

# CITY COUNCIL REPORT



Meeting Date: April 5, 2016  
 General Plan Element: *Economic Vitality*  
 General Plan Goal: *Foster economic and employment opportunities*

## ACTION

**Cherokee Aviation Holdings, LLC Lease Agreement.** Adopt Resolution No. 10333 authorizing contract No. 2016-014-COS, a ground lease agreement at the Scottsdale Airport and giving consent to the imposition of a deed of trust on Cherokee's leasehold interest.

## BACKGROUND

The City owns and operates the Scottsdale Airport. The ground lease agreement permits the Lessee to construct improvements and use the premises as a widened Taxiway "C" and C-10 connector connecting taxiways "B" and "C". The improvements will allow the aircraft operating out of the private Airpark facility safe access to and from airport property.

### Lease Considerations:

- The term for the lease is twenty (20) years with the option for two additional 10 (ten) year periods.
- The leased area consists of .506 acres of land located on and adjacent to Taxiway "C".
- Cherokee Aviation Holdings, LLC purchased property in the airpark and needs the ground lease to be able to taxi aircraft back and forth between their property and the airport.
- The Lessee shall pay for all improvements to the leased premises as well as adjacent improvements to the taxiway that will remain with the airport.
- Cherokee requests that the City give consent to the imposition of a Deed of Trust on its Leasehold interest to provide financing for the desired improvements.
- The base rent will generate \$8,820 in annual revenue to the Airport Enterprise Fund.
- The lease format was developed by and approved by the City Attorney's Office.
- If approved, the lease will become effective immediately.

The lease agreement permits the Lessee to utilize the leased property in conjunction with an adjacent off-airport corporate hangar.

## **ANALYSIS & IMPACTS**

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### **Policy Implications**

If the lease agreement is not authorized, the tenant will be unable to taxi their larger aircraft between their hangar and the airport runway. As a result, revenue will not be generated from the ground lease nor from airpark access fees.

### **Community Involvement**

The public was provided with an opportunity to comment on the lease agreement at the Airport Advisory Commission on January 13, 2016. No negative comments were received and the Airport Advisory Commission approved a motion to recommend that City Council authorize the agreement with a 6-0 vote.

## **RESOURCE IMPACTS**

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### **Available funding**

No additional funds will be necessary to administer this lease agreement.

### **Staffing, Workload Impact**

No additional staffing will be necessary to administer the lease agreement.

### **Maintenance Requirements**

No additional maintenance required as it a ground lease and the leased premises will be maintained by lessee.

### **Future Budget Implications**

The Aviation Enterprise Fund will receive approximately \$8,820 annually in base rent for the lease.

## **OPTIONS & STAFF RECOMMENDATION**

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### **Recommended Approach**

Adopt Resolution No. 10333 to authorize contract No. 2016-014-COS, a ground lease agreement at the Scottsdale Airport with Cherokee Aviation Holdings, LLC and give consent to the imposition of a deed of trust on Cherokee's leasehold interest.

### **Description of Option B**

Do not adopt Resolution No. 10333 to authorize a ground lease agreement at the Scottsdale Airport with Cherokee Aviation Holdings, LLC and give consent to the imposition of a deed of trust on Cherokee's leasehold interest.



RESOLUTION NO. 10333

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING LEASE AGREEMENT NO. 2016-014-COS AT THE AIRPORT BETWEEN THE CITY OF SCOTTSDALE AND CHEROKEE AVIATION HOLDINGS, L.L.C., AND GIVING CONSENT TO CONTRACT NO. 2016-014-COS-E1, THE IMPOSITION OF A DEED OF TRUST ON THE CHEROKEE'S LEASEHOLD INTEREST

Cherokee Aviation Holdings, LLC, a Delaware limited liability company, desires to provide better access to its hangar facilities by entering into a ground lease with the City to provide additional access to Taxiway Charlie; and

The ground lease will provide additional revenue for the airport and benefit the public by providing better access to Taxiway Charlie; and

The ground lease will preserve a safe operating environment for aircraft on the airport, maintain compliance with FAA Grant Agreements, and allow for additional private development of airport hangar space; and

Cherokee requests that the City give consent to the imposition of a Deed of Trust on its Leasehold interest to provide financing for the desired improvements.

BE IT RESOLVED by the Council of the City of Scottsdale as follows:

Section 1: The Mayor is authorized and directed to sign Lease Agreement No. 2016-014-COS between the City of Scottsdale and Cherokee Aviation Holdings, L.L.C., a Delaware limited liability company.

Section 2: In accordance with the provisions of Section 17.8 of Lease Agreement No. 2016-014-COS, the Mayor is authorized and directed to sign the Consent, Contract No. 2016-014-COS-E1, by and between the City of Scottsdale as Lessor under said Lease Agreement, Cherokee Aviation Holdings, LLC, a Delaware limited liability company, as Lessee, and ZB, N.A. dba National Bank of Arizona, a national banking association, giving the City's consent to the imposition of a single Deed of Trust upon Cherokee's Leasehold interest.

PASSED AND ADOPTED by the Council of the City of Scottsdale this \_\_\_\_ day of \_\_\_\_\_, 2016.

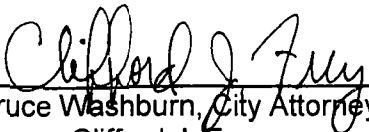
CITY OF SCOTTSDALE, an  
Arizona municipal corporation

By: \_\_\_\_\_  
W. J. "Jim" Lane, Mayor

ATTEST:

By: \_\_\_\_\_  
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Clifford J. Frey  
Senior Assistant City Attorney

When Recorded Return to:  
(Gary Mascaro)  
ONE STOP SHOP  
CITY OF SCOTTSDALE  
7447 East Indian School Road, Suite 100  
Scottsdale, AZ 85251

City of Scottsdale Contract No. 2016--014-COS  
*Resolution No. 10333*

### LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Agreement") is made and entered into this 9<sup>th</sup> day of February, 2016, by and between the City of Scottsdale, an Arizona municipal corporation ("Lessor"), and Cherokee Aviation Holdings, LLC, a Delaware limited liability company ("Lessee").

### RECITALS

A. Lessor is the owner of the Scottsdale Airport (the "Airport") located northeast of the intersection of Scottsdale Road and Thunderbird Road in Maricopa County, Arizona.

B. Lessor holds fee title and various other interests in the Airport pursuant to various documents (the "Site Documents").

C. Lessee has the right to access and use the Airport pursuant to and in accordance with that certain Scottsdale Airpark Access Permit dated January 20, 2016, Chapter 5 of the Scottsdale Revised Code, and the Scottsdale Airpark Rules and Regulations.

D. The Airport includes a certain parcel of real property (the "Premises") comprising approximately .506 acres located on and adjacent to taxiway Charlie, and more particularly described on Exhibit "A" attached hereto.

E. Lessee warrants and represents to be the owner of that certain parcel of real property being Lot 12 of Scottsdale Industrial Airpark No. 7 according to Book 234 of Maps, page 27 of the public records of Maricopa County, Arizona.

F. As of the date of this Agreement, the leased Premises consist of an aircraft taxiway and safety area.

G. Lessee desires to construct and operate certain improvements for Lessee's use of the Premises as a widened taxiway Charlie and Charlie 10 connector connecting taxiways Bravo and Charlie (collectively the "Project"), upon the Premises as depicted on the drawing (the "Site Plan") attached hereto as Exhibit "B", subject to the requirements of this Agreement. Lessee shall operate the Premises in conjunction with an off airport corporate hangar adjacent to the Premises.

H. Subject to the terms and conditions of this Agreement, Lessee shall construct the various improvements comprising the Project upon and adjacent to the Premises as depicted on the Site Plan.

I. Lessee shall complete the Project no later than June 30, 2017 (the "Completion Deadline").

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Lessee, and the covenants and agreements contained herein to be kept and performed by Lessee, and other good and valuable consideration, Lessor and Lessee agree as follows:

I. RECITALS

1 Recitals. The foregoing recitals are incorporated into this Agreement.

II. PREMISES

2 Premises. Lessee's rights to use the Premises are limited as follows:

2.1 Public Agency Access. Lessor reserves the right for other public agencies and Lessor to enter the Premises or any part thereof at all reasonable times, for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located within or without the Premises. Any such entry shall be made only after reasonable notice to Lessee, and after Lessor or the other public agency has agreed to be responsible for any claims or liabilities pertaining to any entry. Any damage or injury to the Premises or to any part thereof resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the entry. Such reserved rights do not include the interior space of any buildings that Lessee may construct adjacent to the Premises. Lessor shall take commercially reasonable steps to minimize any disruption of the conduct of business on the Premises caused by the repair, operation, maintenance and replacement of such improvements and facilities.

2.2 Rights in Adjacent Premises. Subject to the right to use and access the Airport as stated in the Recitals, Lessee's rights are expressly limited to the real property defined as the "Premises" in this Agreement. Without limitation, in the event any public right-of-way or other public or private property adjacent to the Premises is owned by, dedicated to, abandoned by or to, or otherwise acquired, used, improved or disposed of by Lessor, such property shall not accrue to this Agreement but shall be Lessor's only. In addition, and severable from the preceding sentence, upon any such event, Lessee shall execute and deliver to Lessor without compensation a quit-claim deed of such right-of-way or other property.

2.3 Variation in Area. In the event the Premises consist of more or less than any stated acreage, this Agreement shall nevertheless continue and Lessee's obligations hereunder shall not be increased or diminished.

2.4 Condition of Title. Lessee's rights hereunder are subject to all covenants, conditions, restrictions, easements, agreements, liens, reservations and encumbrances upon, and all other recorded conditions of title to, the Premises. Lessee has obtained any title insurance or information Lessee deems appropriate. Lessor does not warrant its own or Lessee's title to the Premises. Lessee's rights hereunder are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions, and orders of all bureaus,

commissions and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction over the Premises or Lessee's use thereof, subject to the limits of applicable law.

2.5 Site Documents. Lessee shall do nothing at the Premises that the Site Documents would not allow Lessor to do. The Site Documents are such documents affecting the Premises as may be recorded in the office of the Maricopa County Recorder as of the date of this Agreement. Lessee shall timely, fully and faithfully perform all obligations of Lessor and Lessee under the Site Documents with respect to the Premises. Lessee shall not have power to amend, modify, terminate or otherwise change the Site Documents. Lessee shall pay, indemnify, defend and hold harmless the Lessor and its agents and representatives of, from and against any and all claims, demands, damages, expenses, interest or penalties of any kind or nature whatsoever, including attorneys', arbitrators' and experts' fees and court costs, which arise from or relate to violations of the Site Documents by Lessee or those claiming through Lessee. In the event the Site Documents impose affirmative duties to be performed on land outside the Premises, Lessee is not obligated to perform such duties unless the Site Documents specifically impose such duties upon the land included within the Premises and Lessee can reasonably perform such duties.

2.6 Condition of Premises. Lessee has examined, studied and inspected the Premises, the Airport, and all other property associated with this Agreement and its environs. Except as expressly stated herein, all of such property is being made available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use. Lessee has obtained such information and professional advice as Lessee has determined to be necessary related to this Agreement or this transaction.

2.7 Other reservations. Lessor reserves the following rights and interests:

2.7.1 Nonexclusive use of the portion of the Premises described as a Site Plan on Exhibit "B."

2.7.2 The right for all manner of aviation in the airspace above Premises and for related noise, vibration, air disturbance and other incidents of aviation use occurring above the Premises and within the general vicinity of the Premises.

2.7.3 The right for free passage of aircraft and all manner of service, emergency and Lessor vehicles in performance of their duties over and across the portion of the Premises depicted as a Site Plan on Exhibit "B" for access to taxiways Bravo and Charlie.

2.8 Lessor's Fixtures and Personalty. No fixtures or personal property owned by Lessor upon or within the Premises are included in this Agreement. Any and all of Lessor's property as may come into the possession of Lessee or be used by Lessee, shall be returned to Lessor by Lessee at termination of this Agreement and shall be maintained in good working condition by Lessee from time to time at Lessee's expense and replaced by Lessee at Lessee's expense when worn out and shall be owned at all times by Lessor with Lessee being solely responsible for the condition thereof. All such personal property is provided "as is" and Lessee accepts all responsibility for its condition and shall thoroughly inspect the same before use.

2.9 Relationship to Lot 12. Lot 12 is not part of the Premises. This Agreement affects Lot 12 only to the extent certain provisions of this Agreement specifically mention said lot. The plans approval processes of this Agreement does not apply to said lot.



### III. TERM OF AGREEMENT

3 Term of Agreement. Lessor hereby leases the Premises to Lessee subject to and conditioned upon Lessee's full, timely, complete and faithful performance of all performances and things to be performed or done hereunder by Lessee, and Lessee hereby accepts the Premises and this Agreement.

3.1 Term. The term of this Agreement shall be for a period of twenty (20) years commencing on the date of this Agreement unless sooner terminated as set forth in this Agreement.

3.2 Extension. In the event of Lessee's continuously full, complete and timely performance of this Agreement throughout the initial term set forth above and any extension (disregarding nonperformance cured within any cure period specified by this Agreement), this Agreement may be extended at Lessee's option for two (2) additional ten (10) year periods as follows:

3.2.1 In order to exercise its options to extend, Lessee must give to Lessor written notice of Lessee's intent to extend no earlier than twelve (12) months and no later than six (6) months prior to expiration of the initial term (or, in the case of the second extension, the first extension).

3.2.2 In the event of extension, Lessee shall obtain from Lessor and record a notice of extension in form reasonably acceptable to Lessor.

3.3 Holding Over. In any circumstance whereby Lessee would remain in possession of the Premises after the expiration of this Agreement, such holding over shall not be considered to operate as a renewal or extension of this Agreement, but shall only create a tenancy from month to month which may be terminated at any time by Lessor upon thirty (30) days notice to Lessee, or by Lessee upon sixty (60) days notice to Lessor.

3.4 Airport Closure. Lessor does not warrant that the Airport will remain open during the entire term of this Agreement, but Lessor does not presently have intentions to close the Airport. If the Airport is closed for more than a six (6) month period, Lessee shall have a six (6) month period (the "Decision Period") to give Lessor notice that Lessee elects to terminate this Agreement without penalty. The Decision Period shall commence on the date (the "Determination Date") which is the end of the said first six (6) month period of Airport closure. If Lessee does not so elect to terminate this Agreement by giving such notice then the following shall apply:

3.4.1 The Permitted Uses shall be expanded to include all uses then allowed under applicable zoning and other laws.

3.4.2 Lessee may elect by notice to Lessor during the Decision Period to extend this Agreement for an additional ten (10) year period.

