeding covered hereby.

6.04 COMPREHENSIVE GENERAL LIABILITY INSURANCE, INCLUDING INDEPENDENT CONTRACTOR'S LIABILITY. User agrees that, at its own cost and expense, it shall procure and continue in force throughout the Term of this Agreement,

for the benefit of User and the Operator, general liability insurance against any and all claims for injuries to persons or damage to property arising in connection with the User's operations in the Zone or in the performance of its obligations under this Agreement, except that User shall not be required to procure insurance for User's obligation to indemnify Operator for Operator's own negligence. Such insurance at all times to be in an amount of not less than FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00) for bodily injury or death arising out of any one occurrence and ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00) for property damage arising out of any one occurrence.

6.05 COMPREHENSIVE AUTOMOBILE AND TRUCK LIABILITY INSURANCE.

The User agrees that, at its own cost and expense, it shall procure and continue in force throughout the Term of this Agreement, for the benefit of the User and the Operator, comprehensive automobile insurance, and liability insurance covering vehicles owned and hired by the User against all claims for injuries to persons or damage to property in an amount of not less than FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00) for bodily injury or death arising out of any one occurrence, and ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00) for property damage arising out of any one occurrence.

6.06 FORM AND EVIDENCE OF INSURANCE. Upon execution of this Agreement, but prior to the commencement of any activities by User in the Premises, the User shall deliver to the Manager appropriate evidence (either by a copy of the policy/policies or by a certificate of insurance in a form acceptable to the Manager) that such insurance is in effect and the applicable premium has been paid. Corresponding evidence of renewal of coverage shall be delivered at least ten (10) days prior to the expiration date of any policy. The insurance required in this Article shall be written by a company authorized to do business in the State of Texas, and as may be approved by the Operator. Such insurance shall name the Operator as an additional insured. Notwithstanding the preceding sentence, the Parties agree to use best efforts to coordinate the defense of any claims. No such insurance policy or policies may be canceled, terminated or modified without giving at least thirty (30) days advance written notice to the Operator. Renewal policies or certificates shall be delivered to the Manager at least thirty (30) days prior to the expiration date of each policy.

If, during the Term of this Agreement, any of the policies are or become unsatisfactory to the Operator as to form or substance, or if the carrier(s) issuing any such policy or policies are or become unsatisfactory to the Operator, the User shall promptly obtain a new and satisfactory policy or policies. If the User shall fail to take out and maintain any of the insurance listed in this Article, and to pay the premiums thereon, the Operator shall have the right to take out such insurance and invoice the User for the costs thereof. However, failure by the User to comply with the insurance requirements of the Operator shall be deemed an event of default and may result in the termination of this Agreement.

6.07 ACCIDENT AND CLAIM REPORTS. In the event of any injury to any person on or in the Premises, other than an employee of the User, or in the event of damage or loss to any property within the Premises, other than the property of the User, the User shall immediately notify the Manager in writing.

6.08 RECORDS. The User shall maintain records in accordance with generally accepted accounting principles and practices, and in accordance with any rules, regulations or directives of the Customs Service, the Board, or the Operator throughout the term of this Agreement; and shall keep for five (5) years after the event, records, statements, and books of account (including records of original entry) recording all transactions pertaining to the User's operations under this Agreement. The records will be kept at the Premises or placed in the Operator's custody for the statutory period and at the sole expense of the User. All statements of record required under this Article shall be prepared in accordance with generally accepted accounting principles and practices, and shall be sworn to by a Certified Public Accountant. Each statement shall be subject to verification and audit by the Operator, Customs Service, and the Board.

6.09 INSPECTION. The Operator shall have the right at all reasonable times and with reasonable notice to inspect the Premises and to examine the equipment of the User to observe the performance by the User of its obligations under this Agreement; and to do any act or thing which the Operator may be obligated or have the right to do, by law, under this Agreement. The Operator agrees not to interfere unreasonably with the User's business during such inspections.

