

**FIRST AMENDMENT TO THE MASTER TENANT LEASE BETWEEN  
THE CITY OF MESA AND EMPIRE SOUTHWEST LLC**

This First Amendment to the Master Tenant Lease (this "First Amendment") is made and is effective as of Nov 8th, 2018 (the "Effective Date"), by and between the City of Mesa, a municipal corporation ("Landlord") and Empire Southwest LLC, a Delaware limited liability company ("Tenant"). Landlord and Tenant are sometimes referred to in this First Amendment collectively as the "Parties," or individually as a "Party."

**RECITALS**

- A. Landlord and Horizon Land and Development, LLC entered into the Master Tenant Lease, dated November 2, 2009, (the "Master Tenant Lease"), to lease Parcel 33A at Falcon Field Airport, Mesa, Arizona, as more specifically described and depicted in the Master Tenant Lease and defined as the "Premises".
- B. An Assignment and Assumption Agreement between Horizon Land and Development LLC and Empire Southwest LLC was executed on October 16, 2012, and Landlord consented to the Assignment.
- C. Landlord and Tenant desire to amend the Master Tenant Lease by this First Amendment for the purpose of increasing the size of the leased premises so that Tenant can expand the hangar to accommodate larger aircraft. The existing Leased Premises is 14,597 square feet, which includes the original footprint of the City-owned hangar (approximately 6,000 feet). The additional square footage needed for the hangar expansion is approximately 6,698.91 square feet. The revised square footage for Parcel 33A is 21,296 square feet as depicted in Exhibit A. The additional square footage will include an Ingress/Egress and Public Utility Easement granting access to adjacent Parcel 26B, located west of the Leased Premises as depicted in Exhibit A-1. Completion of construction of all proposed improvements shall be no later than twelve (12) months following the Effective Date of this First Amendment.

**D. AGREEMENT**

IN CONSIDERATION of the foregoing recitals and the mutual covenants, which are incorporated herein as part of this agreement, and the agreements and conditions in this First Amendment, the Parties agree as follows:

- 1) Recitals. Landlord and Tenant represent that the above Recitals are true and correct. The Parties agree that the Recitals are hereby incorporated herein as terms of this First Amendment.

- 2) **Definitions.** All capitalized words and phrases used in this First Amendment shall have the same meanings as set forth in the Master Tenant Lease unless a different definition is set forth in this First Amendment.
- 3) **Section 1- Premises.** The Exhibit A attached to the Master Tenant Lease is hereby deleted in its entirety and replaced with the attached Exhibit "A", which increases the premises from 14,597.09 square feet to 21,296 square feet.
- 4) **Section 4.02 Rental.** The first sentence of Section 4.02 is hereby deleted in its entirety and replaced with the following:

"The Tenant shall pay to Landlord for each year during the Permanent Term an annual rent ("Minimum Annual Rent") in the amount of thirty-six thousand seven hundred and eighty dollars and twenty-five cents (\$36,780.25) calculated as follows: 15,296 square feet x \$.37453 per square foot per year plus 6,000 x \$.43127 x 12 months plus applicable taxes. Tenant shall pay Rent on or before the 1<sup>st</sup> day of each November during the Permanent Term of the Lease, beginning the 1<sup>st</sup> November of 2018. Pursuant to Section 6.02 the Minimum Annual Rent will be subject to annual rental rate adjustments."

- 5) **Limited Severability.** In the event, any term or provision (or portion of any term or provision) of this First Amendment is held to be invalid or unenforceable, the validity of the other provisions or the remainder of such provision shall not be affected, and this First Amendment shall be construed and enforced as if it did not contain the particular term or provision (or portion of such term or provision) that is deemed to be invalid or unenforceable.
- 6) **Ratification and Reaffirmation.** Landlord and Tenant do hereby ratify, reaffirm, adopt, contract for, and agree to be or continue to be, as the case may be, bound by all of the terms and conditions of the Master Tenant Lease, as amended. Except as previously modified and modified herein, all of the terms and conditions of the Master Tenant Lease, as amended, are incorporated by reference herein as if set forth at length. It is acknowledged and agreed that the execution of this First Amendment by the Landlord and Tenant is not intended to and shall not constitute a release of Landlord and/or Tenant from any and all obligations or liabilities which they have to each other under and pursuant to the terms of the Master Tenant Lease, as amended, and Landlord and Tenant are not released from any such liabilities or obligations.
- 7) **Construction.** The terms and provisions of this First Amendment shall be interpreted and construed in accordance with their usual and customary meanings. The Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this First Amendment, that ambiguous or conflicting terms or provisions contained in this First Amendment shall not be interpreted or construed against the Party who prepared or whose attorney prepared the executed First Amendment or Master Tenant Lease or any earlier draft of the same.

- 8) Governing Law, Venue, and Jurisdiction. This First Amendment shall be governed by the laws of the State of Arizona. A Party may only bring an action related to a dispute arising out of this First Amendment or the Master Tenant Lease in a court of appropriate venue and jurisdiction in Maricopa County, State of Arizona.
- 9) Statutory Notice Requirement. The Parties acknowledge that this First Amendment is subject to cancellation by Landlord pursuant to the provisions of A.R.S. § 38-511.
- 10) Surviving Provisions. All obligations under this First Amendment or the Master Tenant Lease shall survive the termination or expiration of the Master Tenant Lease as amended by this First Amendment; additionally, any other section or obligation that reasonably should survive shall survive.
- 11) Merger. All provisions of the Master Tenant Lease and the First Amendment, which have not been amended by this First Amendment, shall remain the same in full force and effect.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this First Amendment to the Master Tenant Lease to be effective as of the date written above.

Approved as to form by the City of Mesa City Attorney's Office:

By: Margaret A. Robertson Date: 11/8/2018  
Margaret A. Robertson

LANDLORD:

CITY OF MESA, a municipal corporation

By: Natalie N. Lewis

Natalie N. Lewis

Its: Deputy City Manager

State of Arizona )

) ss.

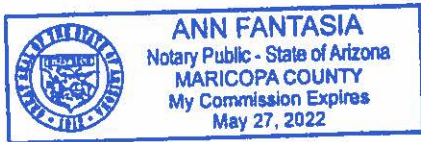
County of Maricopa )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of November, 2018, by Natalie N. Lewis, the Deputy City Manager of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that she signed on behalf of the City of Mesa.

(Seal and Expiration Date)

Ann Fantasia

Notary Public



TENANT:

EMPIRE SOUTHWEST, LLC

By: \_\_\_\_\_

Printed: CHRIS ZAHARIS

State of Arizona )

) ss.

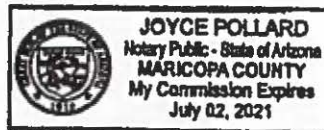
County of Maricopa )

The foregoing instrument was acknowledged before me this 16 day of October, 2018, by Chris Zaharis who acknowledged that he/she signed on behalf of

EMPIRE SOUTHWEST, LLC

(Seal and Expiration Date)

Joyce Pollard  
Notary Public



**EXHIBIT A**  
**Legal Description**  
**Parcel 33A**



STANDAGE & ASSOCIATES, LTD.