### IV. LEASE PAYMENTS

4 Lease Payments. Lessee shall pay to Lessor all of the following payments together with all other payments required by this Agreement (all payments by Lessee to Lessor required by this Agreement for any reason are collectively the "Rent"):

4.1 Rent Payment Date. All Rent shall be payable one month in advance on the twenty-fifth day of the preceding month. In the event an amount is not known in advance, Lessor shall have the right to estimate the amount, with an adjustment to be made after the actual amount becomes known to Lessor and within sixty (60) days after Lessee's receipt of an invoice for such adjustment from Lessor. For example, the Rent for September shall be payable on or before August 25. Rent is deemed paid only when good payment is actually received by Lessor.

4.2 Base Rent. The rental amount (the "Base Rent") Lessee shall pay to Lessor at the beginning of each month of this Agreement shall be Seven Hundred Thirty-Five Dollars and No/100 (\$735.00).

4.3 Biannual Base Rent Adjustment. The Base Rent shall be automatically adjusted upward on each annual anniversary of this Agreement occurring in an even numbered calendar year. The adjustment shall be made on the basis of changes in the United States Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average, all items, published by the United States Bureau of Labor Statistics (the "Cost of Living Index"). The amount of each adjusted monthly installment of Base Rent (represented by the letter "R" in the formula set forth below) shall be equal to the Cost of Living Index number on the adjustment date (represented by the letter "C" in the formula set forth below) divided by the Cost of Living Index number for the month during which this Agreement commences (represented by the letter "M" in the formula set forth below), and multiplied by the original monthly Base Rent amount (represented by the "B" symbol in the formula set forth below). This computation is expressed by the following formula:

$$R = \frac{C \times B}{M}$$

provided, that in no event shall any Rent be adjusted downward from any previous period. If the Cost of Living Index has not been published on any adjustment date, Lessor shall have the right to estimate the Cost of Living Index and to make the adjustments based on such estimate. Any correction due to an error in Lessor's estimate shall be paid by Lessee to Lessor (or by Lessor to Lessee, as the case may be) within thirty (30) days after notice by either party to the other that the Cost of Living Index has been published. If such Cost of Living Index shall, for any reason whatsoever, not be published or readily identifiable at the adjustment date, then an index published by any state or federal agency or an index, formula or table accepted generally by the real estate profession shall be used as chosen by Lessor in Lessor's reasonable discretion. Any delayed adjustment shall be effective retroactively. In the event of a holdover, all Rent and every element thereof shall be increased by an additional fifty percent (50%) over the amount of Rent that would otherwise be payable under this Agreement.

4.4 Security Deposit. Upon execution of this Agreement, Lessee shall provide to Lessor, and maintain with Lessor at all times during the term of this Agreement, a cash security deposit in the amount equal to Five Thousand Dollars (\$5,000) guaranteeing the faithful performance of this Agreement. Lessor acknowledges having received said original security deposit. Any funds or property of Lessee held by or available to Lessor or any issuer of a letter of credit receiver, escrow agent or other third party under or related to this Agreement shall also stand as a security deposit guaranteeing Lessee's faithful performance of this Agreement. Any portion of any security deposit to which Lessee may then be entitled, net of any setoff or other obligation of Lessee, shall be paid to Lessee by the then owner of the fee title to the Premises within sixty (60) days after the later of termination of this Agreement or complete satisfaction of all of Lessee's obligations.

4.5 Late Fees. Should any Rent not be paid on or before the date due, a late fee shall be added to the amount due in the amount of the greater of ten percent (10%) of the amount due. Furthermore, any Rent that is not timely paid shall accrue interest at the rate of .25 percent (.0025%) per month from the date the amount first came due until paid. Lessee expressly agrees that the foregoing represent fair and reasonable estimates by Lessor and Lessee of Lessor's costs (such as accounting and processing costs, administrative costs, etc.) in the event of a delay in payment of Rent. Lessor shall have the right to allocate payments received from Lessee among Lessee's obligations.

4.6 Rent Amounts Cumulative. All amounts payable by Lessee under any provision of this Agreement or under any tax, assessment or other existing or future ordinance or other law of the City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.

4.7 No Setoffs. Lessee shall pay all Rent directly to Lessor without setoff or deduction of any description. Lessee expressly waives any right of setoff.

## V. USE RESTRICTIONS

5 Use Restrictions. Lessee's use and occupation of the Premises shall in all respects conform to all and each of the following cumulative provisions:

5.1 Permitted Uses. Lessee and those claiming through Lessee shall use the Premises solely for aircraft parking and staging, limited aircraft fueling, and minor aircraft maintenance such as washing (collectively the "Permitted Uses"). Lessee shall conduct no other activity at or from the Premises.

5.2 Aircraft Fueling. No fuel facilities of any description shall be installed at the Premises. No aircraft fueling shall occur at the Premises except in accordance with all applicable laws and regulations and only from fueling facilities located off the Premises. The only fueling permitted upon the Premises is aircraft fueling from a fuel truck authorized to dispense fuel at the Airport.

5.3 Height Limitation. Lessee shall not direct, permit, or maintain upon the Premises any structure, tree, or other stationary or attached object (except an aircraft) which penetrates the Federal Aviation Regulation Part 77 surface without consent of the Federal Aviation Administration.

5.4 Lot 12 Ownership. Lessee shall operate the Premises as a unit with Lot 12. At all times during this Agreement, Lessee shall cause ownership, possession, operation and control of Lot 12 to remain in the same hands as Lessee's leasehold interests under this Agreement.

5.5 Prohibited Names. Lessee shall not allow use in connection with any operations on the Premises any name that directly or indirectly refers to or contains any part of Lessor's name or the Airport's name or otherwise suggests a connection between Lessor and Lessee or Lessee's activities. Lessee shall also not use in connection with its operations at the Premises any name associated with products or purveyors of any sort of alcohol, tobacco, adult entertainment or gambling related products or services.

5.6 Nonexclusive Uses. Lessee understands and agrees that Lessor, Lessor's other tenants, and other persons within and without the Airport and the surrounding vicinity will conduct from time to time business activities in direct competition with Lessee. Lessee has no exclusive

rights to conduct any activity anywhere at the Airport. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958(49 U.S.C. 1349).

5.7 Communications Operations Restriction. Lessee shall not install, operate, or allow the use of equipment, methodology or technology that may or would interfere with the optimum effective use or operation of Lessor's existing or future fire, emergency or other communication equipment, methodology or technology (i.e., voice or other data carrying, receiving or transmitting equipment). If such interference should occur, Lessee shall immediately discontinue using the equipment, methodology or technology that causes the interference until Lessee takes corrective measures. Any such corrective measures shall be made at no cost to Lessor.

5.8 Outdoor Uses. Except to the extent, if any, approved by Lessor in writing in advance from time to time, all uses other than aircraft parking, aircraft fueling, pedestrian, aircraft and vehicular access, and similar incidental uses are confined to Lot 12. The preceding sentence does not prohibit minor aircraft servicing outside the Premises on other portions of the Airport as may be allowed from time to time. Under no circumstances may Lessee construct a building upon the Premises.

5.9 Coordination Meetings. Lessee shall meet with Lessor and other Airport users from time to time as requested by Lessor to coordinate and plan construction and operation of the Premises and the requirements of this Agreement.

5.10 Governmental Relations. Lessee shall conduct its activities in coordination with Lessor as necessary to maintain good relations with all governmental and other entities having jurisdiction over the Premises. The preceding sentence does not prohibit Lessee from asserting its legal rights against such entities. Lessee shall immediately give to Lessor notice of any actual or threatened dispute, violation or other disagreement relating to the Premises. Lessee is not an agent for Lessor. Without limitation, such entities (who are not third party beneficiaries to this Agreement) include (to the extent that such entities have jurisdiction over the Premises):

5.10.1 State of Arizona

5.10.2 Maricopa County

5.10.3 Arizona Department of Environmental Quality

5.10.4 Arizona Department of Transportation

5.10.5 Federal Aviation Administration

5.11 Conduct at Premises. In entering into this Agreement, Lessor and Lessee have foremost in mind providing a professional atmosphere devoid of any unruly, inebriated, disorderly, or sexually oriented behavior. Lessee shall cause persons exhibiting such behavior to leave the Premises. No alcohol is permitted on the Premises. The preceding sentence does not apply to small quantities of alcohol provided by building or aircraft occupants for their own use (and guests).

5.12 Quality Service. Lessee shall operate the Premises in a first-class manner; shall furnish prompt, clean and courteous service; and shall keep the Premises attractively maintained, orderly, clean, sanitary and in an inviting condition at all times, all to Lessor's reasonable satisfaction.

5.13 Lessee's Agent. Lessee shall at all times when the Premises or Lot 12 are occupied, retain on call, available to Lessor upon Lot 12 an active, qualified, competent and experienced manager to supervise all activities upon and operation of the Premises and who shall be authorized to represent and act for Lessee in matters pertaining to all emergencies and the day-to-day operation of the Premises and other matters affecting this Agreement. Lessee shall also provide notice to Lessor of the name, street address, electronic mail address, and regular and after hours telephone and telefax numbers of a person to handle Lessee's affairs and emergencies at the Premises.

5.14 Operations and Staff Qualifications and Requirements. Lessee shall provide to the Premises adequate qualified personnel to conveniently conduct all operations at the Premises.

5.15 Hazardous Materials. Lessee's use upon or about the Premises shall be subject to the following provisions regarding any hazardous waste or materials or toxic substance or any substance now or hereafter subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. § 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous waste or toxic substances (collectively "Toxic Substances"):

5.15.1 Lessee shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the Premises.

5.15.2 Lessee shall dispose of any Toxic Materials away from the Premises as required by law and as reasonably required by Lessor.

5.15.3 Lessee shall not use the Premises in a manner inconsistent with regulations issued by the Arizona Department of Health Services, or in a manner that would require a permit or approval relating to Toxic Substances from the Arizona Department of Health Services or any other governmental agency.

5.15.4 In addition to any other indemnities or obligations, Lessee shall pay, indemnify, defend and hold Lessor harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Premises attributable to or caused by Lessee or anyone using the Premises or acting or claiming under Lessee or this Agreement or otherwise relating to this Agreement. Lessee shall immediately notify Lessor of any prohibited Toxic Substance at any time discovered or existing upon the Premises.

5.15.5 Lessee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Lessee acknowledges that Lessor gives no assurance as to the possibility that the Premises may contain actual or presumed asbestos containing materials.

5.16 Parking off the Premises. Lessor is not required to provide any parking. Vehicle loading, unloading, parking and standing is not allowed on any other area of the Airport or upon adjacent streets or lands (except for Lot 12). The preceding sentence does not prohibit use of motor vehicles upon the Airport ramp or other areas as may be permitted from time to time. Lessee shall take such measures as Lessor may reasonably request (including but not limited to installing, maintaining and operating card controlled access gates) to control non-aircraft access to areas accessible to aircraft.

5.17 Airport Operations. Lessee acknowledges that Lessee's use of the Premises shall be subject and subordinate to Lessor's operation of the Airport which will necessarily directly and indirectly affect Lessee and the Premises. Lessee shall not use the Premises in a way that in Lessor's reasonable discretion adversely affects Lessor's use or operation of the Airport. Cumulatively and without limitation:

5.17.1 This Agreement does not give Lessee any rights to park aircraft at any location at the Airport other than the Premises or to use any other portion of the Airport except as stated in the Recitals. Any use of any portion of the Airport other than the Premises by Lessee shall be only as a member of the public and subject to all rules and regulations affecting the Airport from time to time.

5.17.2 Lessor reserves the right to further develop, diminish, close, remove or otherwise change the landing area and other areas of the Airport. Lessor reserves the right, but shall not be obligated to Lessee to maintain, operate or repair the landing or other areas of the Airport and all publicly-owned facilities of the Airport.

5.17.3 There is hereby reserved to Lessor, its successors and assigns, and for the use and benefit of Lessor and the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This right of flight shall include the right to cause within or without said airspace any noise, vibrations or other effects relating to the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operating at, the Airport.

5.17.4 Lessee shall not interfere with or endanger or obstruct the flight, taxiing, landing or taking off of aircraft, the loading or unloading of passengers or cargo, or other Airport operations.

5.18 Actions by Others. Lessee shall be responsible to ensure compliance with this Agreement by all persons using the Premises or claiming through or under Lessee or this Agreement. Lessee shall prevent all such persons from doing anything which this Agreement prohibits Lessee from doing.

## VI. IMPROVEMENTS BY LESSOR

6 Improvements by Lessor. Lessor has not promised to and is not obligated in any manner to make any improvements to the Premises or the Airport.

## VII. LESSEE'S IMPROVEMENTS GENERALLY

7 Lessee's Improvements Generally. Lessee shall not perform any improvements, repairs, installation, construction, grading, structural alterations, utility alterations, parking or traffic alterations, removal, demolition or other cumulatively significant construction or similar work of any description whether or not specifically described herein upon the Premises (collectively "Lessee's Improvements") except in compliance with the following:

7.1 Cost of Lessee Improvements. All Lessee's Improvements shall be designed and constructed by Lessee at Lessee's sole cost and expense. In no event, including without limitation termination of this Agreement for any reason, shall Lessor be obligated to compensate Lessee in any manner for any of Lessee's Improvements or other work provided by Lessee during or related to this Agreement. Lessee shall timely pay for all labor, materials, work done for Lessee at or for the Premises and all professional and other services related thereto and shall pay, indemnify,

defend and hold harmless Lessor and Lessor's employees, officer's, contractors and agents against all claims related thereto. Lessee shall bear the cost of all work required from time to time to cause the Premises to comply with local zoning rules, the Americans with Disabilities Act, building codes and similar rules. Lessee shall also bear the cost of all work required from time to time to cause any other property owned by Lessor to comply with all such rules implicated by work performed by Lessee, by Lessee's use of the Premises, or by any exercise of the rights granted to Lessee under this Agreement.

7.2 Improvement Quality. Any and all work performed on the Premises by Lessee shall be performed in a workman-like manner as reasonably determined by Lessor and shall be diligently pursued to completion and in conformance with all building codes and similar rules. All of Lessee's Improvements shall be high quality, safe, fire resistant, modern in design, and attractive in appearance, all as approved by Lessor through the plans approval processes described in this Agreement in addition to any zoning, building code or other regulatory processes that may apply.

7.3 Ownership of Lessee's Improvements. All Lessee's Improvements shall be and become part of the real property of Lessor as constructed or installed. Notwithstanding Lessor's ownership of the land and improvements, during the term of this Agreement Lessee and its permitted sublessees and other permitted successors and assignees shall have the right to occupy and use the land and improvements as set forth in this Agreement, including the right to impose liens upon Lessee's leasehold interest to the extent permitted by this Agreement.