ARTICLE VII – DEFAULT, REMEDIES AND DEACTIVATION

7.01 DEFAULT BY USER. The following events shall be deemed events of default by User, and may result in the termination of this Agreement:

- A. User's failure to pay any transaction fee and such failure shall continue for a period of thirty (30) days.
- B. User's failure to comply with any term, provision or covenant of this Agreement, other than the payment of fees noted in Section 7.01A above, and failure to cure such non-compliance within ten (10) days after receipt of written notice thereof.
- C. User under this Agreement becomes insolvent, or shall make a transfer in fraud of creditors, or makes an assignment for the benefit of creditors.
- D. User under this Agreement files a petition under any section or chapter of the Bankruptcy Reform Act of 1978, as amended, or under any similar law or statute of the United States or any State thereof; or User under this Agreement is adjudged bankrupt or insolvent in proceedings filed against User under this Agreement.

- E. A receiver or trustee is appointed for the Premises or for all, or substantially all, of the assets of User under this Agreement.
- F. User's failure to keep books, records and accounts in accordance with the manner set forth herein following thirty (30) days notice and an ability to cure.
- G. User's failure to provide reports to Operator in a timely manner following thirty (30) days notice and an ability to cure.
- H. User's failure to pay fines and penalties assessed by the Customs Service, the Board or any other governmental agency following thirty (30) days notice and an ability to cure.
- I. Receipt of notice from the Customs Service regarding the deactivation of the Premises, Zone, or any area affecting the User's ability to operate within the Zone.

7.02 REMEDIES. Upon the occurrence of any such event of default, Operator shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

- A. Discontinue processing User's Zone transactions until such time as the default is cured.
- B. Cessation of foreign trade zone operations until such time as the default is cured.
- C. Terminate this Agreement.
- D. Make claim against the User's surety pursuant to the payment bond required herein.

7.03 NON-WAIVER OF REMEDIES. Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedies herein provided or provided by law, nor shall pursuit of any other such remedy constitute a forfeiture or waiver of any fees due to Operator hereunder or of any damages accruing to Operator by reason of the violation of any of the terms, provisions and covenants herein contained. Forbearance by Operator to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default.

7.04 DEACTIVATION. In the event of deactivation of the Premises, the Zone, or any area of the Zone affecting the operations of the User, the User shall reconcile all pending transactions and provide a reconciliation letter to the Operator indicating that there is no remaining inventory in zone status within the Premises or the Zone. Such

reconciliation letter shall also state that all transactions have been completed, leaving a zero balance on hand.

ARTICLE VIII - MISCELLANEOUS PROVISIONS

8.01 NOTICES. Whenever any notice is required or permitted hereunder such notice shall be in writing. Any such notice or document required or permitted shall be deemed to have been delivered, whether actually received or not, when deposited in the United States mail postage prepaid, registered mail, return receipt requested, addressed to the respective parties at the address for notice specified in Article I above or to such other address as the parties from time to time may designate to each other by prior written notice.

8.02 CAPTIONS. The captions and headings contained in this Agreement are used only to facilitate reference, and in no way define or limit the scope or intent of any of the provisions of this Agreement.

8.03 APPLICABLE LAW. This Agreement is entered into in El Paso, El Paso County, Texas, and the laws of the State of Texas shall govern the validity, performance, interpretation and enforcement of this Agreement. The Parties agree that venue shall be in El Paso County, Texas.

8.04 NON-ASSIGNABILITY. The User shall not assign, sublet, sell, convey, or transfer all or any part of this Agreement in any way without the prior written consent of the Operator. Any attempt to transfer or assign without the prior written consent of the Operator shall be void and at the option of the Operator may be deemed an event of default.

8.05 NO THIRD PARTY BENEFIT. No provision contained or incorporated in this Agreement shall create or give to third parties any claim or right of action against the Operator or the User beyond such as legally may exist in the absence of any such provision.