CONSULTING ENGINEERS

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**EXHIBIT A**  
**Legal Description**  
**PARCEL 33A**

A portion of the Southwest quarter of Section 3, Township 1 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

Commencing at the Southwest corner of said Section 3, said point being a found Brass Cap in Handhole, from which the South quarter corner of said Section 3 bears North 89 degrees 30 minutes 09 seconds East, for a distance of 2627.46 feet, said point being a found Maricopa County Department of Transportation Brass Cap in Handhole;

Thence North 89 degrees 30 minutes 09 seconds East, along the South line of the Southwest quarter of said Section 3, for a distance of 983.19 feet;

Thence North 00 degrees 14 minutes 49 seconds East, for a distance of 1267.07 feet;

Thence North 89 degrees 02 minutes 14 seconds East, for a distance of 197.01 feet;

Thence South 01 degree 04 minutes 30 seconds East, for a distance of 138.50 feet;

Thence North 89 degrees 26 minutes 38 seconds East, for a distance of 8.58 feet, to the **POINT OF BEGINNING**;

Thence continuing North 89 degrees 26 minutes 38 seconds East, for a distance of 115.37 feet;

Thence North 00 degrees 31 minutes 01 seconds West, for a distance of 2.46 feet;

Thence North 89 degrees 26 minutes 38 seconds East, for a distance of 17.50 feet;

Thence South 00 degrees 31 minutes 01 seconds East, for a distance of 34.46 feet;

Thence North 89 degrees 26 minutes 38 seconds East, for a distance of 20.02 feet;

Thence South 00 degrees 33 minutes 22 seconds East, for a distance of 53.54 feet;

Thence South 42 degrees 49 minutes 53 seconds East, for a distance of 65.18 feet;

Thence South 46 degrees 59 minutes 18 seconds West, for a distance of 17.09 feet;

Thence North 44 degrees 50 minutes 26 seconds West, for a distance of 40.38 feet;

Thence South 45 degrees 09 minutes 34 seconds West, for a distance of 12.10 feet;



STANDAGE & ASSOCIATES, LTD.

CONSULTING ENGINEERS

**PAGE 2 OF 2  
PARCEL 33A  
LEGAL DESCRIPTION**

Thence South 00 degrees 33 minutes 22 seconds East, for a distance of 14.76 feet;  
Thence South 89 degrees 23 minutes 28 seconds West, for a distance of 75.91 feet;  
Thence North 00 degrees 43 minutes 42 seconds West, for a distance of 5.00 feet;  
Thence South 89 degrees 23 minutes 28 seconds West, for a distance of 71.15 feet;  
Thence North 00 degrees 37 minutes 30 seconds West, for a distance of 12.65 feet;  
Thence North 00 degrees 57 minutes 28 seconds West, for a distance of 23.39 feet;  
Thence North 00 degrees 33 minutes 22 seconds West, for a distance of 98.71 feet, to the  
**POINT OF BEGINNING.**

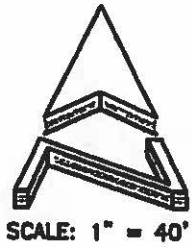
Said Parcel 33A contains 0.489 Acres (21,296 S.F.) more or less.



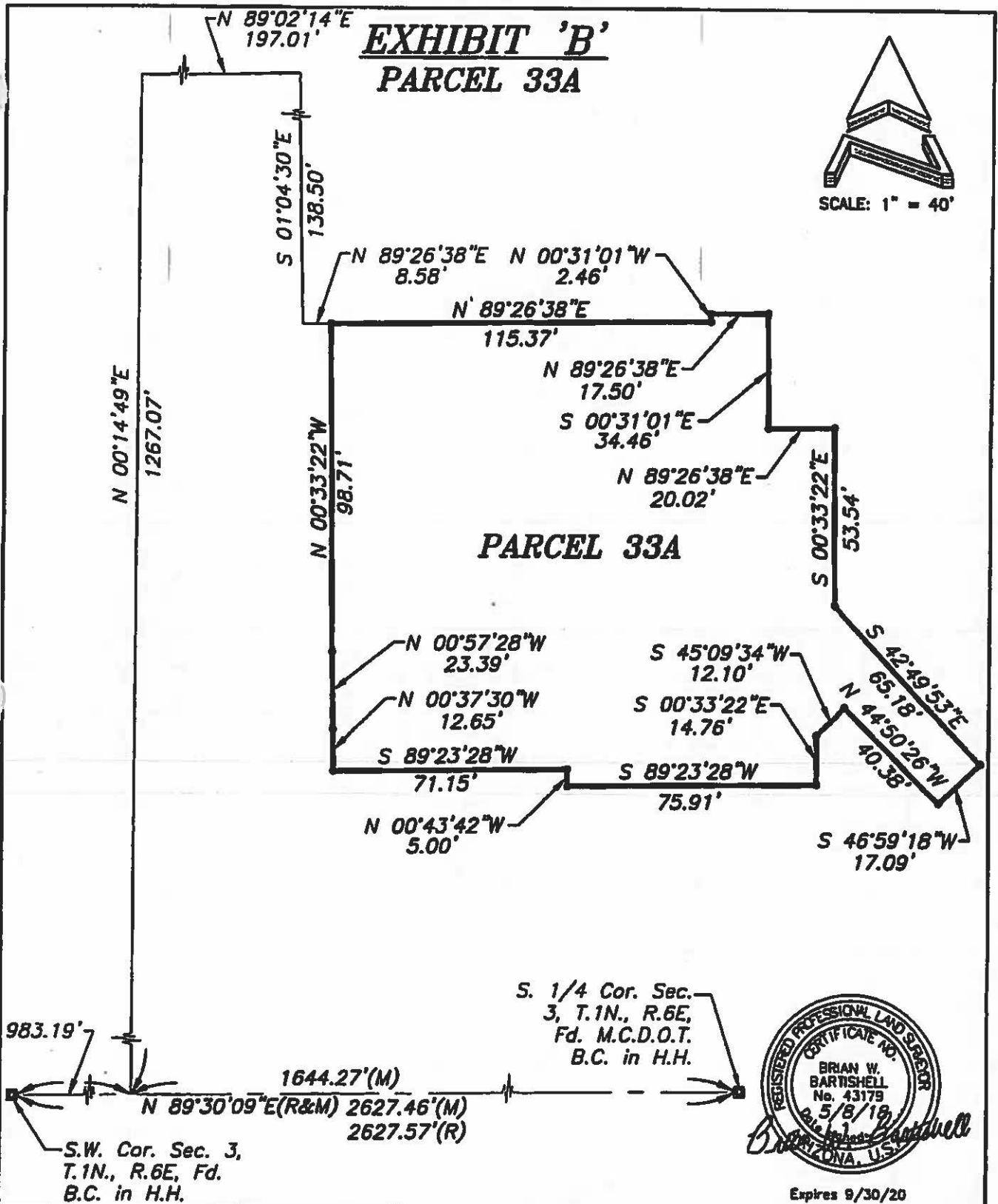
Expires 8/30/20



**EXHIBIT 'B'**  
**PARCEL 33A**



SCALE: 1" = 40'



PARCEL 33A

PROPERTY EXHIBIT



**Standage & Associates, Ltd.**  
**Consulting Engineers**

409 S El Dorado  
Mesa, Arizona 85202  
(480) 892-8090

SA Proj # 180200

1 / 1

**EXHIBIT B**  
**Legal Description**  
**Parcel 33A**  
**Ingress/Egress &**  
**Public Utility Easement**



STANDAGE & ASSOCIATES, LTD.