7.4 Time for Completion. Lessee shall diligently and expeditiously pursue to completion the construction of all approved Lessee's Improvements and shall, subject to any force majeure delays, complete construction of all of Lessee's Improvements no later than the earlier of i) six (6) months after commencement of such construction, or ii) any earlier date required by this Agreement or by Lessor's approval of the plans. The preceding sentence does not require Lessee to complete initial construction of the Project prior to the Completion Deadline.

7.5 Construction Coordination. Lessee shall conduct all of its construction activities at and about the Premises so as not to materially interfere with activities, operation, and other construction upon the Airport or surrounding properties.

7.6 Approval Required. Lessee shall not commence construction of any Lessee's Improvements (including work on adjacent public lands, if applicable) without having first received the written consent of Lessor. Such consent requirement shall apply to all improvements, equipment, fixtures, paint, wall treatments, utilities of every description, communications cabling, decorations and other construction work of any description as described in all plans heretofore or hereafter delivered by Lessee to Lessor. All such plans and construction are subject to inspection and final approval by Lessor as to design, aesthetics, functionality, land use, materials, site plan, and all other factors reasonably determined by Lessor to be relevant to the successful development of the Premises and the Airport.

7.7 Effect of Approval. Lessor's approval of plans submitted shall be irrevocable for purposes of this Agreement and shall constitute approval (but only at the level of detail of the applicable stage of the review process) of the matters plainly shown on the plans approved. Lessor shall not reject subsequent plans to the extent the matter to which Lessor objects was clearly included in plans previously approved by Lessor and plainly shown on plans previously approved by Lessor. However, Lessor is not precluded from objecting to refinements or implementation of matters previously approved or treatment of matters previously not approved.

7.8 Utility Modifications. Any changes to utility facilities at the Premises shall be strictly limited to the Premises and shall be undertaken by Lessee at its sole cost and expense. No provider or other third party shall install, repair, operate, or maintain telecommunications or other utilities within the Premises without first executing a non-exclusive license agreement specified by Lessor. Such license may regulate, among other things, access fees, facilities routes and locations, work scheduling, relocation, indemnification, ownership of cables and other equipment, insurance, and other matters as determined by Lessor. Regardless of any such license, the third party's rights shall be derived from and a subset of Lessee's rights under this Agreement, all such work shall be Lessee Improvements, and Lessee shall continue to be responsible according to this Agreement for all work performed.

7.9 Design Requirements. All Lessee's Improvements shall comply with the following design requirements:

7.9.1 All Lessee's Improvements shall be contained entirely within the Premises and without any encroachment or dependence upon any other property, except that:

7.9.1.1 Lessee's Improvements shall include construction of curbs, taxiway connectors, lighting, gutters, pavement, landscaping, and other improvements Lessor determines to be appropriate as shown on the approved plans or otherwise agreed to by Lessor and Lessee prior to commencement of construction.

7.9.2 All Lessee Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and functional consistency with other buildings, taxiways, and improvements located at the Airport.

7.9.3 All Lessee's Improvements shall comply with all requirements of law, any applicable insurance contracts, all Site Documents and this Agreement.

7.9.4 Lessee shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Premises.

7.9.5 To the extent requested by Lessor, Lessee's plans shall include a description of construction methods employed to address environmental issues affecting or affected by the Premises and protect other facilities at the Airport and surrounding properties.

7.10 Disturbance of Toxic Substances. Before undertaking any construction or maintenance work, Lessee shall cause the Premises to be inspected to prevent disturbance of potential asbestos or other Toxic Substances. Before starting any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, Lessee shall cause the contractor or other person performing such work to give to Lessor notice by the method described in this Agreement to the effect that the person will inspect for such materials, will not disturb such materials and will indemnify, defend and hold Lessor harmless against any disturbance of such materials in the course of the work. Lessee shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Lessee in connection with the Premises to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services.

7.11 Plans Required. Lessee's design of all Lessee's Improvements shall occur in three stages culminating in final working construction documents for the Lessee's Improvements (the



"Final Plans"). The three stages are, in order of submission and in increasing order of detail, as follows:

7.11.1 Conceptual plans showing the general layout, locations, elevations, configuration, and capacities of all significant improvements, topographical features, pedestrian and vehicular ways, buildings, utilities, water systems, and other features significantly affecting the appearance, design, function and operation of each element of Lessee's Improvements. The conceptual plans must also show general locations and dimensions of all rooms, hallways and other areas together with the number of square feet of building and other area that all significant uses and facilities will respectively occupy.

7.11.2 Preliminary plans showing all building finishes and treatments, finished elevations, general internal and external building design and decoration schemes (including without limitation colors, textures and materials), mechanical, communications, electrical, plumbing and other utility systems, building materials, landscaping and all other elements necessary prior to preparation of final working construction documents and showing compliance with all requirements of this Agreement. The preliminary plans shall show all detail necessary before preparation of Final Plans.

#### 7.11.3 Final Plans.

7.12 Buildings. Lessee is not permitted to construct a building on the Premises and Lessor is at no time obligated to approve any building. Nevertheless, if Lessor does approve a building in the future, the plans approval process of this Agreement shall apply to the building.

7.13 Approval Process. The following procedure shall govern Lessee's submission to Lessor of all plans for Lessee's Improvements, including any proposed changes by Lessee to previously approved plans:

7.13.1 Upon execution of this Agreement, Lessor and Lessee shall each designate a construction manager to coordinate the respective party's participation in designing and constructing the Lessee's Improvements. Each construction manager shall devote such time and effort to the Lessee's Improvements as may be necessary for timely, good faith, and convenient coordination among the parties and their representatives involved with the Lessee's Improvements and compliance with this Agreement. Lessor's construction manager will not be exclusively assigned to this Agreement or the Lessee's Improvements.

7.13.2 All plans submitted under this Agreement shall show design, appearance, style, landscaping, mechanical, utility, communication and electrical systems, building materials, layout, colors, streets, sidewalks, transportation elements, views, and other information reasonably deemed necessary by Lessor for a complete understanding of the work proposed, all in detail reasonably deemed appropriate by Lessor for the level of plans required by this Agreement.

7.13.3 All submissions by Lessee under this Agreement shall be delivered directly to Lessor's construction manager and shall be clearly labeled to indicate that they are submitted pursuant to this Agreement and not for building permits, zoning or other approvals. Each submittal of plans by Lessee for Lessor's review shall include five (5) complete sets of the plans on paper together with two (2) copies of Autocad release 12 or 13 computer files on three and one-half inch high density floppy disks containing vector line drawings of the improvements or such other form of then reasonably widely used computer data as Lessor may require.

7.13.4 Lessee shall coordinate with Lessor as necessary on significant design issues prior to preparing plans to be submitted hereunder.

7.13.5 In addition to other submissions required under this Agreement, Lessee shall simultaneously deliver to Lessor's construction manager copies of all applications and supplemental, supporting and related materials for all zoning, development review and similar processes for the Lessee's Improvements (excluding building permits).

7.13.6 No plans shall be deemed approved by Lessor until stamped "APPROVED PER PARAGRAPH 7.6 OF LEASE AGREEMENT" (or other words clearly evidencing Lessor's approval pursuant to this Agreement as distinguished from any regulatory or other approval) and dated and initialed, by Lessor's construction manager (collectively "Stamped").

7.13.7 Construction shall not commence until Lessee delivers to Lessor a formal certification in favor of Lessor by a qualified registered engineer acceptable to Lessor to the effect that the Lessee's Improvements are properly designed to be safe and functional and comply with this Agreement. Such certification shall be accompanied by and refer to such supporting information and analysis as Lessor may require. Such certification shall be on the face of the plans themselves.

7.13.8 Lessee acknowledges that Lessor's construction manager's authority with respect to the Premises is limited to the administration of the requirements of this Agreement. No oral approval, consent or direction by Lessor's construction manager or other persons affiliated with Lessor inconsistent with this Agreement shall be binding upon Lessor. Lessee shall be responsible for securing all zoning approvals, development review, and other governmental approvals and for satisfying all governmental requirements pertaining to the Lessee's Improvements and shall not rely on Lessor or Lessor's construction manager for any of the same.

7.13.9 Lessor's issuance of building permits or zoning clearances, or any other governmental reviews or actions shall not constitute approval of any plans for purposes of this Agreement. Lessee's submission of plans under this Agreement, Lessor's approval of plans for purposes of this Agreement, and the plans approval process under this Agreement, shall be separate and independent of all zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals.

7.13.10 Lessor has the right to require Lessee to obtain approval for any Lessee Improvements from the City of Scottsdale Development Review Board and any similar body.

7.13.11 Lessee shall hand deliver all plans to Lessor no later than each submission date. Submission dates shall be such dates as are necessary for Lessee to timely obtain the approvals required by this Agreement. Lessee is responsible to allow adequate time for all communications and plans revisions necessary to obtain approvals and shall schedule its performances hereunder and revise its plans as necessary to timely obtain all approvals.

7.13.12 Within thirty (30) days after Lessor's receipt of plans from Lessee, Lessor shall make available to Lessee one (1) copy of the plans Lessee submitted either Stamped or marked to indicate the reasons that Lessor does not approve the plans.

7.13.13 If changes are required, Lessee shall revise the plans incorporating the changes requested by Lessor and shall within thirty (30) days after Lessor returns the marked up plans to Lessee submit revised plans to Lessor. Within twenty (20) days after Lessor's receipt of

the revised plans, Lessor shall make available to Lessee one (1) copy of the revised plans either Stamped or marked to indicate the reasons that Lessor does not approve the plans.

7.13.14 Lessee shall provide to Lessor copies of any and all designs or plans for improvements upon the Premises for Lessor's unrestricted use at the Premises or elsewhere.

7.14 Minor Changes. Lessor's consent shall not be required for minor changes discovered by Lessee during the course of initial Project construction to be necessary to complete construction as contemplated by the latest plans approved by Lessor. For purposes of the preceding sentence, "minor changes" are those that do not materially alter the structure, size, layout, location, quality, appearance, functionality or other aspects of any room, area, feature, structure, or other aspects of any improvements. Lessee shall give to Lessor as much advance notice of any minor changes as is reasonably possible. In the event advance notice to Lessor is not possible, Lessee shall as soon as possible, and in no event later than three (3) days after the change, give Lessor notice of any such minor change. Such notice shall refer specifically to this paragraph.

7.15 Funding Assurances. In addition to the security deposit and any other payment or performance required under this Agreement, Lessee shall at least two weeks prior to the commencement of any construction work by Lessee under this Agreement having an estimated cost of more than Ten Thousand Dollars (\$10,000) provide to Lessor the following assurances that Lessee will timely pay for the work to be completed (the "Funding Assurances") as follows:

7.15.1 Funding Assurances Amount. The Funding Assurance shall be in an amount (the "Funding Assurances Amount") equal to eighty percent (80%) of the full contract amounts payable directly or indirectly to all persons for the construction work. In the event the contract amounts increase by more than ten percent (10%) above the prior amount, the Funding Assurances Amount shall increase by the same proportion.

7.15.2 Funding Assurances Alternatives. All Funding Assurances shall consist of one of the following:

7.15.2.1 A fully executed construction loan commitment or agreement legally obligating a reputable federally insured financial institution to fund construction.

7.15.2.2 A letter of credit meeting the requirements listed on Exhibit "C" attached hereto.

7.15.2.3 Written confirmation from a federally insured financial institution chosen by Lessor having offices in Maricopa County, Arizona to the effect that said institution is holding for Lessor funds (the "Construction Account") in the Funding Assurances Amount. Such funds shall be held in an interest bearing account in Lessor's name only. All interest shall remain in the Construction Account. All funds shall be owned by Lessor upon deposit in the Construction Account. Funds shall be disbursed to anyone other than Lessor only upon Lessor's notice to the institution that Lessor has received unrelated third party invoices for actual hard costs of construction labor or materials together with notice from Lessee that such funds may be disbursed. The invoices must be accompanied by a certificate from the third party that the third party has actually supplied the labor or materials to the Premises and by such additional information and things as Lessor may reasonably consider necessary to determine compliance with this Agreement. All distributions from the Construction Account shall be by check payable to Lessor or jointly payable to Lessee and the third party. Lessee shall provide to Lessor no later than the tenth day of each month a detailed statement of Construction Account activity during the preceding

month. All funds will be immediately available to Lessor upon demand. At no time is Lessor required to pay or advance any funds not previously deposited by Lessee.

7.16 Contractor Assurances. In addition to the Funding Assurances, the security deposit and any other payment or performance required under this Agreement, Lessee shall at least two weeks before the commencement of any construction work by Lessee under this Agreement having an estimated cost of more than Thirty Thousand Dollars (\$30,000) provide to Lessor evidence of the following assurances in favor of Lessee that Lessee's contractors will timely and properly complete and pay all suppliers and subcontractors for the work completed (the "Contractor Assurances") as follows:

7.16.1 Contractor Assurance Amount. Each Contractor Assurance shall be in an amount (the "Contractor Assurance Amount") equal to one hundred percent (100%) of the full contract amount payable directly or indirectly to all persons for the construction work.

7.16.2 Contractor Assurances Required. Lessee's obligation to cause its contractors to provide Contractor Assurances includes both of the following:

7.16.2.1 A payment bond in favor of Lessee covering all of the contracted work.

7.16.2.2 A performance bond in favor of Lessee covering all of the contracted work.

7.16.3 Contractor Assurance Qualifications. The issuer of each Contractor Assurance must be qualified to do business and in good standing in the State of Arizona and in its home state and must have a net worth of at least three times the Contractor Assurance amount. Each Contractor Assurance shall be issued by a person acceptable to Lessor and shall also at a minimum meet the requirements of A.R.S. § 34-222 and A.R.S. § 34-223, and other applicable laws.

7.17 Rules Applicable to Both Funding Assurances and Contractor Assurances. The following rules shall be applicable to both all Funding Assurances and all Contractor Assurances (collectively "Improvement Assurances"):

7.17.1 Amount Adjustment. In the event the required amount of an Improvement Assurance increases from time to time by more than ten percent (10%) above the prior amount, Lessee shall, from time to time, on or before the date of the increase, deliver to Lessor an additional Improvement Assurance in the amount of such increase, or cause the existing Improvement Assurance held by Lessor to be amended to increase its amount.