8.06 ATTORNEY'S FEES. In any successful action brought by the Operator for the enforcement of the obligations of the User under this Agreement the Operator shall be entitled to recover court costs, interest and reasonable attorney's fees. In any successful action brought by the User for the enforcement of the obligations of the Operator under this Agreement, the User shall be entitled to recover court costs, interest and reasonable attorney's fees.

8.07 WAIVER. One or more waivers of any covenant, term or condition of this Agreement by either Party shall not be construed by the other Party as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval of either Party shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

8.08 SEVERABILITY. Every provision of this Agreement is intended to be severable. If any term or provision hereof is found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

8.09 ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement of the parties on the subject matter hereof and may not be changed, modified, discharged, or extended except by written instrument duly executed by the parties.

8.10 SUCCESSORS AND ASSIGNS. All of the terms, covenants and agreements herein contained shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

8.11 ELECTION OF REMEDIES. User agrees that the Operator shall have all the rights and remedies granted by this Agreement at law or in equity, and that these same rights and remedies shall be cumulative and may be pursued separately, successively or concurrently against the User and/or the User's surety company. The exercise or failure to exercise any right or remedy by the Operator shall never be construed to be a waiver or release of any other right or remedy.

8.12 NON-PARTNERSHIP. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or joint venture between the parties hereto, it being understood and agreed that neither the provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Operator/Grantee and User in a foreign-trade zone.

8.13 VIOLATIONS OF LAWS, RULES, REGULATIONS. The Operator shall be under no obligation to perform under this Agreement if the activity would cause the Operator to be, or result in the Operator being in violation of any law, rule or regulation of the State of Texas, the United States of America, or any governmental agency governing foreign-trade zones. Subject to the foregoing sentence, for the term of the Lease Agreement, the Owner shall not interfere with the User's use of the Premises as a foreign trade zone.

8.14 CONFIDENTIALITY OF ZONE RECORDS. The parties acknowledge that the Operator is a public entity and is therefore subject to the Texas Public Information Act ("TPIA"). Should the Operator receive a request under the TPIA for information which has been identified by User as confidential, the Operator will notify the User of the receipt of such request so that the User may assert its rights as a third party to protect such information in such proceedings involving a determination by the Office of the Attorney General as to whether such information must be released under the TPIA.

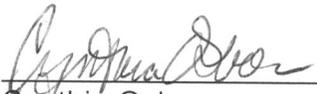
[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by a duly authorized representative on the date first noted above.

THE CITY OF EL PASO:

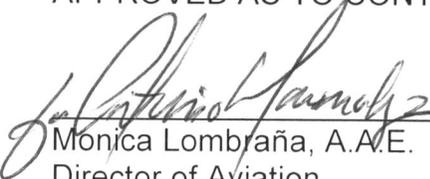
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



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

ACKNOWLEDGMENT
(OPERATOR)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2009, by **Joyce A. Wilson, City Manager** of the **City of El Paso, Texas** (Operator).

Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

USER:
HONEYWELL INTERNATIONAL INC.

By: [Signature]
Printed Name: Jeannine Lane
Title: Vice President General Counsel

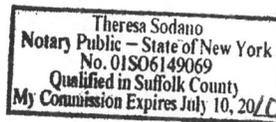
ACKNOWLEDGMENT
(USER)

THE STATE OF New York)
COUNTY OF Nassau)

This instrument was acknowledged before me on this 15th day of September, 2009 by _____, as _____ of **Honeywell International Inc. – Honeywell Security (User)**.