CONSULTING ENGINEERS

## EXHIBIT A Legal Description Ingress/Egress & Public Utility Easement

A portion of the Southwest quarter of Section 3, Township 1 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

Commencing at the Southwest corner of said Section 3, said point being a found Brass Cap in Handhole, from which the South quarter corner of said Section 3 bears North 89 degrees 30 minutes 09 seconds East, for a distance of 2627.46 feet, said point being a found Maricopa County Department of Transportation Brass Cap in Handhole;

Thence North 89 degrees 30 minutes 09 seconds East, along the South line of the Southwest quarter of said Section 3, for a distance of 983.19 feet;

Thence North 00 degrees 14 minutes 49 seconds East, for a distance of 1007.60 feet;

Thence North 89 degrees 22 minutes 36 seconds East, for a distance of 210.64 feet, to the **POINT OF BEGINNING**;

Thence North 00 degrees 57 minutes 28 seconds West, for a distance of 21.11 feet;

Thence North 89 degrees 23 minutes 28 seconds East, for a distance of 100.19 feet;

Thence North 73 degrees 11 minutes 25 seconds East, for a distance of 54.86 feet;

Thence South 42 degrees 49 minutes 53 seconds East, for a distance of 65.18 feet;

Thence South 46 degrees 59 minutes 18 seconds West, for a distance of 17.09 feet;

Thence North 44 degrees 50 minutes 26 seconds West, for a distance of 40.38 feet;

Thence South 45 degrees 09 minutes 34 seconds West, for a distance of 12.10 feet;

Thence South 89 degrees 23 minutes 28 seconds West, for a distance of 147.08 feet;

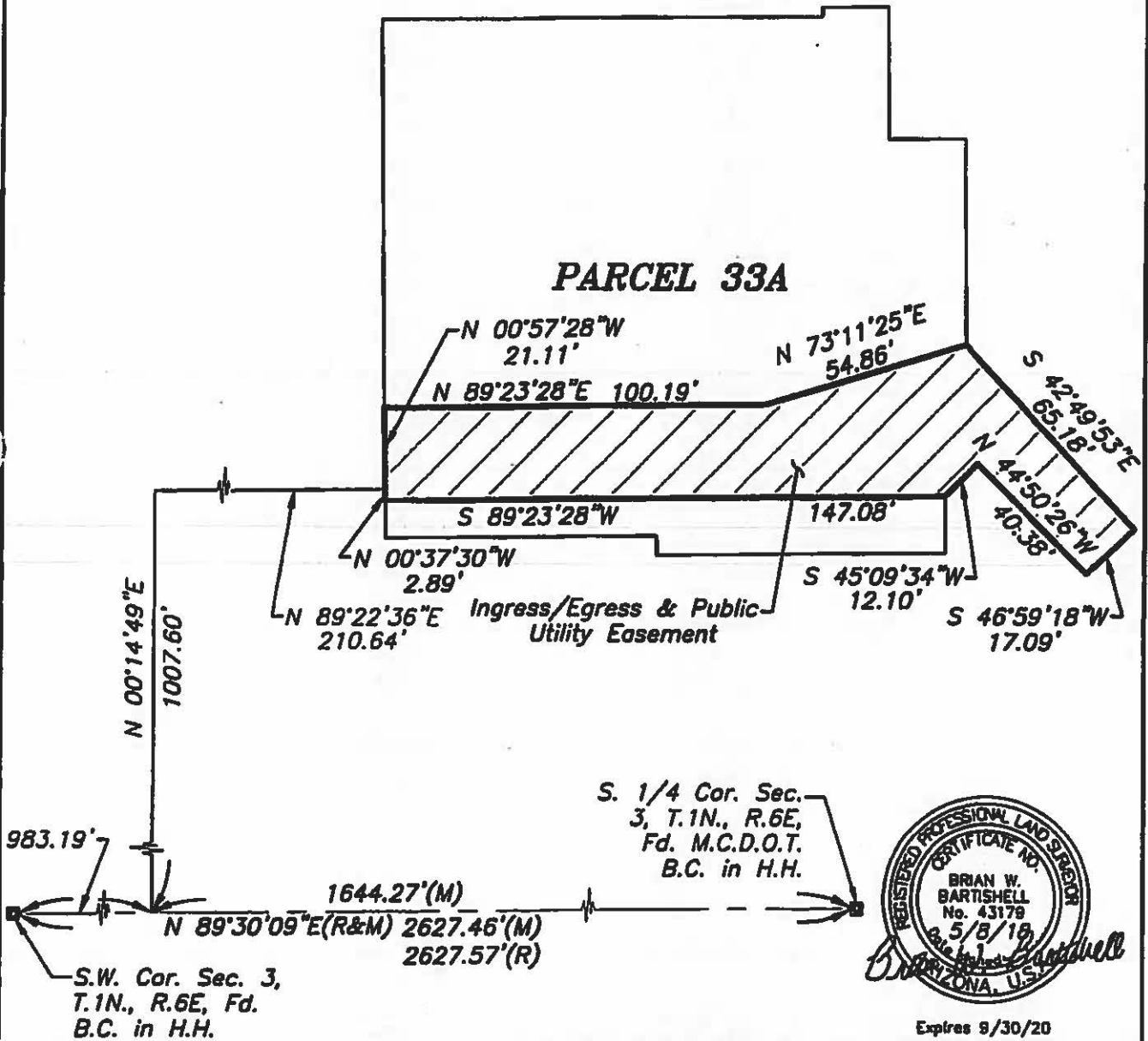
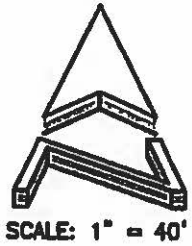
Thence North 00 degrees 37 minutes 30 seconds West, for a distance of 2.89 feet, to the **POINT OF BEGINNING**.

Said Ingress/Egress & Public Utility Easement contains 0.116 Acres (5,054 S.F.) more or less.



Expires 9/30/20

**EXHIBIT 'B'**  
**INGRESS/EGRESS & PUBLIC**  
**UTILITY EASEMENT**



|   |       |  |
|---|-------|--|
| <b>PARCEL 33A</b>                                   |       | <b>Standage &amp; Associates, Ltd.</b><br><b>Consulting Engineers</b><br>409 S. El Dorado<br>Mesa, Arizona 85202<br>(480) 892-8090 |
| <b>INGRESS/EGRESS &amp; PUBLIC UTILITY EASEMENT</b> |       |  |
| SA Proj. # 180200                                   | 1 / 1 |  |

CONSENT TO ASSIGNMENT AND ASSUMPTION  
OF THE MASTER TENANT LEASE

The "Master Lease" as referenced herein is that certain Master Tenant Lease dated as of November 2, 2009, between the City of Mesa, as Landlord, and Horizon Land and Development, LLC, as the original tenant thereunder, with respect to the real property defined and described as the "Premises" therein.

By signing below, Horizon Land and Development, LLC, an Arizona limited liability company ("Horizon Land and Development"), and Empire Southwest, LLC, a Delaware limited liability company ("Empire Southwest"), do hereby represent and warrant that there was an assignment and assumption of the Master Lease from Horizon Land and Development to Empire Southwest as of OCTOBER 16, 2012 (the "Assignment Date"); and that as part of such assignment and assumption Empire Southwest has assumed all of the obligations, rights, and responsibilities under the Master Lease.

Horizon Land and Development does hereby represent that it has assigned the Master Lease, including conveyance of all rights and responsibilities thereof, to Empire Southwest, as of the Assignment Date.

Empire Southwest does hereby represent and warrant that it has assumed the Master Lease and acknowledges and agrees to perform faithfully and to assume and be bound by all the terms, covenants, provisions, and agreements of the Master Lease as of Assignment Date and thereafter.

Horizon Land and Development and Empire Southwest desire to have the City of Mesa consent to this assignment and assumption as required by the Master Lease.