7.17.2 Improvement Assurance Form. Each Improvement Assurance must be in form and substance acceptable to Lessor. The scope of Lessor's approval is to assure that the Improvement Assurance complies with this Agreement. Lessee shall deliver directly to Lessor's legal department (together with a copy to Lessor as provided for notices under this Agreement) a full and complete draft form of each Improvement Assurance and all related and supporting documentation at least thirty (30) days before the date the actual Improvement Assurance is required. All Improvement Assurances shall contain provisions specifically recognizing and authorizing Lessor's rights provided by this Agreement. All Improvement Assurances shall be accompanied by or shall include a statement by the issuer to Lessor to the effect that the Improvement Assurance is intended by the issuer to provide to Lessor at a minimum the protection described in this Agreement as follows:

This \_\_\_\_\_ is intended to conform to the requirements for Improvement Assurance set forth in article \_\_\_\_ of the \_\_\_\_\_ Agreement between \_\_\_\_\_ and the City of Scottsdale dated \_\_\_\_\_, 20\_\_\_\_ and to provide to the City of Scottsdale the protections described therein. Issuer warrants that it meets the requirements thereof for issuing of this \_\_\_\_\_.

Lessor shall give its comments concerning the draft form of Improvement Assurance no later than fifteen (15) days after receiving the draft form.

7.17.3 Improvement Assurance Claims. Lessor shall not make demand on an Improvement Assurance contrary to the provisions of this Agreement; but in the event of a dispute over Lessor's obtaining and using the benefits of an Improvement Assurance, neither Lessee, the Improvement Assurance issuer, nor any third party shall be entitled to interfere in any way (including without limitation, restraining order, injunctions or other judicial remedies, all of which are hereby unconditional and irrevocably waived) with Lessor's obtaining or using the funds or other benefits of the Improvement Assurance.

7.17.4 Lessor's Improvement Assurance Claim. In the event Lessee is in default or the construction is not completed or timely progressing for any reason, Lessor shall have the right to set-off, deduct and withhold an amount or otherwise make claim upon any Improvement Assurance sufficient to complete the construction and to pay all other costs and expenses related to such construction. Additionally, in such event, Lessor shall have the right to claim an amount sufficient to pay all costs of litigation, attorneys fees and costs required by a judgment or decision relating to any contingent liability that, in the opinion of Lessor, may be outstanding at the time of termination. Further, Lessor may, subject to the express provisions hereof, including the notice and cure provisions of Section 10.1 hereof, draw on any Improvement Assurance at any time Lessee is in default to satisfy Lessee's obligations under this Agreement.

7.17.5 Improvement Assurance Term. Each Improvement Assurance shall require the issuer to give Lessor not less than thirty (30) days nor more than sixty (60) days advance notice of expiration or other termination. Any replacement Improvement Assurance must be delivered to Lessor at least thirty (30) days before expiration of the Improvement Assurance being replaced. Any replacement Improvement Assurance must meet all requirements of this Agreement. No Improvement Assurance may be modified without Lessor's consent.

7.18 Release of Improvement Assurance. Within thirty (30) days after the last to occur of the following, Lessor shall give to Lessee notice that the Improvement Assurance is released: i) Lessee's completion of the Lessee Improvements, ii) Lessee's payment of all design, construction, and all other amounts to be paid in connection with construction of the Lessee Improvements, iii) Lessee's performance and payment of all other obligations related to the Improvement Assurance and the construction, payment and other obligations thereto, and iv) Lessee's giving to Lessor notice requesting the release stating that the preceding conditions have been satisfied along with such supporting documentation as Lessor may reasonably require.

## VIII. LESSEE'S INITIAL PROJECT CONSTRUCTION

8 Lessee's Initial Project Construction. No later than the Completion Deadline, Lessee shall complete construction of the Project in accordance with all requirements of this Agreement, including without limitation those relating to Lessee's Improvements, and the following:

8.1 Initial Plans Approved. By entering into this Agreement, Lessor approves for purposes of this Agreement only, the design of the Lessee's Improvements comprising the Project

to the extent their design is set forth in the Site Plan and other exhibits to this Agreement that show compliance with Lessor's design requirements for Lessee's Improvements. For purposes of Lessee's initial Project construction, said approval satisfies the requirement under this Agreement that Lessee obtain Lessor's approval of plans to the extent of matters shown in the Site Plan and other exhibits. However, Lessee must still submit to Lessor and obtain Lessor's approval of matters not shown on the Site Plan and other exhibits, and changes, modifications, refinements and particular implementations of matters that are shown on the Site Plan and other exhibits.

8.2 Project Definition. As of the date of this Agreement, the Project is only designed to the extent depicted in the Site Plan. Unless otherwise agreed by the parties, the Project shall conform to the Site Plan and the following (which listing of requirements is not intended to be exhaustive of the improvements required to construct the improvements this Agreement requires Lessee to construct):

8.2.1 Main Components. Lessee's Improvements include all improvements shown on the Site Plan or required by applicable law.

8.2.2 Infrastructure. Lessee's Improvements include all related work upon the apron, safety area, drainage and other facilities upon the Premises and upon other real property near the Premises.

8.2.3 Other Design Requirements. The Project shall include all such other improvements and other facilities as may be necessary to operate the Premises in the manner contemplated by this Agreement.

8.3 Design and Construction Professionals. All construction and plans preparation for the Project from initial proposals through final construction documents and completion of construction shall be performed by professionals selected and paid by Lessee. All of Lessee's design and construction contractors shall have substantial experience in timely and successfully constructing projects similar to the Project.

8.3.1 Lessee shall reimburse to Lessor all of Lessor's costs for plan review and inspections by Lessor's employees and contractors.

8.4 Project Design and Construction Schedule. Lessee shall design and construct the Project according to the following schedule:

8.4.1 Lessee shall obtain Lessor's approval of Final Plans for the Project no later than December 31, 2016 prior to the Completion Deadline.

8.4.2 Lessee shall commence constructing the Project no later than December 31, 2016 prior to the Completion Deadline.

8.4.3 Lessee shall complete construction of the entire Project, obtain certificates of occupancy for the entire Project, and commence operating the Project in the manner contemplated by this Agreement, no later than the Completion Deadline.

## IX. MAINTENANCE AND UTILITIES

9 Maintenance and Utilities. Except as expressly provided below, Lessee shall be solely responsible for all maintenance, repair and utilities for the Premises during the term of this Agreement.

9.1 Maintenance by Lessor. Lessor shall maintain that portion of Lessee's Improvements which are located outside of and adjacent to the Premises at the Airport depicted as a Site Plan on Exhibit "B" attached hereto (the "Additional Improvements") at Lessor's sole expense in a first-class, sound, clean and attractive manner, meeting or exceeding the manner of maintenance at first class comparable facilities in the western United States as determined in Lessor's reasonable discretion.

9.2 Utility Interruptions. Lessor is not responsible for any interruption of utilities to or upon the Premises or other difficulties related to utilities at the Premises. Without limitation:

9.2.1 Lessor is not responsible for utility interruptions caused outside the Premises.

9.2.2 Lessor is not responsible for utility interruptions not caused directly by Lessor's negligence.

9.2.3 Lessor is not responsible for the acts, breach, errors or omissions of any provider or consumer of electrical service or other utilities to the Premises.

9.3 Maintenance by Lessee. Lessee shall at all times repair, and maintain and replace the Premises and all of Lessee's facilities thereat at Lessee's sole expense in a first-class, sound, clean and attractive manner, meeting or exceeding the manner of maintenance at first class comparable facilities in the western United States as determined in Lessor's reasonable discretion.

#### X. BREACH BY LESSEE

10 Breach by Lessee. Lessee shall comply with, perform and do each performance and thing required of Lessee herein and Lessee's failure to do so shall be a breach by Lessee of this Agreement.

10.1 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" and a material breach by Lessee of Lessee's material obligations under this Agreement:

10.1.1 If Lessee shall be in arrears in the payment of Rent and shall not cure such arrearage within ten (10) days after Lessor has notified Lessee in writing of such arrearage.

10.1.2 The occurrence of any default or other failure by Lessee to perform all obligations under any of the Site Documents.

10.1.3 If Lessee shall abandon the Premises or this Agreement.

10.1.4 If Lessee shall be the subject of a voluntary or involuntary bankruptcy, insolvency or similar Proceeding or if any general assignment of any of Lessee's property shall be made for the benefit of creditors (collectively a "Lessee Insolvency").

10.1.5 If any representation or warranty made by Lessee in connection with this Agreement or the negotiations leading to this Agreement shall prove to have been false in any material respect when made.

10.1.6 If Lessee shall fail to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the Premises or timely pay any taxes pertaining to the Premises and shall not cure such failure within thirty (30) days.

10.1.7 If Lessee shall fail to or neglect to do or perform or observe any other provisions contained herein on its part to be kept or performed and such failure or neglect to do or perform or observe any of such other provisions shall continue for a period of thirty (30) days after Lessor has notified Lessee in writing of Lessee's default hereunder. In the event of a cure which cannot be completed within thirty (30) days, Lessee shall have an extended cure period as follows:

10.1.7.1 Lessee shall complete the cure within the shortest period that may be possible, but in no event later than ninety (90) days after Lessor's initial notice.

10.1.7.2 As soon as reasonably possible, but in no event later than the end of the initial thirty (30) day period, Lessee shall give to Lessor notice describing the non-performance, Lessee's proposed cure, the time required for the proposed cure and the reason the cure cannot be effected within the initial thirty (30) day period. Lessee shall thereafter give to Lessor such notices as are necessary to keep Lessor thoroughly apprised of the status of the cure.

10.1.8 If Lessee shall repeatedly fail to perform any requirement of this Agreement.

10.2 Lessor's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, Lessor may, at its option and from time to time, exercise any or all or any combination of the following remedies in any order and repetitively at Lessor's option:

10.2.1 Lessor's right to terminate this Agreement for nonpayment of Rent or for any other Event of Default is hereby specifically provided for and agreed to.

10.2.2 Without demand or notice, enter into and upon the Premises or any part thereof, and repossess the same of its former estate, and expel Lessee and those claiming by, through or under it, and remove their effects, if any, forcibly if necessary, without being deemed guilty of trespass and without prejudice to any other remedy.

10.2.3 Claim and enforce a lien upon Lessee's property at the Premises securing all of Lessee's obligations hereunder.

10.2.4 Cause a receiver to be appointed for the Premises and for the continuing operation of Lessee's business thereon.

10.2.5 Pay or perform, for Lessee's account and at Lessee's expense, any or all payments or performances required hereunder to be paid or performed by Lessee.

10.2.6 Abate at Lessee's expense any violation of this Agreement.

10.2.7 Pursue at Lessee's expense any and all other remedies, legal or equitable, to which Lessor may be entitled.

10.2.8 Refuse without any liability to Lessee therefore to perform any obligation imposed on Lessor by this Agreement.



10.2.9 Be excused from further performance under this Agreement.

10.2.10 Insist upon Lessee's full and faithful performance under this Agreement and upon Lessee's full and timely payment of all Rent during the entire remaining term of this Agreement.

10.2.11 Assert or exercise any other right or remedy permitted by law.

10.3 Non-waiver. Lessee acknowledges Lessee's unconditional obligation to comply with this Agreement. No failure by Lessor to demand any performance required of Lessee under this Agreement, and no acceptance by Lessor of any imperfect or partial performance under this Agreement, shall excuse such performance or impair in any way Lessor's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by Lessor of Rent or other performances hereunder shall be deemed a compromise or settlement of any claim Lessor may have for additional or further payments or performances. Any waiver by Lessor of any breach of condition or covenant herein contained to be kept and performed by Lessee shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent Lessor from declaring a default for any succeeding breach either of the same condition or covenant or otherwise. No statement, bill or notice by Lessor concerning payments or other performances due hereunder shall excuse Lessee from compliance with this Agreement nor estop Lessor (or otherwise impair Lessor's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (including any waiver of this sentence or paragraph) shall be effective against Lessor unless made in writing by a duly authorized representative of Lessor specifically identifying the particular provision being waived and specifically stating the scope of the waiver. LESSEE EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

10.4 Reimbursement of Remedies Lessor's Expenses. Lessee shall pay to Lessor upon demand any and all amounts expended or incurred by Lessor in performing Lessee's obligations.

10.5 Inspection. Lessor shall have access to the Premises at all times and upon reasonable notice (except, in the event of an emergency without notice) for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the Premises or exercising Lessor's other rights hereunder. Lessee shall promptly undertake appropriate action to rectify any deficiency (identified by Lessor during such inspections or otherwise) in Lessee's compliance with this Agreement.

## XI. TERMINATION

11 Rights at Termination. Termination of this Agreement due to Lessee's breach or for any other reason does not terminate Lessee's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or in any way terminate any of Lessee's liability related to this Agreement.

11.1 Delivery of Possession. At the expiration of the term hereof or upon any sooner termination thereof, Lessee shall without demand, peaceably and quietly quit and deliver up the Premises to Lessor thoroughly cleaned, in good repair, and with all utilities operating, with the Premises maintained and repaired and in as good order and condition, reasonable use and wear excepted, with the Premises as the same now are or in such better condition as the Premises may hereafter be placed by Lessee or Lessor. Upon termination, Lessee shall deliver to Lessor any

security deposits, prepaid rents, or other amounts for which Lessor deems a claim may be made respecting the Premises.

11.2 Confirmation of Termination. Upon expiration or termination of this Agreement for any reason, Lessee shall provide to Lessor upon demand quit claim deeds covering the Premises executed by Lessee and by all persons claiming through this Agreement or Lessee any interest in or right to use the Premises.

11.4 Fixtures and Improvements. Upon termination of this Agreement through expiration, default or otherwise, if the same has not occurred earlier, title to any and all attached items shall automatically vest in Lessor without any payment by Lessor or any compensation to Lessee and without requirement of any deed, conveyance, or bill of sale. However, if Lessor shall request any documents in confirmation thereof, Lessee shall promptly execute, acknowledge and deliver the same. Unattached items owned by Lessee shall continue to be owned by Lessee.

## XII. INDEMNITY AND INSURANCE

12 Indemnity and Insurance. Lessee shall insure the Premises and its property and activities at and about the Premises and shall provide insurance and indemnification as follows:

12.1 Insurance Required. Prior to entering, occupying or using the Premises in any way all times thereafter, and in any event not later than the date thirty (30) days after the date of this Agreement, and at all times thereafter Lessee shall obtain and cause to be in force and effect the following insurance:

12.1.1 Commercial General Liability. Commercial general liability insurance with an unimpaired limit of Five Million Dollars (\$5,000,000) for each occurrence and a Five Million Dollar (\$5,000,000) general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, any medical professionals based on the Premises, and liability assumed under an "insured contract" including this Agreement. The policy will cover Lessee's liability under the indemnity provisions of this Agreement. The protection under the policy shall at a minimum meet or exceed Insurance Service Office, Inc. form CG0001093 or an equivalent thereof as determined by Lessor from time to time. The policy shall contain a "separation of insureds" clause.