Notary's Commission Expires:
July 10, 2010

Theresa Sodano (Pinto)
Notary Public, State of
Notary's Name (printed):
Theresa Sodano-Pinto



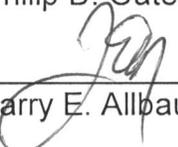
[SIGNATURES CONTINUE ON FOLLOWING PAGE]

OWNER:

O.K. and B., a California general partnership

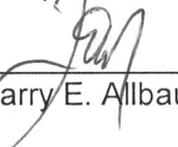
By: The Marvin L. Oates Trust Dated March 7, 1995,
as amended, General Partner

By: 
Philip D. Oates, co-Trustee

By: 
Larry E. Allbaugh, co-Trustee

The Marvin L. Oates Trust Dated March 7, 1995,
as amended

By: 
Philip D. Oates, co-Trustee

By: 
Larry E. Allbaugh, co-Trustee

Buzz Oates Development, L.P., a California
limited partnership

By: The Marvin L. Oates Trust Dated March 7, 1995,
as amended, General Partner

By: 
Philip D. Oates, co-Trustee

By: 
Larry E. Allbaugh, co-Trustee

By: Oates Associates Investors, LLC, a California
limited liability company, General Partner

By: 
Philip D. Oates, co-Trustee of the Philip and
Jana Oates Family Trust, Manager

State of California)
County of Sacramento)

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

On October 7, 2009 before me, Stephene R. Wilson, Notary Public,
(here insert name and title of the officer)

personally appeared Philip D. Oates
and Larry E. allbough

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/~~they~~ executed the same in his/her/~~their~~ authorized capacity(ies), and that by his/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of Foreign - Trade zone # 68 user agreement - Honeywell 208/180, containing 19 pages, and dated September 10, 2009.

The signer(s) capacity or authority is/are as:

- Individual(s)
 Attorney-in-Fact
 Corporate Officer(s) _____ Title(s)

- Guardian/Conservator
 Partner - Limited/General
 Trustee(s)
 Other: _____

representing: Philip D. Oates Co-Trustee
Name(s) of Person(s) or Entity(ies) Signer is Representing
Larry E. allbough, Co-Trustee

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:
 form(s) of identification credible witness(es)

Notarial event is detailed in notary journal on:

Page # 17 Entry # 304

Notary contact: _____

Other

Additional Signer(s) Signer(s) Thumbprint(s)

INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is made and entered into effective September 24, 2009 by and between Honeywell International, Inc., a Delaware corporation ("Tenant"), and O.K. and B., a California general partnership, The Marvin L. Oates Trust Dated March 7, 1995, as amended, and Buzz Oates Development, L.P., a California limited partnership ("Landlord")

Landlord and Tenant are parties that certain lease dated November 22, 1996 ("Lease") for the Premises located at 12220 Rojas Drive, Suite A, El Paso, Texas 79936, consisting of approximately 143,715 square feet. Tenant desires to enter into, and have Landlord sign that certain Foreign-Trade Zone User Agreement ("FTZ Agreement"). Landlord is willing to execute the FTZ Agreement on the condition that Tenant agrees to indemnify Landlord against any costs or claims arising therefrom, as set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

- 1. Landlord shall execute the FTZ Agreement.
2. Tenant shall indemnify, defend, protect and hold harmless Landlord, from and against any and all penalties imposed by the "Operator" under the FTZ Agreement.
3. This Agreement shall be governed by and construed pursuant to the laws of the State of Texas. In the event that either party brings suit against the other with respect to matters arising from or growing out of this Agreement, then all costs and expenses, including without limitation, its actual attorneys' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.
4. This Agreement may be executed in counterparts which, when executed by each of the parties, shall constitute a valid and binding Agreement between Landlord and Tenant. The parties may also execute this Agreement and transmit their signatures by facsimile, which facsimile signatures will be valid and binding to the same extent as original signatures.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement as of the day and year first above written.