The City of Mesa does hereby consent to the assignment and assumption of the Master Lease, including all rights and responsibilities thereof, from Horizon Land and Development to Empire Southwest, under the terms of this Consent Agreement. The City of Mesa's consent to the assignment is conditioned on Empire Southwest's assumption of all obligations, rights, and responsibilities as Tenant under the Master Lease; and the term "Tenant" as used in the Master Lease shall mean Empire Southwest. Additionally, Empire Southwest agrees that, as an additional term and obligation under the Master Lease, it must obtain a Certificate of Occupancy from the City of Mesa's Development and Sustainability Department prior to Empire Southwest's occupancy or use of the Premises, including, but not limited to, any storage of aircraft or other personal property on or within the Premises; and the City of Mesa's consent to the assignment is contingent upon Empire Southwest obtaining a Certificate of Occupancy prior to any occupancy or use of the Premises. Part of the process to obtain the required Certificate of Occupancy includes the approval by the Falcon Field Airport Director of any proposed, and/or required modifications to the Premises, to ensure compliance with the Planned Area Development (PAD) for Falcon Field Airport, prior to application for a building permit. All other terms and conditions of the Master Lease shall remain unchanged and are in full force and effect.

Nothing herein shall be construed to release (in whole or in part) Horizon Land and Development from any and all liabilities, damages, causes of action, expenses, and reasonable attorneys' fees and legal expenses incurred by the City of Mesa due to Horizon Land and Development's failure to fulfill, perform, discharge, or observe its obligations under the Master Lease that arise on or before the Assignment Date.

Nothing herein shall be construed to release (in whole or in part) Empire Southwest from any of the terms, conditions, covenants, requirements, liabilities, or conditions under the Master Lease.

Notices to Tenant will be to Empire Southwest, LLC; 1725 S. Country Club; Mesa, Arizona, 85210; unless Tenant notifies Landlord as required under the Master Lease.

IN WITNESS WHEREOF, the undersigned have executed this Consent to Assignment and Assumption of the Master Lease as of 17 October, 2012.

**HORIZON LAND AND DEVELOPMENT, LLC., an Arizona limited liability company**

By: John Hagle

Its: Trustee for John Wilson Hagle Jr and Rhonda Elaine Hagle Revocable Family Trust, member of Raven II Holdings, LLC, member of Horizon Land and Development, LLC

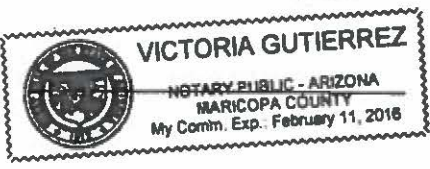
Date: 17 October 2012

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing Agreement was acknowledged before me this 17<sup>th</sup> day of October, 2012, by John Hagle, in his/her capacity as trustee, on behalf of Horizon Land and Development, LLC, an Arizona limited liability company.

Victoria Gutierrez  
Notary Public

My Commission Expires:



EMPIRE SOUTHWEST, LLC., an Arizona  
limited liability company ("Tenant")

By: [Signature]

Its: EVP

Date: OCTOBER 14, 2012

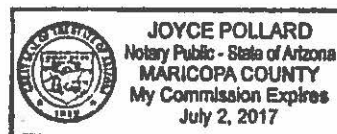
STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing Agreement was acknowledged before me <sup>as of</sup> this 12<sup>th</sup> day of October, 2012, by  
CHRIS ZAHARIS, in his/her capacity as EVP, on behalf Empire Southwest, LLC, an ~~Arizona~~ Delaware  
limited liability company.

Joyce Pollard  
Notary Public

My Commission Expires:

7-2-2017



CITY OF MESA, an Arizona  
municipal corporation

By: *Richard Lewis*

Its: *asst. to City Mgr.*

Date: *9.25.13*

STATE OF ARIZONA       )  
  ) ss.  
County of Maricopa       )

The foregoing Agreement was acknowledged before me this *25<sup>th</sup>* day of *September*, 2013, by *Richard Lewis*, in his capacity as *Asst to City Mgr.*, on behalf of City of Mesa, an Arizona Municipal Corporation.



*Ann Fantasia / Ann Webster*  
Notary Public

My Commission Expires:  
*May 27, 2014*



**MASTER TENANT LEASE**

**Between**

**Falcon Field Airport - The City of Mesa, a  
municipal corporation, Landlord,**

**and**

**Horizon Land and Development, LLC,  
Tenant**

**COMMERCIAL - AVIATION LEASE**

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**COMMERCIAL - AVIATION LEASE**

THIS LEASE AGREEMENT (the "Lease"), made and entered into this 2<sup>ND</sup> <sup>NOVEMBER</sup> day of ~~October~~, 2009, by and between the CITY OF MESA, a municipal corporation ("LANDLORD") and Horizon Land and Development, LLC, ("TENANT"), hereinafter respectively referred to as Landlord and Tenant, without regard to number or gender.

**RECITALS**

WHEREAS, Landlord desires to lease to Tenant and Tenant desires to take and lease from Landlord, the real property and/or buildings, described on Exhibit "A" hereto, for the purposes hereinafter set forth, subject to all terms and conditions of that certain Instrument of Transfer between the United States of America and the Reconstruction Finance Corporation and Landlord, which instrument is recorded in Docket 270, at page 90, Official Records of Maricopa County, Arizona, and amended by Instrument of Release recorded in Docket 5984, page 126, Official Records of Maricopa County, Arizona, which amendment releases paragraph 4 of said original Instrument of Transfer.

NOW THEREFORE, in consideration of the mutual promises and conditions hereinafter contained, the parties hereto agree as follows.

**SECTION 1 - PREMISES**

1.01 Lease of Premises. For and in consideration of the rents, covenants and agreements hereinafter set out, Landlord hereby leases to Tenant and Tenant leases and accepts, subject to the terms and conditions of this Lease, those premises referred to as the "Premises," subject to any prior, valid, existing claims or rights of way, including the present existing roads. The Premises are described legally on Exhibit "A" and shown on Exhibit "B," attached hereto and include the building known as the Gosshawk Hangar (6,000 sq.ft.), and 8,597 square feet of vacant land, and shall include any buildings and improvements thereon as may be constructed pursuant to the terms of this Lease. The approximate location of the Premises is identified on the airport lease map, attached hereto as Exhibit "C." Exhibits A, B, and C are, with this

reference, incorporated herein.

**1.02 Condition of Premises.** Tenant acknowledges, represents and agrees that (i) Tenant is leasing the Premises "AS IS" based on its own inspection and investigation and not in reliance on any statement, representation, inducement or agreement of Landlord except as may be expressly set forth elsewhere in this Lease, (ii) Tenant shall take possession of the Premises in an "AS IS" condition, and (iii) this Lease confers no rights either with regard to the subsurface of the land below the ground level of the Premises or with regard to the air space above the top of the roof of any building that is part of the Premises, except to the extent necessary for construction or installation of any building, including fixtures and appurtenances, as approved by the City of Mesa. Tenant's taking possession of the Premises on commencement of the term shall constitute Tenant's acknowledgment that the Premises are in good condition.

## SECTION 2 – TERM

**2.01 Initial Term.** The initial term of the Lease shall be for a period of one (1) year, commencing on the N/A day of N/A, 20   (the "Commencement Date") and ending on the N/A day of N/A, 20   ("Initial Term"). The Initial Term and all renewal terms shall be referred to herein as the full term of this Lease.

**2.02 Permanent Term.** The term of this Agreement ("Permanent Term") shall commence on the 1<sup>st</sup> day of November, 2009 and expires on the 31<sup>st</sup> day of October, 2045, provided, however, that the Tenant is in full compliance with all the provisions, covenants, conditions, and requirements of this Lease. The rental rate for such Permanent Term shall be determined as provided in Sections 4 and 6 of this Lease.