12.1.2 Automobile Liability. Commercial business automobile liability insurance with limit of Five Million Dollars (\$5,000,000) for each occurrence covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Lessee's use of the Premises. Coverage must be at least as broad as coverage code 1, "any auto", Insurance Service Office, Inc. policy form CA 00011293 or an equivalent thereof as determined by Lessor. If applicable, an MCS 90 endorsement covering Toxic Substances is required providing Five Million Dollars (\$5,000,000) per occurrence limits of liability for bodily injury and property damage. Without limitation, all of such insurance shall cover hazards of motor vehicle use for loading and off loading.

12.1.3 Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of Five Hundred Thousand Dollars (\$500,000) for each accident, Five Hundred Thousand Dollars (\$500,000) disease for each employee, One Million Dollars (\$1,000,000) policy limit for disease.

12.1.4 Special Form (All Risk) Property Insurance. Lessee shall maintain Special Risk Causes of Loss Property coverage, as defined by Insurance Services Office, Inc., in an amount per occurrence equal to the full replacement cost of the Premises and all personal property used in connection with the Premises. Property coverage shall include Pollutant Clean Up and Removal with minimum limits of coverage of \$50,000.

12.1.5 Contractor's Protective. With respect to any construction involving the Premises, Lessor's and contractor's protective insurance covering the interests of contractors, Lessor and Lessee, with a minimum limit of One Million Dollars (\$1,000,000) for each occurrence and a Two Million Dollars (\$2,000,000) general aggregate limit per policy year. This coverage may be included with the commercial general liability coverage.

12.1.6 Builders' Risk Property Insurance. Builders' risk insurance in the amount of the entire cost of the Project or other construction work at or related to the Premises as well as subsequent modifications thereto. Such builder's risk insurance shall be maintained until final payment for the construction work and materials has been made and until no person or entity other than Lessee and Lessor has an insurable interest in the Premises, whichever is later. This insurance shall include interests of Lessor, Lessee and all subcontractors and sub-subcontractors involved in any Lessee's Improvements or other construction work at or related to the Premises during the course of any construction, and shall continue until all work is completed and accepted by Lessee and Lessor. Lessee bears full responsibility for loss or damage to all work being performed and to works under construction. Builders' risk insurance shall be on special form (all-risk) policy form and shall also cover false work and temporary buildings and shall insure against risks of direct physical loss or damage from external causes including debris removal and demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for architect's service and expenses required as a result of such insured loss and other "soft costs". Builders' risk insurance must provide coverage from the time any covered property comes under Lessee's control and/or responsibility, and continue without interruption during construction or renovation or installation, including any time during which the covered property is being transported to the construction installation site, and while on the construction or installation site awaiting installation. The policy will continue to provide coverage when the covered Premises or any part thereof are occupied. Builders' risk insurance shall be primary and not contributory.

12.1.7 Environmental Impairment Liability. Lessee shall maintain Environmental Impairment Liability coverage for any fuel storage facility, tank, underground or aboveground piping, ancillary equipment, containment system or structure used, controlled, constructed or maintained by Lessee in the amount of \$1,000,000 Each Incident, \$2,000,000 Aggregate. The policy shall cover on-site and off-site third party bodily injury and property damage including expenses for defense, corrective action for storage tank releases and clean-up for storage tank releases. The environmental insurance coverage described in this paragraph is not required for aircraft fueling from a fuel truck owned and operated by an unrelated third party based at a different location at the Airport and licensed to operate at the Airport.

12.1.8 Other Insurance. Any other insurance Lessor may reasonably require for the protection of Lessor and Lessor's employees, officials, representatives, officers, directors, and agents (collectively "Additional Insureds"), the Premises, surrounding property, Lessee, or the activities carried on or about the Premises. Likewise, Lessor may elect by notice to Lessee to increase the amount of any insurance to account for inflation, changes in risk, or any other factor that Lessor reasonably determines to affect the prudent amount of insurance to be provided.

12.2 Form of Insurance. All insurance policies shall meet the following requirements:

12.2.1 All policies except workers' compensation must name Lessor and the other Additional Insureds as additional insureds. Lessee shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement. Lessor may give Lessee notice of Lessor's election from time to time that any or all the Additional Insureds not be named as Additional Insureds with respect to specific insurance coverages.

12.2.2 All property policies must name Lessor as a loss payee as respects any proceeds relating to the Premises.

12.2.3 All policies must provide Lessor with at least thirty (30) days prior notice of any cancellation, reduction or other material change in coverage.

12.2.4 All policies shall require that notices be given to Lessor in the manner specified for notices to Lessor under this Agreement.

12.2.5 "Occurrence" coverage is required. "Claims made" insurance is not permitted.

12.2.6 Policies must also cover and insure Lessee's activities relating to the business operations and activities conducted from the Premises.

12.2.7 The insurer's duty to notify Lessor of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives".

12.2.8 Lessee must clearly show by providing copies of insurance policies, certificates, formal endorsements or other documentation acceptable to Lessor that all insurance coverage required by this Agreement is provided.

12.2.9 All insurance policies shall contain a waiver of any transfer rights of recovery (subrogation) against Lessor and all other Additional Insureds.

12.2.10 No deductibles, retentions, or "self-insured" amounts shall exceed One Hundred Thousand Dollars (\$100,000) in the aggregate per year. If Lessee desires higher deductibles, retentions, or "self-insured" amounts, Lessee shall notify Lessor in writing not more often than once per year requesting a change in the amount. Lessor shall have the right to accept, modify, limit or reject Lessee's request. Lessee shall be solely responsible for any self-insurance amount or deductible. Lessor may require Lessee from time to time to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

12.3 Insurance Certificates. Lessee shall evidence all insurance by furnishing to Lessor certificates of insurance annually and with each change in insurance. Certificates must evidence that the policy referenced by the certificate is in full force and effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must evidence that Lessor and the other Additional Insureds are additional insureds and that insurance proceeds will be paid as required by this Agreement. Certificates must be in a form acceptable to Lessor. All certificates are in addition to the actual policies and endorsements required. Lessee shall provide updated certificates at Lessor's request.

12.4 Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to Lessor. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

12.5 Primary Insurance. Lessee's insurance shall be primary insurance. Any insurance or self-insurance maintained by Lessor shall not contribute to Lessee's insurance.

12.6 Indemnity. In addition to all other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Lessee (and all other persons using, acting, working or claiming through or for Lessee or this Agreement if they participated in causing the claim in question) shall jointly and severally pay, indemnify, defend and hold harmless Lessor and all other Additional Insureds for, from and against any and all claims or harm related to the Premises and this Agreement (the "Indemnity"), to the extent caused by Lessee (or any other persons using, acting, working or claiming through or for Lessee or this Agreement). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings) which may arise in any manner out of any use of the Premises or Lessor's property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Premises or surrounding areas related to this Agreement, including without limitation, claims, liability, harm or damages caused in part by Lessor or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Lessee or Lessor may be liable. The Indemnity shall also include and apply to any environmental, personal injury or other liability relating to Lessee's acquisition, ownership or use of real property developed, operated, owned, used, controlled or possessed by Lessee under this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to:

12.6.1 Claims arising only from the sole negligence of Lessor.

12.6.2 Claims which the law prohibits from being imposed upon Lessee.

12.7 Risk of Loss. Lessor is not required to carry any insurance covering or affecting the Premises or use of Lessor's property related to this Agreement. Lessee assumes the risk of any and all loss, damage or claims to the Premises or related to Lessee's use of the Premises or other property of Lessor, Lessee or third parties throughout the term hereof. Lessor expressly disclaims any representation that required insurance is adequate to protect any person or property against any risks related to the Premises or any activities, uses or improvements related to the Premises. Lessee's obligations to indemnify do not diminish in any way Lessee's obligations to insure; and Lessee's obligations to insure do not diminish in any way Lessee's obligations to indemnify. Lessee's obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Lessee under or connected with this Agreement. Lessee shall be responsible for any and all damages to its property and equipment related to this Agreement and shall hold harmless and indemnify regardless of the cause of such damages. In the event Lessee secures other insurance related to the Premises or any improvements, property or uses

related thereto, Lessee shall effect an endorsement under such policy waiving any and all insurer's rights of subrogation against Lessor and the other Additional Insureds.

12.8 Insurance to be Provided by Lessees, Sublessees and Others. Any sublessees, contractors or other persons occupying, working on or about, or using the Premises pursuant to this Agreement must also provide for the protection of Lessor and all other Additional Insureds all of the insurance and indemnification required by this Agreement. The preceding sentence does not require such persons to provide insurance which merely duplicates insurance Lessee provides. Lessee shall cause any persons storing aircraft at the Premises to name Lessee and the Additional Insureds as additional insureds under their aircraft liability policies. Such policies shall contain waivers of subrogation as to Lessee and Lessor and the other Additional Insureds.

### XIII. CONDEMNATION

13 Condemnation. The following shall govern any condemnation of any part of or interest in the Premises (the "Part Taken") and any conveyance to a condemnor in avoidance or settlement of condemnation or a threat of condemnation:

13.1 Termination as to Part Taken. This Agreement shall terminate as to the Part Taken on the date (the "Condemnation Date") which is the earlier of the date title to the Part Taken vests in the condemnor or the date upon which the condemnor is let into possession of the Part Taken. Lessee shall execute and deliver to Lessor deeds or other instruments reasonably requested by Lessor conveying and assigning to Lessor Lessee's entire interest in the Part Taken. In the event of a partial condemnation, this Agreement shall continue in full force and effect as to the part of the Premises not taken.

13.2 Determining Partial or Total Condemnation. A condemnation of the Premises which renders the Premises unsuitable for use of the Project (an "Interfering Condemnation"), or which takes the entire Premises, shall be deemed to be a total condemnation. Any other condemnation shall be a partial condemnation. Within fifteen (15) days after the commencement of any condemnation, Lessee and Lessor shall each give to the other a notice stating its respective opinion as to whether the condemnation is total or partial and the reasons for the opinion. Within fifteen (15) days thereafter, Lessor shall determine in Lessor's reasonable discretion whether the condemnation is total or partial.

13.3 Rent Adjustment. In the event of a partial condemnation, Base Rent shall be reduced by a percentage equal to the percentage of the Premises land area taken. The effective date of the Base Rent adjustment shall be the Condemnation Date.

13.4 Condemnation Proceeds. Lessee hereby assigns and transfers to Lessor Lessee's entire interest in all condemnation damages, interest, severance damages, and any other payments or proceeds of any kind relating to the condemnation (collectively the "Condemnation Proceeds"). Lessee shall execute and deliver to Lessor assignments or other instruments reasonably requested by Lessor confirming such assignment and transfer. Lessee shall immediately pay to Lessor any Condemnation Proceeds Lessee may receive. The Condemnation Proceeds shall not include relocation benefits awarded specifically to Lessee to cover expenses of relocating Lessee's business located at the Premises at the time of the condemnation and shall not include any severance damages awarded to Lessee as the owner of Lot 12 with respect to the severance of Lessee's leasehold interest under this Agreement from Lot 12. Such relocation benefits and severance damages with respect to the severance of Lessee's leasehold interest under this Agreement from Lot 12 shall be owned by and paid directly to Lessee only.

13.5 Proceeds Account Deposit. Separate and apart from any condemnation action, Lessor shall deposit into the Proceeds Account (the "Condemnation Deposit") a portion of the Condemnation Proceeds (the "Condemnation Deposit Amount") received by Lessor as follows:

13.5.1 The Condemnation Deposit Amount shall be calculated as follows:

13.5.1.1 First, begin with the actual original capital cost paid by Lessee to construct the Lessee's Improvements condemned.

13.5.1.2 Second, adjust such actual cost based on the Cost of Living Index in the same manner provided for adjustment of Base Rent.

13.5.1.3 Third, reduce said adjusted actual cost by five percent (5%) for each year or portion of a year having passed from the time of construction.

13.5.1.4 Fourth, subtract any amount necessary to insure that the Condemnation Deposit Amount does not exceed the net amount of Condemnation proceeds actually received by Lessor with respect to such Lessee's Improvements.

13.5.2 Lessor shall make the Condemnation Deposit within ten (10) days after Lessor receives the condemnation proceeds.

13.6 Lessee's Condemnation Work. In the event of a partial condemnation, Lessee shall restore the remainder of the Premises to its condition at the time of condemnation less the Part Taken. In the event of an Interfering Condemnation, Lessee shall perform such demolition or restorative work upon the remaining Premises as Lessor may direct, except that the cost of such work shall not exceed the cost of demolishing the improvements then existing upon the remaining Premises. Disbursements from the Proceeds Account shall be subject to the rules applicable to the Proceeds Account. Notwithstanding the preceding sentence, any portion of the Condemnation Deposit remaining in the Proceeds Account after the work is completely paid for and any claims by Lessor against Lessee are satisfied shall be disbursed to Lessee.

13.7 Power to Condemn. Lessee acknowledges that Lessor has not relinquished any right of condemnation or eminent domain over the Premises. Lessor does not warrant that Lessor will not condemn the Premises during the term of this Agreement, but Lessor does not presently have intentions to condemn the Premises.

#### XIV. DAMAGE TO OR DESTRUCTION OF PREMISES

14 Damage to or Destruction of Premises. The following provisions shall govern damage to the Premises:

14.1 Damage to Entire Premises. If the Premises are partially damaged by fire, explosion, the elements, the public enemy, or other casualty, and the cost of restoring the damage would exceed fifty percent (50%) of the then estimated cost of constructing all improvements upon the Premises, Lessee shall have a ninety (90) day period following such damage to notify Lessor that Lessee elects to terminate this Agreement. Lessee's failure to give such notice shall constitute Lessee's election not to terminate this Agreement. In the event of damage to the Premises to a lesser degree or extent this Agreement shall not terminate.

14.2 Restoration Work. Whether or not this Agreement is terminated, Lessee shall perform certain construction work at Lessee's expense ("the Restoration Work"). If this Agreement

is terminated, the Restoration Work shall be all engineering, design and construction work necessary to demolish, clear and clean the Premises to the extent and as directed by Lessor. If this Agreement is not terminated, then the Restoration Work shall be all engineering, design and construction work necessary to restore the Premises to the condition existing prior to the damage.

14.3 Restoration Process. Lessee's performance of the Restoration Work shall be subject to the approval process and other requirements for Lessee's improvements. Lessee shall perform the Restoration Work with due diligence and at Lessee's sole cost and expense.

14.3.1 Insurance Proceeds. All property insurance proceeds for improvements attached to the Premises (whether actually paid before or after termination of this Agreement) shall be paid directly to Lessor and owned by Lessor. Lessor shall deposit said proceeds in an account (the "Proceeds Account") with a federally insured financial institution having offices in Maricopa County, Arizona. The Proceeds Account shall be an interest bearing account in Lessor's name only. All interest shall remain in the Proceeds Account. All funds will be immediately available to Lessor upon demand. At no time is Lessor required to pay or advance any funds not in the Proceeds Account.