TENANT:

Honeywell International Inc., a Delaware corporation

By: [Signature]
Name: Jeannine J. Lane
By: Vice President and General Counsel
Honeywell Security

By: [Signature]
Name:
By: [Signature]

LANDLORD:

O.K. and B., a California general partnership

By: The Marvin L. Oates Trust Dated March 7, 1995, as amended, General Partner

By: [Signature]
Philip D. Oates, co-Trustee

By: [Signature]
Larry E. Allbaugh, co-Trustee

The Marvin L. Oates Trust Dated March 7, 1995, as amended

By: [Signature]
Philip D. Oates, co-Trustee

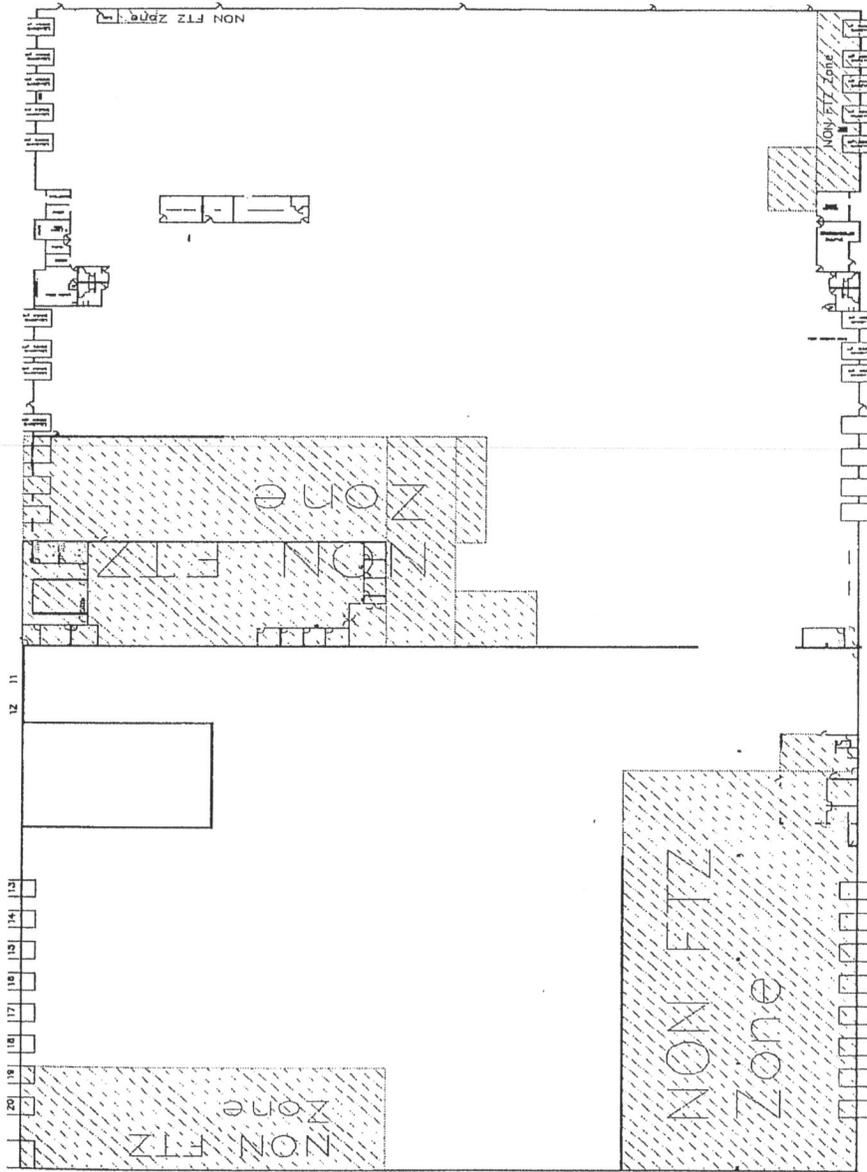
By: [Signature]
Larry E. Allbaugh, co-Trustee

Buzz Oates Development, L.P., a California limited partnership

By: The Marvin L. Oates Trust Dated March 7, 1995, as amended, General Partner

ATTACHMENT A

Map of Activated FTZ Area



262K SQFT Occupied by Honeywell,
194K SQFT Approx in FTZ