**2.03 Termination of Lease.** This Lease shall terminate without further action on the earlier of (i) the Performance Date, if Commencement of Construction of the Minimum Improvements has not occurred on or before such date, (ii) expiration of the Permanent Term, or (iii) expiration of the Initial Term, in the event Tenant does not exercise the option to renew this Lease for the Permanent Term. Nothing set forth herein waives Landlord's right to terminate this Lease for default.

### SECTION 3 - USES OF THE PREMISES

**3.01 Use of Premises.** Tenant shall develop, use and operate the leased Premises for any lawful purpose provided however, that such purpose is in accordance with the terms and conditions of the Development Plan, as defined in Subsection 7.01 hereof, and the most current Airport Layout Plan for Falcon Field. The Development Plan, defined below, is incorporated herein with this reference.

**3.02 Compliance with Laws.** Tenant shall observe and comply with all present and future laws, ordinances, requirements, rules and regulations of all governmental authorities having jurisdiction over the Premises or any part thereof and of all insurance companies writing policies covering the Premises or any part thereof. Tenant shall also promptly obtain each and every permit, license, certificate or other authorization required in connection with the lawful and proper use of the Premises or required in connection with any building or improvement now or hereafter erected thereon. Without limiting the generality of the foregoing, Tenant shall comply with all provisions of the Mesa City Code, Federal Grant Programs, Airport Master Plan for Falcon Field (including the current Airport Layout Plan), Environmental Regulations, Surplus Property Instruments and Regulations of the Federal Aviation Administration and such Rules and Regulations governing Airport operations that exist as of the date of this Lease, as well as such modifications and additions thereto as Landlord, in its reasonable discretion, may hereafter make for the Airport. Tenant shall further provide copies of documentation and certification(s) of compliance with all necessary Arizona Department of Environmental Quality rules and regulations concerning operation of any underground storage tank ("UST") system on the Premises. Any violation of the provisions of this Subsection 3.02 shall constitute a default under this Lease following an applicable notice and cure period of thirty (30) days. Provided, however, if the nature of Tenant's cure is such that more than thirty (30) days are reasonably required to cure a violation, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion.

## SECTION 4 - RENTAL

4.01 Rent, Initial Term. N/A

4.02 Rent, Permanent Term. Tenant shall pay to Landlord for each year during the Permanent Term an annual rent ("Minimum Annual Rent") in the amount of \$30,197.01 (\$0.38/sq. ft./month X 6,000 sq. ft. X 12 months, plus \$0.33/sq. ft. X 8,597 sq. ft.) plus applicable taxes. Tenant shall pay Rent on or before the 1st day of each November during the Permanent Term of this Lease, beginning on the 1st day of November, 2009. The Minimum Annual Rent shall be referred to as the "Annual Rent."

4.03 Rental Impositions. Tenant agrees to pay to Landlord, or to the appropriate governmental body, with and in addition to the Annual Rent, any and all excise, privilege, license or sales taxes, or other governmental impositions imposed by any governmental body on the rentals received by Landlord from Tenant during the term hereof payable as additional rent at the same times as Annual Rent is payable hereunder.

4.04 Payment of Rent. Tenant shall, without prior notice or demand and without any set off or deduction whatsoever, pay the Annual Rent and any other rent or other charges due under this Lease. Tenant covenants and agrees that all sums to be paid under this Lease, if not paid when due, shall bear interest on the unpaid portion thereof at the rate of one and one half percent (1½%) per month or any fraction thereof that such sums are unpaid. Tenant further covenants and agrees that for each calendar year in which the Annual Rent is not paid to Landlord within ten (10) days after the due date, Tenant shall promptly pay to Landlord a sum equal to five percent (5%) of the unpaid rentals as special damages.

## SECTION 5 - SECURITY DEPOSIT

5.01 Security Deposit. Tenant shall, at execution of the Lease by Landlord, deposit with Landlord a Security Deposit, equal to two (2) months of the Permanent Rent, in one of the following forms: (i) cash or certified check; (ii) a surety bond, from a state approved and licensed insurance company; or (iii) a Certificate of Deposit. The Security Deposit for the Premises shall be security for the full and faithful performance by Tenant of all of the terms and conditions of the Lease, including without limitation, payment of the Annual

Rent. In the event Tenant chooses to deposit a surety bond as the Security Deposit, said surety bond shall remain in full force and effect during the full term of the Lease. In the event Tenant chooses to deposit a Certificate of Deposit as the Security Deposit, Tenant shall also deposit a power of attorney appointing and empowering Landlord to pay over any such cash or withdraw such funds from the Certificate of Deposit to Landlord in the event of Tenant's default under the Lease. The Security Deposit shall be returned to Tenant, provided Tenant has fully and faithfully carried out all terms, covenants and conditions on Tenant's part to be performed. Failure of Tenant to maintain a Security Deposit shall be deemed default under the terms of this Lease.

## **SECTION 6 - RENTAL RATE ADJUSTMENT**

**6.01** Rental Rate Adjustment. The Minimum Annual Rent for the Permanent Term of this Lease shall be as provided in Subsection 4.02 hereof. Such Minimum Annual Rent shall be subject to adjustment at one (1) year intervals, the first adjustment to be effective on November 1, 2010, with subsequent adjustments to occur each year thereafter. The amount of said adjustments shall be determined as set forth in Subsection 6.02 hereof.

**6.02** Determination of Adjustment Amount. The Minimum Annual Rent shall be adjusted during the Permanent Term as follows: The base for computing the adjustment shall be the Consumer Price Index for all urban consumers (base year 1967 = 100) for the United States, published by the United States Department of Labor, Bureau of Labor Statistics, which is in effect on the Commencement Date (hereinafter referred to in this Section 6 as "Initial Term Index"). The Index published most immediately preceding the adjustment date in question (hereinafter referred to in this Section 6 as "Extension Index") shall be used in determining the amount of the adjustment. If the applicable Extension Index has increased over the Initial Term Index, the Minimum Annual Rent for the Initial Term shall be multiplied by a fraction, the numerator of which is the Extension Index and the denominator of which is the Initial Term Index to determine the adjusted Minimum Annual Rent. If the Extension Index has not increased over the Initial Term Index, the adjusted Minimum Annual Rent shall be as set forth in Subsection 6.04 hereof.



**6.03 Example.** Application of the formula set forth in Subsection 6.02, above is illustrated by the following example: assume that the Minimum Annual Rent for the Permanent Term is \$10,000, that the Initial Term Index is 400.7 and that the applicable Extension Index is 460.1. Based on the following computation the Minimum Annual Rent for the extended period will be \$11,483.

$$\frac{460.1}{400.7} \times \$10,000 = \$11,483$$

**6.04 Maximum/Minimum Increases.** Notwithstanding any provisions of this Section 6 to the contrary, the Minimum Annual Rent shall be reviewed every five years from the first year of the Permanent Term and shall be subject to the following maximum and minimum limits: All such five year reviews shall determine the rate of Minimum Annual Rent increase for the previous five years. The minimum increase of the Minimum Annual Rent from the first year of the five year review period shall be at least 10% from the first year of that five year period, provided, however, no rental increase shall exceed 30% from the first year of the five year period. If the Minimum Annual Rent has not been increased pursuant to Section 6.01 and 6.02 to meet the minimum 10% amount required by this subsection, the following year's Minimum Annual Rent shall be raised so that the Minimum Annual Rent to be paid reflects a 10% increase from the first year of the five year review period.