14.4 Proceeds Account Use Priorities. The Proceeds Account funds shall be used for the following purposes:

14.4.1 Funds in the Proceeds Account shall be used only for paying for the Restoration Work until the cost of the Restoration Work has been disbursed. Inadequacy of funds in the Proceeds Account does not excuse Lessee from Lessee's obligation to perform the Restoration Work.

14.4.2 Funds in the Proceeds Account shall next be used for compensating Lessor for the loss of the Premises and use of the Premises, protecting Lessor, the Premises and Lessor's property from every other loss or exposure suffered by Lessor due to the damage, and satisfying any of Lessee's obligations then due hereunder.

14.4.3 Any remaining funds in the Proceeds Account shall be distributed as follows:

14.4.3.1 If this Agreement is not terminated, then any remaining funds in the Proceeds Account shall be distributed to Lessee and any other interested parties as their interests may appear.

14.4.3.2 If this Agreement is terminated, then any remaining funds in the Proceeds Account shall be distributed to Lessor.

14.5 Use of Proceeds Account for Restoration Work. The following shall govern disbursement of funds from the Proceeds Account for the Restoration Work:

14.5.1 All distributions from the Proceeds Account shall be by check payable to Lessor or jointly payable to Lessee and the third party.

14.5.2 Lessee's applications for payment shall be prepared according to a schedule of values for the work prepared by Lessee's architect, subject to Lessor's reasonable approval.



14.5.3 Funds shall be disbursed within fourteen (14) days after Lessor has received notice from Lessee requesting that such funds be disbursed. Such notice shall be accompanied by the following:

14.5.3.1 A description of the work completed.

14.5.3.2 Unrelated third party invoices for design, engineering or related professional services rendered or actual hard costs of demolition or construction labor or materials.

14.5.3.3 Certificates from the third party payee that the third party has actually supplied the labor or materials to the Premises.

14.5.3.4 Appropriate mechanics and materialmen's lien waivers.

14.5.3.5 Such additional documentation and confirmations as Lessor may reasonably deem necessary to confirm compliance with this Agreement.

14.5.4 The Proceeds account shall qualify as a satisfactory Funding Assurance.

14.6 Accelerated Funding. In order to avoid delay in completing the Restoration Work due to time constraints of the Proceeds Account, Lessee may do either or both of the following:

14.6.1.1 Advance its own funds (the "Reimbursable Funds") for the Restoration Work from time to time and subsequently obtain reimbursement from the Proceeds Account subject to compliance with the requirements for disbursements from the Proceeds Account. If Lessee provides receipts showing Lessee has already paid the third party payee, then checks reimbursing Reimbursable Funds to Lessee shall name only Lessee as payee.

14.6.1.2 Unilaterally request that Lessor make a one-time single disbursement to Lessee (the "Working Funds"). Lessee shall hold the Working Funds in a separate bank account and shall use the Working Funds only during the course of the Restoration Work to make progress payments to third parties for the Restoration Work. The amount of the Working Funds shall not exceed the greater of Twenty Thousand Dollars (\$20,000) or ten percent (10%) of the estimated cost of the Restoration Work. Upon completion of the Restoration Work, Lessee shall return any excess Working Funds to the Proceeds Account.

14.7 Monthly Restoration Work Report. Lessee shall provide to Lessor no later than the tenth day of each month a written report of the progress of the Restoration Work along with detailed statement of Proceeds Account, Reimbursable Funds and Working Funds activity during the preceding month.

## XV. LESSEE'S RECORDS

15. Lessee's Records. Lessee will maintain in a secure place within Maricopa County, Arizona proper and accurate books, records, ledgers, correspondence, and other papers and repositories of information, relating in any manner to this Agreement and to all of Lessee's obligations hereunder.

15.1 Standards for Records. Lessee shall keep and maintain all books and records relating to the Premises in accordance with generally accepted accounting principles applied on a

consistent basis. Lessee shall retain all records related to this Agreement or Lessee's performances hereunder for a period of seven (7) years after the period reported in the record.

15.2 Reporting. Lessee will furnish or cause to be furnished to Lessor, as soon as the same are available, and in any event within one hundred twenty (120) days after the end of each calendar year a certificate signed by the chief financial officer or managing general partner, as the case may be, of Lessee stating that there exists no Event of Default and no condition, event or act, which with notice or lapse of time or both, would become an Event of Default or, if any such Event of Default or any such condition, event or act exists, specifying the nature and period of existence thereof and what action Lessee proposes to take with respect thereto. Lessee shall furnish, from time to time, such financial and other information as Lessor may reasonably request pertaining to Lessee's and Lessor's respective rights and obligations with respect to this Agreement as reasonably determined by Lessor. Lessee need not disclose information that does not directly concern the Premises or Lessor's or Lessee's rights and obligations related to the Premises in Lessor's reasonable judgment.

15.3 Right of Inspection. Until the date three (3) years after termination of this Agreement, Lessee will (i) permit and assist Lessor and its representatives at all reasonable times to inspect, audit, copy and examine, as applicable, Lessee's facilities, activities and records, (ii) cause its employees, agents and, if reasonably necessary, accountants to give their full cooperation and assistance in connection with any such visits or inspections, (iii) make available such further information concerning Lessee's business and affairs relating to the Premises as Lessor may from time to time reasonably request, and (iv) make available to Lessor at the Premises (or at the offices of Lessor within the corporate limits of the City of Scottsdale) any and all records and reasonable accommodations for Lessor's audit and inspection. The preceding sentence does not require Lessee to pay for copies Lessor requests or Lessor's employees' or other agents' time or travel expenses. Such inspection shall be limited to matters relevant to Lessor's and Lessee's rights and obligations under this Agreement and activities related to the Premises as reasonably determined by Lessor.

15.4 Records Included. Lessee's records subject to this Agreement include, but are not limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, computer data, invoices, cash register tapes and similar records, contracts, logs, accounts, commitments, arrangements, notes, diaries, ledgers, correspondence, reports, drawings, receipts, vouchers, memoranda and any and all other agreements, sources and repositories of information and matters that may in Lessor's reasonable judgment bear on any matters, rights, duties or obligations under or covered by this Agreement or any performance hereunder. Lessee need not disclose information that does not directly concern the Premises or Lessor's or Lessee's rights and obligations related to the Premises in Lessor's reasonable judgment.

15.5 Costs of Audit. If an audit, inspection or examination of Lessee's performance discloses underpayments (or other adjustments in favor of Lessor) of any nature in excess of three percent (3%) of any payments or single payment, Lessee shall pay to Lessor Lessor's actual cost (based on the amount paid by Lessor, or based on reasonable charges charged by private auditors and other service providers for comparable work if the audit is performed by Lessor's employees) of the audit, inspection or examination, together with late fees, interest, and other amount payable in connection with such adjustments or payments. Any adjustments and/or payments which must be made as a result of any such audit, inspection or examination (whether or not performed in-house by Lessor), shall be made within a reasonable amount of time (not to exceed 30 days) after Lessor gives to Lessee notice of Lessor's findings.

15.6 Applicable to Sublessees. By claiming under this Agreement, sublessees and others conducting a business based at the Premises shall also be deemed to have agreed to

provide to Lessor upon request information relevant to compliance with this Agreement by Lessee or others.

XVI. COMPLIANCE WITH LAW

16. Compliance with Law. Lessee shall conduct only lawful operations and activities at the Premises and at the Airport in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended and shall use and occupy the Premises in conformance with all of the same. The provisions of this Agreement obligating Lessee to comply with applicable law do not deny Lessee such right, if any, as Lessee may have under applicable law to continue a use which was lawful (and permitted by this Agreement) when commenced. Lessee acknowledges that this Agreement does not constitute, and Lessor has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance or favoritism to Lessee with regard to), any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting Lessee, the Premises, the Airport or Lessee's use of the Premises or Airport. Lessee acknowledges that all of Lessee's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all laws and regulations applicable to Lessee. Lessee further agrees that this Agreement is not intended to diminish any performances to the City of Scottsdale that would be required of Lessee by law if this Agreement had been made between Lessee and a private citizen. Lessor has not relinquished any right of condemnation or eminent domain over the Premises. This Agreement does not impair the City of Scottsdale power to enact, apply or enforce any laws or regulations, or exercise any governmental powers, affecting in any way Lessee or the Premises. Without limiting in any way the generality of the foregoing, Lessee shall comply with all and each of the following:

16.1 Government Property Lease Excise Tax. Lessee shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-6201 *et seq.* or similar laws in force from time to time which are lawfully assessed against the Premises or against Lessor or Lessee with respect to the Premises. Pursuant to A.R.S. § 42-6206, failure by Lessee to pay the taxes after notice and an opportunity to cure is an event of default that could result in divesting Lessee of any interest in or right of occupancy of the Premises.

16.2 Taxes, Liens and Assessments. In addition to all other amounts herein provided, Lessee shall pay, when the same become due and payable, all taxes and general and special fees, charges and assessments of every description which during the term of this Agreement may be lawfully levied upon or assessed against Lessee, the Premises, the operations conducted therein, any amounts paid or other performances under this Agreement by either party, and all possessory interest in the Premises and improvements and other property thereon, whether belonging to Lessor or Lessee. The preceding sentence does not apply to obligations of Lessee not related to the Premises. Lessee shall have the right to contest, but not the right to refuse to timely pay, any taxes and assessments. Lessee shall pay all sales, transaction privilege, and similar taxes which it is legally obligated to pay.

16.3 Special Supplemental Indemnity. Without limitation, the indemnities of this Agreement require Lessee to pay, indemnify, defend and hold Lessor harmless against fines or penalties for any breach of security arising from the unauthorized entry of any persons using Lot 12 or the Premises (or their vehicles or aircraft) onto the passenger loading areas, taxiways, runways, aircraft movement areas and any other restricted portion of the Airport. The preceding sentence does not apply to persons who are not authorized by Lessee to use Lot 12 or the Premises.

16.4 Federal Agreements. This Agreement shall be subordinate to the provisions and requirements of any existing or future grant assurances and other agreements between the Lessor and the United States, relative to the development, operation or maintenance of the Airport.

16.5 Based Aircraft. Lessee shall not allow to be based at Lot 12 or the Premises any aircraft which has not been registered with the Airport to the extent as required by applicable laws and regulations.

## XVII. ASSIGNABILITY

17. Assignability. Except as provided herein, this Agreement is not assignable by Lessee and any assignment shall be void and create in the assignee no rights except in strict compliance with the following:

17.1 Assignments Prohibited. Every assignment of Lessee's interest in the Premises or this Agreement or any of Lessee's rights or interests hereunder is prohibited unless Lessor's consent to the assignment is contained in this Agreement or Lessee first receives from Lessor a separate notice of Lessor's consent to the assignment. References in this Agreement to assignments by Lessee shall be considered also to apply to all of the following transactions, circumstances and conditions:

17.1.1 Any voluntary or involuntary assignment, conveyance, transfer or sublease of the Premises or any interest therein or any rights under this Agreement.

17.1.2 Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, deed of trust, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise (collectively "Liens").

17.1.3 The use, occupation, management, control or operation of the Premises or any part thereof by others.

17.1.4 Any transfer of membership interests, corporate stock or any other direct or indirect transfer of the majority of the ownership, management or control of Lessee except transfers caused by the death of a shareholder or other owner.

17.1.5 Any assignment by Lessee for the benefit of creditors, voluntary or involuntary.

17.1.6 Any bankruptcy or reorganization of Lessee not completely resolved in Lessee's favor within one hundred twenty (120) days after it is initiated.

17.1.7 The occurrence of any of the foregoing by operation of law or otherwise.

17.1.8 The occurrence of any of the foregoing with respect to any assignee or other successor to Lessee except for sublessees.

17.2 Effect of Assignment. No action or inaction by Lessor shall be considered a waiver of the prohibition on assignments or any other provision of this Agreement, or the acceptance of the assignee, sublessee or occupant as Lessee, or a release of Lessee from the further performance by Lessee of the provisions of this Agreement. The consent by Lessor to an assignment shall not relieve Lessee from obtaining Lessor's consent to any further assignment.

No assignment shall release Lessee from any liability hereunder except that Lessee shall be released from future obligations under this Agreement in the event of a complete assignment of Lessee's entire interest made with Lessor's consent. This Agreement shall also run with the land and continue to be a burden upon the Premises and every interest therein in favor of Lessor.

17.3 Sale of Lot 12. Lessee shall assign all of its rights and obligations under this Agreement to the purchaser or other assignee of Lot 12. Lessor shall have the right to unilaterally terminate this Agreement if Lessee's rights and obligations under this Agreement are not assigned to and assumed by any purchaser or other acquirer of fee title to Lot 12, even if the assignment is prevented by Lessor's failure to consent to such an assignment. Lessor shall not unreasonably refuse to consent to an assignment of this Agreement to any purchaser of fee title to Lot 12. Lessee shall give Lessor thirty (30) days advance notice of any transfer of fee title to Lot 12.

17.4 Enforceability after Assignment. This Agreement shall control any conflict between this Agreement and the terms of any assignment. Upon execution of this Agreement, and upon each subsequent assignment, Lessee shall provide a complete copy of this Agreement and any amendments to each sublessee or other assignee.

17.5 Grounds for Refusal. No assignments of this Agreement are contemplated or bargained for except for those to which Lessor has given consent in this Agreement. Except as provided above with respect to Lessee's assignment of the Agreement to a purchaser of Lot 12, Lessor has the absolute right for any reason or for no reason in its sole discretion to give or withhold consent to any assignment or to impose any conditions upon any assignment. Lessee shall pay to Lessor the sum of One Thousand Five Hundred Dollars (\$1,500) as a fee for legal and administrative expenses related to any assignment or any request for consent to an assignment. Lessor's aviation director shall have authority in his sole and absolute authority to decrease the amount of said fee.

17.6 Form of Assignment. Any permitted assignment or subletting shall be by agreement in form and content acceptable to Lessor. Without limitation, any sublease or assignment shall specify and require that each sublessee or assignee acquiring any interest under this Agreement shall assume and be bound by, and be obligated to perform the terms and conditions of this Agreement, and that in the event Lessor terminates this Agreement because of default by Lessee, Lessor at Lessor's sole option may succeed to the position of Lessee as to any sublessee or assignee of Lessee without liability for any prior breaches or performances.

17.7 Employees. Lessee's hiring and discharging of employees shall not constitute a change of management amounting to an assignment of this Agreement by Lessee.

17.8 Liens Prohibited. Notwithstanding the prohibition on Liens, Lessee is permitted with Lessor's consent to impose a single mortgage or deed of trust (the "Primary Lien") upon Lessee's leasehold interest in the Premises under this Agreement to secure a loan obtained by Lessee to obtain funds for Lessee to use to (a) acquire Lessee's interest under this Agreement along with ownership of Lot 12, and/or (b) construct the Project.

17.9 Lien Payment. Lessee shall pay all Liens as the same become due, and in any event before any action is brought to enforce the Lien. Lessee agrees to pay, indemnify, defend and hold Lessor and the Premises free and harmless from all liability and against any and all Liens arising from work done for Lessee, together with all costs and expenses in connection therewith, including attorney's fees. Lessor shall have the right at any time to post and maintain on the Premises such notices, pay such amounts, file or record such notices, or take such other actions

as Lessor may consider necessary to protect Lessor and its property interests against all Liens. Every Lien shall cover Lessee's entire leasehold interest in this Agreement and the Premises.

17.10 Lien Priorities. In no event shall any Lien (whether arising before, concurrent with, or after the date of this Agreement) cover, affect or have any priority higher than or equal to any of Lessor's rights in the Premises or under this Agreement at any time.

17.11 Lessor's Rights to Pay Lienholder. Prior to foreclosure, deed in lieu, or the conclusion of other enforcement of a Lien, Lessor shall have the right at any time to purchase any Lien, by payment to the holder of the Lien the amount of the unpaid debt, plus any accrued and unpaid interest.

17.12 Primary Permitted Lien. The Primary Lien is subject to the following provisions:

17.12.1 Until the Project is completed, the Primary Lien shall not be cross collateralized or cross defaulted with any debt or lien related to property other than the Premises. Until the Project is completed, the Primary Lien shall cover no interests in any real property other than Lessee's interests in the Premises and the rents and profits under any permitted subleases.

17.12.2 The holder of the Primary Lien (the "Primary Lienholder") shall promptly give notice to Lessor of the creation of the Primary Lien and any modification, renewal, termination, default or enforcement of the Primary Lien, and any notices to Lessee related thereto. Such notices shall be accompanied by true copies of the Primary Lien or other correspondence or instruments pertaining to the notice. Primary Lienholder shall notify Lessor of the address to which notices to Primary Lienholder shall be sent.

17.12.3 The Primary Lien shall contain no provisions inconsistent with or purporting to alter in any way the provisions of this Agreement. This Agreement shall control any inconsistent terms or provisions in the Primary Lien or in any document of any description related to the Primary Lien.

17.12.4 Primary Lienholder shall have a limited right to cure deficiencies in Lessee's performance under this Agreement (the "Cure Right") as follows:

17.12.4.1 The Cure Right is that, in the event of an Event of Default:

17.12.4.1.1 Lessor shall not terminate this Agreement without first giving Primary Lienholder notice of the Event of Default; and

17.12.4.1.2 Upon Lessor's giving such notice, Primary Lienholder shall have a opportunity to cure the Event of Default as specifically described herein.

17.12.4.2 The Cure Right only applies to Events of Default that are capable of cure by Primary Lienholder within one hundred eighty (180) days after Lessor's notice to Primary Lienholder. In the event of an Event of Default that cannot be cured within that time period, Primary Lienholder and/or Lessee shall have the right to call for a meeting to consult with Lessor's city manager or aviation director shall each have authority to consider such a plan and give notice on behalf of Lessor extending the time period for curing the particular Event of Default in accordance with the plan.

17.12.4.3 If an event or circumstance occurs which will become an Event of Default with the passage of time or giving of notice or both, Lessor may elect to provide Primary

Lienholder's notice of the Event of Default prior to, after, or simultaneously with any notice Lessor may give to Lessee, and prior to, after, or simultaneously with the expiration of any applicable cure or grace period.

17.12.4.4 Primary Lienholder may elect to exercise the Cure Right by giving Lessor notice (a "Cure Notice") of such election not later than twenty-one (21) days after Lessor's notice to Primary Lienholder. Primary Lienholder's failure to timely give a Cure Notice shall be Primary Lienholder's rejection and waiver of the Cure Right. Primary Lienholder's giving of a Cure Notice shall constitute Primary Lienholder's promise to Lessor that Primary Lienholder shall immediately undertake and diligently pursue to completion on Lessee's behalf all payments and performances necessary to cure an Event of Default and otherwise cause Lessee's performance to comply in all respects with the requirements of this Agreement. Each Cure Notice shall include payment of any and all amounts then payable to Lessor under this Agreement.

17.12.4.5 In the event Primary Lienholder exercises the Cure Right, Primary Lienholder shall immediately commence and thereafter diligently prosecute the cure to completion no later than thirty (30) days after Primary Lienholder's Cure Notice to Lessor. In the event of a cure which cannot be completed within thirty (30) days, Primary Lienholder shall complete the cure within the shortest period that may be possible, but in no event later than one hundred eighty (180) days after Primary Lienholder's Cure Notice exercising the Cure Right (or such longer period as Lessor's city manager or aviation director may allow). In the case of a Lessee Insolvency, if the Premises are operating as required by this Agreement and all payments by Lessee are current and all other defaults are cured, then the one hundred eighty (180) day period specified in the preceding sentence shall be extended to eighteen (18) months to cure the Lessee Insolvency. Such extension applies only to the Lessee Insolvency.

17.12.5 Until completion of the Project, the Primary Lien must be held by an FDIC insured financial institution having offices in Maricopa County, Arizona, a pension fund or insurance company authorized to do business in Arizona, or sophisticated investors qualified under federal securities law to purchase unregistered securities in private placements.

17.12.6 This Agreement's provisions relating to the Primary Lien are for the sole benefit of Lessor and Primary Lienholder, and are not for the benefit of Lessee.

17.12.7 Lessee shall immediately give notice to Lessor and Primary Lienholder of any notice Lessee may receive relating to this Agreement or to the Primary Lien.

17.12.8 Primary Lienholder shall immediately give notice to Lessor and Lessee of any notice Primary Lienholder may receive relating to this Agreement or to the Primary Lien.

17.12.9 The provisions of this Agreement permitting the Primary Lien shall apply to any subsequent refinancing of the Primary Lien so long as the following requirements are satisfied:

17.12.9.1 Any replacement Primary Lien must satisfy all requirements of this Agreement.

17.12.9.2 No new Primary Lien may be created while a Primary Lien exists or is of record.

17.12.9.3 Only one Primary Lien may exist or be of record at a time.

17.12.10 Primary Lienholder shall become personally liable to perform Lessee's obligations hereunder only if and when Primary Lienholder gives a Cure Notice, becomes the owner of all or part of the leasehold estate pursuant to judicial or non-judicial foreclosure, assignment or transfer in lieu of foreclosure or otherwise, or takes possession of all or part of the Premises. The occurrence or existence of any of the foregoing shall constitute an assumption by Primary Lienholder of Lessee's obligations under this Agreement.

17.13 Confirmation of Status. By notice to the other (a "Confirmation Request Notice"), either Lessor or Lessee (the "Requesting Party") may request that the other provide to the Requesting Party written confirmation of certain matters (an "Estoppel Certificate") as follows:

17.13.1 Lessee may give a Confirmation Request Notice only when a Primary Lien is being created or assigned, or when Lessee's entire interest in the Premises is being assigned. Any Confirmation Notice by Lessee must meet the following additional requirements:

17.13.1.1 The Confirmation Request Notice shall be executed and joined in by the prospective Primary Lienholder, assignee of a Primary Lien, or assignee of Lessee's entire interest in the Premises (the "Confirmation Assignee").

17.13.1.2 The Confirmation Request Notice shall describe the proposed transaction between Lessee and the Confirmation Assignee.

17.13.1.3 The Confirmation Request Notice must include warranties and representations by the Confirmation Assignee that the matters to be confirmed are true to the best of its knowledge.

17.13.1.4 The Confirmation Request Notice must include warranties and representations by Lessee that the matters to be confirmed are true and that the information contained in the Confirmation Request Notice is complete and true.

17.13.1.5 If a Primary Lien is being created or assigned, the Confirmation Request Notice must warrant and represent that the proposed Primary Lienholder and its Lien qualify in every way for Primary Lien status under this Agreement.

17.13.2 The Confirmation Request Notice must specify the matters the other party is requested to confirm. The Confirmation Request Notice shall request only that the other party confirm whether or not one or more of the following matters are true, to the best of such other party's knowledge:

17.13.2.1 That this Agreement is in effect and has not been amended except as stated in the Confirmation Request Notice.

17.13.2.2 If Lessee is the Requesting Party, that an Event of Default by Lessee does not exist (except that Estoppel Certificates by Lessor shall exclude matters of zoning or other regulatory compliance). If Lessor is the Requesting Party, that Lessor has performed its obligations and is in compliance with this Agreement.

17.13.2.3 If a Primary Lien is being created, that upon Primary Lienholder's providing to Lessor copies of the recorded instrument creating Primary Lienholder's Primary Lien and a recorded instrument releasing any prior Primary Lien, Lessor will acknowledge Primary Lienholder as the Primary Lienholder under this Agreement.



17.13.2.4 If Lessee is the Requesting Party, that Lessor consents to the proposed transaction between Lessee and the Confirmation Assignee.

17.13.3 The other party shall provide the Estoppel Certificate to the Requesting Party not less than thirty (30) days after a proper Confirmation Request Notice.

17.14 Assignment Payment. In addition to all other Rent payable hereunder, in the event of any assignment (including without limitation a Lien enforcement) which transfers possession of more than 30% of the Premises or has a duration of five (5) or more years, Lessee shall pay to Lessor the amount of Five Thousand Dollars (\$5,000). Lessee shall pay to Lessor the sum of One Thousand Five Hundred Dollars (\$1,500) as a fee for legal and administrative expenses related to creation of a Primary Lien or any assignment or request for consent to an assignment. Lessee shall pay to Lessor the sum of Seven Hundred Fifty Dollars (\$750) as a fee for legal and administrative expenses related to any request for an Estoppel Certificate.

17.15 Airpark Access Permit. If an aircraft is to be stored or based at the Premises or Lot 12 for more than ten (10) days, then Lessor's consent to an assignment is not effective until an Airpark Access Permit is in effect between the City of Scottsdale and the aircraft owner.

17.16 Approved Assignments. Lessee shall attach to each assignment not described in this paragraph, a copy of Lessor's notice to Lessee of Lessor's consent to the assignment. No consent by Lessor to an assignment shall be effective unless and until Lessee receives notice of Lessor's consent pursuant to this Agreement. This Agreement shall continue to be enforceable according to its terms in spite of any provisions of any Estoppel Certificate or other documents relating to an Assignment. Lessor hereby consents to the creation of a Primary Lien which meets all of the requirements of this Agreement.

17.17 Assignment by Lessor. Lessor's interests in this Agreement shall be automatically deemed to be assigned to and assumed by any person who acquires fee title to the Premises. Upon any such assignment, Lessor's liability with regard to this Agreement shall terminate.

## XVIII. MISCELLANEOUS

### 18. Miscellaneous.

18.1 Severability. If any provision of this Agreement is declared void or defective, that declaration shall not affect the validity nor any other provision of this Agreement.

18.2 Amendments. This Agreement may not be amended except by a formal writing executed by all of the parties. An amendment shall not be binding against a Primary Lienholder unless the Primary Lienholder consents to the amendment which consent shall not be unreasonably withheld or delayed.

18.3 Conflicts of Interest. No member, official or employee of Lessor shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

18.4 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

18.5 Nonliability of Lessor Officials and Employees. No member, official, representative or employee of Lessor shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by Lessor or for any amount which may become due to any party or successor, or with respect to any obligation of Lessor or otherwise under the terms of this Agreement or related to this Agreement. The inclusion of the preceding sentence in this Agreement does not suggest that Lessee has waived any protections that laws applicable to Lessee's legal formation (such as limited liability pursuant to limited liability company laws or limited partnership laws) may provide for Lessee's members, officials, representatives or employees.

18.6 Notices. Notices hereunder shall be given in writing delivered to the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to Lessor: Scottsdale Aviation Director  
15000 N. Airport Dr.  
Suite 200  
Scottsdale, AZ 85260

City of Scottsdale  
3939 N. Drinkwater Blvd.  
Scottsdale, AZ 85251  
Attn: City Attorney

If to Lessee: Dr. Michael W. Gregory  
Attn: James A. Craft  
c/o Apogee Physicians  
15059 North Scottsdale Road  
Suite 600  
Scottsdale, AZ 85254

Copies to: Holder of Primary Lien only if specifically required by this Agreement.

Notices to Lessee may also be hand-delivered to Lessee's management office at the Premises. Notices given or served by personal delivery shall be deemed to have been received upon tender to the respective party. Notices given or served by mail or commercial courier shall be deemed to have been given or served as of the date of delivery (whether accepted or refused) established by the United States Postal Service return-receipt or the overnight courier's proof of delivery, as the case may be.

18.7 Time of Essence. Time is of the essence of each and every provision of this Agreement.

18.8 Integration. This Agreement (including the exhibits attached hereto) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence and memoranda or representation regarding the Premises.

18.9 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore

be interpreted according to its plain meaning and without regard to rules of interpretation, if any, which might otherwise favor Lessee.

18.10 Lessee Payments Cumulative. All amounts payable by Lessee to Lessor hereunder or under any tax, assessment or other existing or future ordinance or other law of City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other by Lessee in any manner.

18.11 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

18.12 No Third Party Beneficiaries. Except for the limited provisions expressly stated to be for the benefit of a Primary Lienholder, no person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. Lessor shall have no liability to third parties for any approval of plans, Lessee's construction of improvements, Lessee's negligence, Lessee's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Lessee), or otherwise as a result of the existence of this Agreement.

18.13 Exhibits. All attached exhibits which are specifically referenced in this Agreement are hereby incorporated into and made an integral part of this Agreement for all purposes.

18.14 Attorneys' Fees. In the event any action or suit or proceeding is brought by Lessor to collect the Rent due or to become due hereunder or any portion hereof or to take possession of the Premises or to enforce compliance with this Agreement or for Lessee's failure to observe any of the covenants of this Agreement or to vindicate or exercise any of Lessor's rights or remedies hereunder, Lessee agrees to pay all costs of such action or suit and all expenses of such action or suit together with such sum as the court may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

18.15 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. Exclusive proper venue for any action regarding this Agreement shall be Maricopa County.

18.16 Approvals and Inspections. All approvals, reviews and inspections by Lessor under this Agreement or otherwise are for Lessor's sole benefit and not for the benefit of Lessee, its contractors, engineers or other consultants or agents, or any other person.

18.17 Recording. Within ten (10) days after the date of this Agreement, Lessee shall cause this Agreement to be recorded in the office of the Maricopa County Recorder.

18.18 Statutory Cancellation Right. In addition to its other rights hereunder, Lessor shall have the rights specified in A.R.S. § 38-511.