Examples:

Minimum 10% Increase:

|                 |                          |
|-----------------|--------------------------|
| Year 1 = 100    |                          |
| Year 2 = 102    | (2% increase)            |
| Year 3 = 106.08 | (4% increase)            |
| Year 4 = 108.73 | (2.5% increase)          |
| Year 5 = 110    | (1.16% minimum increase) |

Maximum 30% Increase:

|                 |                         |
|-----------------|-------------------------|
| Year 1 = 100    |                         |
| Year 2 = 112    | (12% increase)          |
| Year 3 = 124.32 | (11% increase)          |
| Year 4 = 130.00 | (4.5% maximum increase) |
| Year 5 = 130.00 | (0% increase)           |

**6.05 Modifications of Index.** If the Index is changed so that the base year differs from that in effect

when the term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discounted or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discounted or revised.

**6.06** Written Confirmation. On each and every adjustment of the Minimum Annual Rent as provided in Section 6.02 hereof, the parties shall immediately execute a written confirmation stating the new Minimum Annual Rent.

## **SECTION 7 – IMPROVEMENTS, CONSTRUCTION AND MAINTENANCE**

**7.01** Minimum Improvements. Tenant shall construct on the Premises the Minimum Improvements, as defined on and shown on the development plan and drawings attached hereto and made a part hereof as Exhibit "D" ("Development Plan"). Tenant agrees to complete construction of the Minimum Improvements in accordance with the project schedule attached hereto and made a part hereof as Exhibit "E" ("Schedule of Improvements").

**7.02** Compliance with Mesa City Design Review Procedures. Tenant shall obtain City of Mesa Design Review approval of the design and construction of the Minimum Improvements on the Premises in accordance with the requirements of the Falcon Field Interim Design Guidelines and Mesa City Code Sections 11-18-9 and 11-18-10, regardless of whether such sections are otherwise applicable to the Minimum Improvements, provided, however, for each improvement that does not require Design Review Board Approval under Mesa City Code Section 11-18-9(D) the Mesa City Planning Director or his designee shall be authorized to determine compliance with the Falcon Field Interim Design Guidelines. Nothing set forth in this Lease limits the authority of the City of Mesa Design Review Board in connection with its approval of development plans for the Premises in accordance with Mesa City Code Sections 11-18-9 and 11-18-10.

**7.03** Commencement of Construction. Tenant agrees to cause Commencement of Construction of the Minimum Improvements no later than November 1, 2009 (the "Performance Date"). Tenant acknowledges and agrees that this Lease and the tenancy created hereby is conditioned on Commencement of Construction

of the Minimum Improvements occurring on or before the Performance Date. In the event that Commencement of Construction of the Minimum Improvements does not occur on or before the Performance Date, this Lease shall automatically terminate and be of no further force and effect. As used herein, the term "Commencement of Construction" means both (i) the obtaining of a building permit by Tenant for the construction of an improvement included in the Minimum Improvements, and (ii) the actual commencement of physical construction operations on the Premises necessary to achieve Completion of Construction of the Minimum Improvements.

**7.04 Completion of Construction.** Except as otherwise agreed upon by both Landlord and Tenant, failure to Complete Construction of the Minimum Improvements, as defined in Exhibit "D," within the deadline set forth in the project schedule, Exhibit "E," shall cause the Tenant's current annual rent to increase to 150% of the rental rate in effect at the time of the default. Such increase shall remain in effect until Tenant can demonstrate that Completion of Construction of the Minimum Improvements has occurred. As used herein, the term "Completion of Construction of the Minimum Improvements" means that all the Minimum Improvements have been completed and have received a permanent Certificate of Occupancy from the City of Mesa. .

**7.05 Construction of Additional Improvements.** Except as expressly authorized herein, Tenant shall make no additions, alterations, changes, fixtures, or other improvements to the Premises ("Improvements") without the express written consent of the Landlord, which shall not be unreasonably withheld or delayed. Tenant, at its own expense, shall keep and maintain the Premises and Improvements neat and orderly at all times and shall perform all repairs to the same to keep them in proper condition. All Improvements on the Premises shall be the property of Tenant during the full term of this Lease. In the event the Improvements are of the type that would normally require Design Review approval under Mesa City Code, Tenant shall comply with the requirements of Mesa City Code Sections 11-18-9 and 11-18-10.

**7.06 FAR Notification Requirements.** Tenant agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations prior to construction of the initial Improvements and prior to construction of any other Improvements on the Premises, or in the event of any

material exterior modification or alteration of any such Improvements.

**7.07 No Interference with Airport Operations.** Tenant shall conduct all work on the Premises, including construction, repair or maintenance work so that such work will in no way materially interfere with the operation and use of the Airport by Landlord and other persons and organizations entitled to use of the same.

**7.08 Airport Review of Safety and Security Plans.** Tenant shall meet with the Falcon Field Airport Director to review Tenant's safety and security plans prior to bringing any construction related equipment to the Premises, and prior to starting construction of any improvement, repair or major maintenance work.

**7.09 Approval of Construction and Improvement Plans.** All proposed construction and Improvement plans must be submitted and approved by the Landlord prior to submission for City building permits. All construction and improvements must comply with the most current Airport Master Plan and with the Development Plan. Tenant understands that the Master Plan consists of recommendations for future development, and that the recommended alternatives outlined in said Master Plan in no way constitute a commitment on the part of the City. It is further understood that proposed development items in the Master Plan are subject to the current needs of the Airport, as well as subject to funding availability.

**7.10 Compliance with City Codes.** Tenant agrees that all work on the Premises, including construction, repair, and maintenance work, shall comply with the Zoning, Building, Fire, Plumbing, Landscaping, Electrical and Mechanical Codes of the City of Mesa. Tenant shall pay all required fees. All initial improvements, other improvements and repairs constructed under Zoning, Building, Plumbing, Landscaping, Electrical, or Mechanical Codes shall have a City of Mesa building permit. Nothing set forth herein limits Tenant's obligation to obtain City Design Review approval in accordance with Subsections 7.02 and 7.05 hereof.

**7.11 Approval of Architectural Plans and Designs.** Tenant agrees to submit its architectural plans and designs, as prepared by an architect or professional engineer registered in the State of Arizona, for approval of Landlord prior to construction. Such approval is in addition to Tenant's obligation to comply with City Codes (including Design Review approval) as previously described and is intended to be limited to reasonable compatibility of general or overall design and materials. Such approval shall not be unreasonably

withheld or delayed.

## **SECTION 8 - MECHANICS' LIENS**

**8.01** Mechanic's Liens. Tenant agrees to keep the Premises free of any mechanics' or materialmen's liens of any kind or nature for any work done, labor performed, or material furnished thereon at the instance or occasion of Tenant. To the extent permitted by law, Tenant further agrees to defend, indemnify and save harmless Landlord for, from, and against any and all claims, liens, demands, costs, and expenses of whatsoever nature for any such work done, labor performed, or materials furnished at Tenant's request. Tenant is not authorized to act for or on behalf of Landlord as its agent, or otherwise, for the purpose of constructing any improvements to the Premises, or for any other purpose, and neither Landlord nor Landlord's interest in the Premises shall be subject to any obligations incurred by Tenant. If requested by the Landlord, Tenant agrees to record a Payment Bond with the Maricopa County Recorders Office as required under A.R.S. §33-1003.

## **SECTION 9 - PERFORMANCE BOND**

**9.01** Performance Bond. If requested by the Landlord, Tenant shall furnish Landlord with a performance bond, in the full amount of the Improvements prior to construction of Improvements. Said bonds must be issued by a company qualified to do business in the State of Arizona and rated "A" or better by the current edition of the Best Rating Service. Said bonds shall be in the form set forth in Exhibit "F" and shall ensure faithful and full observance and performance by Tenant of all the terms, conditions, covenants and agreements set forth in Section 7.01 and 7.05 of this Lease, except Tenant's agreement to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations for the construction of any future structures or buildings not described in this Lease relating to construction of the Improvements or in the event of any planned modification or alteration which is not described in this Lease.