[Signature page follows.]





## TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Paragraph</u>	<u>Description</u>
A		Legal description for lease land
B		Site Plan
C		Standards for letter of credit

**NOTE:** All Exhibits must be labeled, formatted for recording, and leave at least one half inch clear space along all margins.

*[Note: this table is not part of the document.]*

**EXHIBIT A  
LEGAL DESCRIPTION  
LEX CAPITAL LEASE PARCEL  
SCOTTSDALE MUNICIPAL AIRPORT TRACT**

A Tract of land in the Northwest Quarter of the Northwest Quarter of Section 12, Township 3 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, lying over the parcels described in Instrument No. 860142543 and 063130103, records of Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Northeast corner of Lot 12 of Scottsdale Industrial Airpark No. 7, according to Book 234 of Maps, Page 27, Records of Maricopa County, Arizona, said point marked by a 1/2" rebar with cap #19857;  
Thence South 43° 55' 22" West along the Northerly line of said Lot 12, a distance of 220.00 feet to the Northwest corner of said Lot 12;  
Thence North 46° 04' 38" West leaving said Northerly line a distance of 100.00 feet;  
Thence North 43° 55' 22" East a distance of 220.00 feet;  
Thence South 46° 04' 38" East a distance of 100.00 feet to the POINT OF BEGINNING.

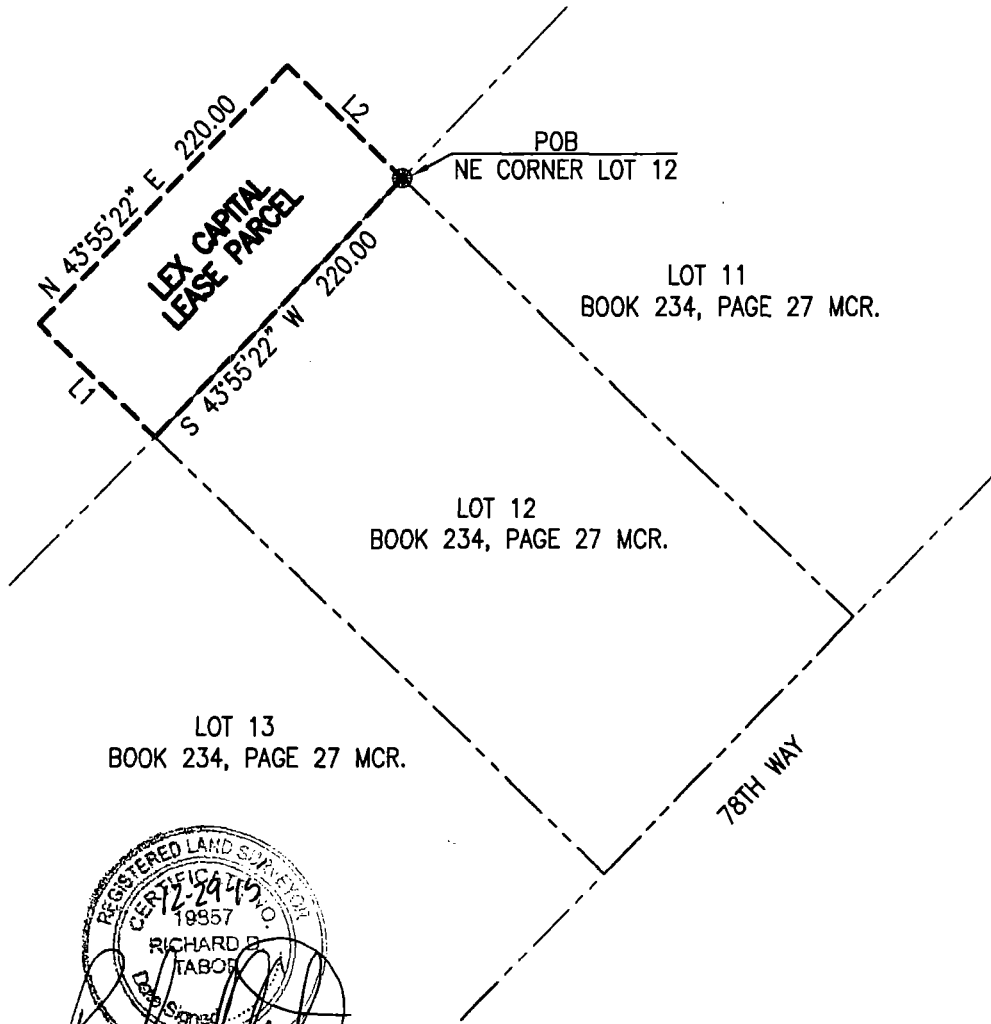
Said described parcel contains 22,000 square feet, more or less.



RS Team Land Surveyors  
1721 W. Rose Garden Lane, Suite 4  
Phoenix, AZ. 85027  
623-445-2003  
12-29-15 #155-2

**EXHIBIT**  
**LEX CAPITAL LEASE PARCEL**  
**SCOTTSDALE MUNICIPAL AIRPORT TRACT**

LINE	BEARING	DISTANCE
L1	N 46°04'38" W	100.00
L2	S 46°04'38" E	100.00



REGISTERED LAND SURVEYOR  
 CERTIFICATE NO. 19857  
 RICHARD B. TABOR  
 Signed  
 EXPIRES 9/30/16

NOTE: ALL DATA IS CALCULATED  
 BASED ON RECORD INFO FROM  
 BOOK 234 OF MAPS, PAGE 27, MCR.

RS TEAM LAND SURVEYORS  
 1721 W. ROSE GARDEN LANE #4  
 PHOENIX, AZ. 85027  
 602-445-2003  
 12-29-15 #155-2





**EXHIBIT "C"**

**Standards for Letters of Credit**

In addition to any other requirements imposed upon a letter of credit (the "Letter of Credit") issued pursuant to this Agreement, each Letter of Credit shall meet and be governed by the following additional standards and requirements;

1. General Requirements. The Letter of Credit must:
  - 1.1 Be clean, unconditional, and irrevocable.
  - 1.2 Be payable to Lessor upon demand.
  - 1.3 Be subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 190.
  - 1.4 Be conditioned for payment solely upon presentation of the Letter of Credit and a sight draft.
  - 1.5 Be transferable one or more times by Lessor without the consent of Lessee or the Issuer.
  
2. Letter of Credit Fees. Lessee shall pay upon Lessor's demand, as additional Rent, any and all costs or fees charged in connection with the Construction Letter of Credit, including without limitation, those that arise due to:
  - 2.1 Landlord's sale or transfer of all or a portion of the Premises [or the Airport Site].
  - 2.2 The addition, deletion, or modification of any beneficiaries under the Letter of Credit.
  
3. Issuing Bank. The Letter of Credit shall meet all of the following requirements:
  - 3.1 The issuer shall be a federally insured financial institution with offices in Maricopa County, Arizona.
  - 3.2 The issuer shall be a member of the New York Clearing House Association or a commercial bank or trust company satisfactory to Lessor.
  - 3.3 The issuer shall have banking offices at which the Letter of Credit may be drawn upon in Maricopa County, Arizona.
  - 3.4 The issuer shall have a net worth of not less than \$1 billion.
  
4. Expiration of Letter of Credit. The Letter of Credit shall expire not earlier than 12 months after the date it is delivered to Lessor. The Letter of Credit shall provide that it shall be automatically renewed for successive 12 month periods through a date which is not earlier than 60 days after the time provided herein for completion of construction, or any renewal or extension thereof, unless written notice of nonrenewal has been given by the issuing bank to Landlord not less than 60 days prior to the expiration of the current period. If the

issuing bank does not renew the Letter of Credit, and if Lessee does not deliver a substitute Letter of Credit at least 30 days prior to the expiration of the current period, then, in addition to its other rights under this Agreement, Lessor shall have the right to draw on the existing Letter of Credit.

- 5 Draws. Lessor may draw upon the Letter of Credit as follows:
  - 5.1 Lessor may use, apply, or retain the proceeds of the Letter of Credit to the same extent that Lessor may use, apply, or retain any other Lessee funds or property to which Lessor may have access.
  - 5.2 Lessor may draw on the Letter of Credit, in whole or in part, from time to time, at Lessor's election.
  - 5.3 Within thirty (30) days after Lessor gives Lessee notice that Lessor has drawn down the Letter of Credit, Lessee shall restore all amounts drawn by Lessor, or substitute cash security instead.
  - 5.4 In the event the required amount of the Letter of Credit increases from time to time, Lessee shall, from time to time, on or before the date of the increase, deliver to Lessor an additional letter of credit in the amount of such increase, or cause the existing Letter of Credit held by Lessor to be amended to increase its amount.
  - 5.5 Lessor may draw upon the Letter of Credit as otherwise permitted by this Agreement.
- 6 Cooperation by Lessee. Lessee shall promptly execute and deliver to Lessor any and all modifications, amendments, and replacements of the Letter of Credit, as Lessor may reasonably request.

CONSENT

This Consent is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and among the City of Scottsdale, an Arizona municipal corporation ("Lessor"), Cherokee Aviation Holdings, LLC, a Delaware limited liability company ("Lessee"), and ZB, N.A. dba National Bank of Arizona, a national banking association ("Primary Lienholder").

RECITALS

A. Lessor is the owner of the Scottsdale Airport (the "Airport") located northeast of the intersection of Scottsdale Road and Thunderbird Road in Maricopa County, Arizona.

B. Lessor holds fee title in various other interests in the Airport pursuant to various documents (the "Site Documents").

C. Lessor and Lessee have entered into that certain Lease Agreement (the "Agreement") as of the 5th day of April, 2016. All capitalized terms used in this Consent and not otherwise defined shall have the meanings given to such terms in the Agreement.

D. Pursuant to Section 17.8 of the Agreement, Lessee is permitted with Lessor's consent to impose a single mortgage or deed of trust (as more particularly defined in the Agreement, the "Primary Lien") upon Lessee's leasehold interest in the real property described in Exhibit A attached hereto (the "Premises") under the Agreement to secure a loan obtained by Lessee to obtain funds for Lessee to use, among other things, to acquire Lessee's interest under the Agreement, make desired improvements, along with the ownership of Lot 12.

E. Primary Lienholder proposes to make a loan (the "Loan") to Lessee secured by, among other things, Lot 12 and Lessee's Leasehold interest pursuant to the Agreement.

NOW, THEREFORE, Lessor, Lessee and Primary Lienholder hereby covenant, agree, represent, and warrant as follows:

1. Consent. Lessor consents to Primary Lienholder's Primary Lien. Lessor agrees that ZB, N.A. dba National Bank of Arizona is the Primary Lienholder and is entitled to the rights and benefits of the Primary Lienholder pursuant to the Agreement. Lessor acknowledges that Lessor has received notice of the creation of the Primary Lien, together with a true copy of the Primary Lien, in accordance with Section 17.12.2 of the Agreement. Lessor further consents to Lessee's collateral assignment, for the benefit of Primary Lienholder, of Lessee's rights under all permits, licenses and approvals granted or to be granted by Lessor to Lessee in connection with Lessee's use of the Airport and the Premises.

2. Notice. Pursuant to Section 17.2.2 of the Agreement, Primary Lienholder hereby notifies Lessor of the address to which notices to Primary Lienholder shall be sent; to wit:

ZB, N.A. dba National Bank of Arizona,  
Its successors and assigns  
James Gaudiano  
6001 N. 24<sup>th</sup> Street  
Phoenix, Arizona 85016  
(602) 212-5401

3. Confirmation of Status. Lessor acknowledges that Lessee has provided a Confirmation Request Notice to Lessor and based on such request, Lessor hereby confirms as follows:

- (a) The Agreement is in effect and has not been amended.
- (b) An Event of Default by Lessee does not exist (excluding matters of zoning or other regulatory compliance).
- (c) Lessor consents to the proposed transaction between Lessee and Primary Lienholder.

4. Lessee Confirmation. Lessee joins in this Consent and agrees and consents to the terms and provisions hereof. In addition, Lessee hereby confirms as follows:

- (a) ZB, N.A. dba National Bank of Arizona is the Primary Lienholder and its lien on Lessee's leasehold interest in the Premises qualifies in every way for Primary Lien status under the Agreement.
- (b) Primary Lienholder has provided a true and correct copy of the Primary Lienholder's Primary Lien to Lessor.

5. Choice of Law. This Consent shall be governed by the internal laws of the State of Arizona without regard to choice of law rules.

6. Counterparts. This Consent may be signed in separate counterparts by each of the parties hereto, all of which may be assembled into a single document and shall constitute a single agreement.

7. Binding Effect. This Consent shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[SIGNATURE PAGES FOLLOW]

LESSOR:

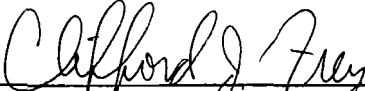
CITY OF SCOTTSDALE, an Arizona municipal corporation

By: \_\_\_\_\_  
W.J. "Jim" Lane, Mayor

ATTEST:

\_\_\_\_\_  
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Clifford J. Frey  
Senior Assistant City Attorney

\_\_\_\_\_  
Gary P. Mascaro, Aviation Director

STATE OF ARIZONA                    )  
  ) ss:  
COUNTY OF MARICOPA            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by W.J. "Jim" Lane, Mayor of the City of Scottsdale, an Arizona municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

PRIMARY LIENHOLDER:

ZB, N.A., dba National Bank of Arizona, a national banking association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ARIZONA                    )  
  ) ss:  
COUNTY OF MARICOPA            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, a \_\_\_\_\_ of ZB, N.A., dba National Bank of Arizona, a national banking association, on behalf of the association.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

LESSEE:

CHEROKEE AVIATION HOLDINGS, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ARIZONA            )  
  ) ss:  
COUNTY OF MARICOPA        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2016, by \_\_\_\_\_, a \_\_\_\_\_  
of CHEROKEE AVIATION HOLDINGS, LLC, a Delaware limited liability company, on behalf  
of the limited liability company.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_



EXHIBIT A

PREMISES

A tract of land the Northwest quarter of the Northwest quarter of Section 12, Township 3 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, lying over the parcels described in Instrument No. 86-142543 and in Docket 6313, page 103, records of Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Northeast corner of Lot 12 of Scottsdale Industrial Airpark No. 7, according to Book 234 of Maps, page 27, records of Maricopa County, Arizona, said point marked by a ½" rebar with cap #19857;

Thence South 43°55'22" West along the Northerly line of said Lot 12, a distance of 220.00 feet to the Northwest corner of said Lot 12;

Thence North 46°04'38" West leaving said Northerly line a distance of 100.00 feet;

Thence North 43°55'22" East a distance of 220.00 feet;

Thence South 46°04'38" East a distance of 100.00 feet to the POINT OF BEGINNING.