## **SECTION 10 - IMPROVEMENTS, OWNERSHIP**

**10.01** Ownership of Non-UST Improvements. Except as provided in Subsection 10.03 hereof, all Initial or other Improvements on the Premises, with the exception of Tenant's trade fixtures and personal property, shall become the property of the Landlord upon expiration of this Lease or upon termination of this Lease for any reason. At no time shall Tenant have the right to remove any Improvements from said Premises unless otherwise agreed to in writing by the Landlord. Notwithstanding the foregoing, if upon the expiration or other termination of this Lease, the Initial or other Improvements on the Premises are not in substantial conformity with their original condition (normal wear and tear excepted), Landlord shall have the right to require Tenant to remove any such Initial or other Improvements or require Tenant to restore the Initial or other Improvements to a condition which is in substantial conformity with their original condition

**10.02** . Landlord shall exercise such right by giving written notice to Tenant within thirty days after the expiration or other termination of this Lease. If so notified, Tenant, at Tenant's sole cost and expense shall remove or restore the designated Improvements within ninety (90) days after the date of written notification and shall restore the Premises to a condition acceptable to Landlord.

**10.03** Tenant Ownership of UST Improvements. During the full term of the Lease and upon the expiration, cancellation or termination of the Lease for any reason, Tenant agrees that any and all USTs and related equipment on the Leased Premises shall remain the property and sole responsibility of the Tenant and not of the City. At all times, Tenant shall remain the owner and operator of the USTs and the City shall not become the owner or operator of the USTs. In no event shall the City be responsible for or owner or operator of the USTs. Prior to and upon expiration of the Lease, Tenant, at its sole expense, shall comply with all applicable federal, state and local laws governing the temporary and permanent closure, removal, remediation, site restoration and clean up of the UST and all affected property, water, soil, and related equipment. All such actions shall be performed pursuant to prescribed standards under the law. Tenant shall complete all actions required by this Section within 60 days after expiration or other termination of this Lease. If said actions are not performed or said performance is not completed within this 60-day time period, Landlord shall have the right to perform such actions on behalf of Tenant, and Tenant shall be responsible for and pay

to Landlord all costs incurred by Landlord as a result of such performance. Notwithstanding the foregoing, to the best of Landlord's knowledge, no USTs are currently located on the Premises.

## SECTION 11 - INSURANCE

### 11.01 Insurance Requirements

A. **Comprehensive General Liability Insurance.** Tenant, at its cost, shall maintain comprehensive liability insurance with limits of not less than \$1,000,000 per occurrence, insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of the Premises. Said insurance shall insure performance by Tenant of the indemnity provisions of Section 12. The policy shall also either contain a provision for broad form contractual liability including Leases, or there shall be attached thereof an endorsement providing for such coverage. If the policy is to be written with an aggregate limit, that limit shall be not less than \$2,000,000.

B. **Standard Fire and Extended Coverage.** Tenant, at its cost, shall maintain on the building and improvements that are part of the Premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of 100% of full replacement value of the buildings and other insurable Improvements. In the case of an insurable loss, an independent third-party trustee shall be appointed to receive and distribute insurance proceeds to assure that repair, replacement, or reconstruction is completed according to the plans approved by both Tenant and Landlord.

C. **Hangar Keeper's Liability.** If hangars are located on the Premises, Tenant shall procure and maintain, at its sole expense, Hangar Keeper's Liability Insurance with a minimum coverage of \$1,000,000 for any one aircraft and \$2,000,000 for loss in any one occurrence for the Hangar Keeper's policy.

D. **Worker's Compensation Insurance.** If Tenant has employees, Tenant shall procure and maintain, at its sole expense, Worker's Compensation Insurance in such amounts as will fully comply

with the laws of the State of Arizona, which shall indemnify, insure and provide legal defense to both Tenant and Landlord against any loss, claim or damage arising from any injuries or occupational diseases happening to or any worker employed by Tenant in the course of carrying out conditions or activities described within the Lease.

E. Employer's Liability Insurance. If Tenant has employees, Tenant shall procure and maintain, at its sole expense, Employer's Liability Insurance, with minimum coverage of \$1,000,000.

**11.02 General Requirements.**

A. Additional Insureds. Comprehensive general liability policy, Standard fire and extended coverage insurance, and Hangar keeper's Liability Insurance shall name Landlord, its departments, officers, and employees as additional insureds.

B. Special Items. Each insurance policy shall provide the following: (i) the policies cannot be cancelled, or substantially modified until and unless thirty (30) days written notice is received by the City of Mesa for payment of any premium or for assessments under any form of policy; (ii) the insurance company shall have no recourse against the City of Mesa for payment of any premium or for assessments under any form of policy; and (iii) the policies are intended as primary coverage for the City of Mesa and that any insurance or self-insurance maintained by the City shall apply in excess of and not contributory with the insurance provided by these policies. Tenant shall continually maintain evidence of insurance for Landlord.

C. Certificates of Insurance. Tenant shall deliver Certificates of Insurance, for the policies of insurance required hereunder, to the Airport Director of Landlord. Tenant shall continually maintain evidence of such insurance for Landlord, and provide such evidence upon Landlord's request. Failure to provide copies of Certificates of Insurance to Landlord in no way absolves Tenant from the responsibility of complying with the insurance requirements of this Agreement.

D. Tenant shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers of the waiver of subrogation set forth in this Lease and shall obtain, at Tenant's expense, an appropriate waiver of subrogation endorsement from the insurer.



**11.03 No Limitation of Liability.** The procuring of any policy of insurance shall not be construed to be a limitation upon Tenant's liability or as a full performance on its part of the indemnification provisions of this Lease; Tenant's obligation being, notwithstanding any said policy of insurance, for the full and total amount of any damage, injury, or loss caused by the negligence or neglect connected with the operation under this Lease.

**11.04 Failure to Maintain Insurance.** Failure to maintain the minimum insurance as stated in this Section 11 shall constitute default of this Lease. Without waiving any remedies available to Landlord for such default, Landlord may at its option purchase the required insurance and charge the actual insurance expense thereof to Tenant, which expense Tenant shall assume and pay.

**11.05 Tenant's Insurance Primary.** Tenant's insurance shall be primary for all purposes under this Lease.

**11.06 Adjustment of Insurance Requirements.** The minimum insurance requirements as to type and amounts shall be subject to reasonable increases at five (5) year intervals at the sole discretion of Landlord.

## **SECTION 12 - HOLD HARMLESS**

**12.01 No Liability of Landlord.** Neither Landlord, nor its departments, officers, or employees shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of Tenant or subtenants or of any other person whomsoever, caused by Tenant's use of the Premises, or by any defect in any building or Improvement erected thereon, or arising from any accident, fire, or from any other casualty on the Premises or from other cause whatsoever; and Tenant, hereby waives on Tenant's behalf all claims against Landlord, provided however, any liability resulting from the negligent acts or omissions or willful misconduct of the City, its departments, officers, or employees shall not be waived.

**12.02 Tenant Indemnification.** To the furthest extent permitted by law, Tenant shall defend, indemnify, and hold City, its departments, boards, commissions, council members, officials, agents, and employees, individually and collectively, for, from, and against all losses, expenses (including attorney fees), damages, claims, charges, fines, suits, actions, demands, or other liabilities of any kind ("Liability"), including

without limitation Liability for bodily injury, illness, death, or for property damage, resulting from or arising out of this Agreement and/or the use or occupancy of the Premises, except for Liability resulting from the negligent acts or omissions or willful misconduct of the City, its employees, agents, or any person under City's direction and control.

### **SECTION 13 - STORAGE OF EQUIPMENT AND MATERIAL**

**13.01 Storage.** Tenant shall not store on the Premises equipment or material outside of buildings unless screened by a method approved in writing in advance by Landlord, which shall not be unreasonably withheld or delayed. This provision does not apply to or preclude Tenant from parking air worthy aircraft on the Premises, but does preclude the outside parking of aircraft being held for salvage purposes or aircraft awaiting repair. Tenant may not store equipment or material unrelated to its operation or business at the airport, including, but not necessarily limited to, recreational vehicles, motor homes, boats, campers, trailers, semi – tractor trailer trucks , mobile homes, and vehicles with expired licenses and registrations, on the Premises for more than two (2) weeks without the prior written consent of the Landlord, which may be given or withheld in the Landlord's sole discretion. The open storage of non-airworthy aircraft, wreckage, or unsightly aircraft components is prohibited.

### **SECTION 14 - ENVIRONMENTAL INDEMNIFICATION-Tenant**

**14.01 Use of Hazardous Material.** Tenant shall not cause or permit any hazardous material, as defined in Subsection 14.05, to be generated, brought onto, used, stored, or disposed of in or about the Premises or the building by Tenant or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of such substances that are required in the ordinary course of Tenant's business conducted on the Premises or are otherwise approved by Landlord. Tenant shall:

A. Use, store and dispose of all such hazardous material in strict compliance with all applicable statutes, ordinances, and regulations in effect during the Lease term that relate to public health and safety and protection of the environment (environmental laws), including those

environmental laws identified in Subsection 14.03; and

B. Comply at all times during the Lease term with all environmental laws.

**14.02 Notice of Release or Investigation.** If, during the Lease Term (including any extensions), either Landlord or Tenant becomes aware of; (a) any actual or threatened release of any hazardous material on, under, or about the Premises or the building, or (b) any inquiry, investigation, proceeding, or claim by any government, agency, or other person regarding the presence of hazardous material on, under, or about the Premises of the building, that party shall immediately, not to exceed twenty four (24) hours after learning of it, notify the other party, and shall provide written notice of the release or investigation within five (5) days after learning of it and shall simultaneously furnish to the other party copies of any claims, notices of violation, reports, or other writings received by the party providing notice that concern the release or investigation.

**14.03 Asbestos Notification.** Tenant acknowledges that Landlord has advised Tenant that any building(s) located on the Premises contain or, because of its age, is likely to contain asbestos-containing materials (ACM). If Tenant undertakes any alterations, additions, or Improvements to the Premises, as permitted by Section 7 , Tenant shall, in addition to complying with the requirements of Section 7 , undertake the alterations, additions, or improvements in a manner that avoids disturbing any ACMs present in the building. If ACMs are likely to be disturbed in the course of such work, Tenant shall encapsulate or remove the ACMs in accordance with an approved asbestos-removal plan and otherwise in accordance with all applicable environmental laws, including giving all notices required by law.

**14.04 Indemnification.** To the furthest extent permitted by law, Tenant shall, at Tenant's sole expense and with counsel reasonably acceptable to Landlord, indemnify, defend, and hold harmless Landlord, or Landlord's authorized agents or representatives, with respect to all losses arising out of or resulting from the release of any hazardous material in or about the Premises or the building, or the violation of any environmental law, by Tenant or Tenant's agents, contractors, or invitees. This indemnification includes:

- A. Losses attributable to diminution in the value of the Premises or the Airport;
- B. Loss or restriction of use of rentable space in the Airport;
- C. Adverse effect on the marketing of any space on the Airport; and

D. All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant and expert fees and expenses) resulting from the release or violation.

E. If Tenant excavates or removes any soil on the subject property, whether or not such soil is contaminated, and notwithstanding Landlord's remediation responsibilities as set forth in this Lease, Tenant shall be responsible for all costs and expenses related to such excavation or removal (including, without limitation any cost of disposal of such soil.) If, as a result of Tenant's excavation or removal, Landlord incurs increased remediation costs or expenses, Tenant will reimburse Landlord for the amount of such increase within thirty (30) days after written demand. This indemnification is not intended to include or extend to acts committed prior to Tenant's occupancy of the property in question, and is only intended to extend to those acts committed by Tenant, and not those committed by other previous parties or previous tenants. Tenant has been supplied with the environmental history of the prior tenancy.

F. The indemnification set forth in this Subsection 14.04 shall survive the expiration or termination of this Lease.

**14.05 Remediation Obligations.** If the presence of any hazardous material brought onto the Premises or the building by Tenant or Tenant's employees, agents, contractors, or invitees results in contamination of the building, Tenant shall promptly take all necessary actions, at Tenant's sole expense, to return the Premises or the building to the condition that existed before the introduction of such hazardous material. Tenant shall first obtain Landlord's written approval of the proposed remedial action. This provision does not limit the indemnification obligation set forth in Section 12 or this Section 14 .

**14.06 Definition of Hazardous Material.** As used in this Section 14 , the term "Hazardous Material" shall mean any hazardous or toxic substance, material, or waste that is or becomes regulated by the United States, the State of Arizona, or any local government authority having jurisdiction over the building or Premises. Hazardous material includes:

A. Any "hazardous substance" as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code §§ 9601-9675);

B. "Hazardous waste" as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code §§ 6901-6992K);

C. Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable Federal, State, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing Liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereafter in effect);

D. Petroleum products;

E. Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code §§ 2011-2297G-4;

F. Asbestos in any form or condition; and

G. Polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs.

**14.07** Except for customary materials necessary for operation, cleaning and maintenance of the Airport, Landlord shall not cause any Hazardous Material to be brought upon, generated at, stored or kept or used in or about the Premises without the prior written consent of Tenant (which Tenant shall not unreasonably withhold as long as Landlord demonstrates to Tenant's reasonable satisfaction that such Hazardous Material is necessary or useful to Landlord's business) and all Hazardous Materials, including customary materials necessary for operating, cleaning and maintenance of the Airport, will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material so brought upon or used or kept in or about the Premises.

## **SECTION 15 - DESTRUCTION OF IMPROVEMENTS**

**15.01** Restoration or Razing of Improvements, Insurance Proceeds. If the Improvements or any

part thereof are damaged or destroyed by reason of any cause whatsoever, Tenant will complete one of the following options upon mutual agreement with Landlord:

A. Within sixty (60) days following such damage or destruction commence and diligently pursue to completion, the repair, or reconstruction of the Improvements ("Restoration"), and this Lease shall remain in full force and effect; or

B. Raze the Improvements and restore the Premises to the condition existing at the time of the Commencement Date of this Lease ("Razing and Restoration of the Premises").

C. Tenant, in the event of destruction of the Improvements, shall deposit the insurance proceeds on account of such damage or destruction under the policies of insurance provided for in Section 11 (the "Proceeds") with an escrow agent or trustee (the "Trustee") that is selected by Tenant and approved by Landlord. The Proceeds shall be released by the Trustee as follows:

(i) In the case of Tenant's election to raze the Improvements and restore the Premises, (1) First, to Tenant, from time to time as the Razing and Restoration of the Premises progresses, upon the request of Tenant and Tenant's submittal of certificates of costs as described below, and (2) Second, to Landlord, in the case of Tenant's failure to complete the Razing and Restoration of the Premises, to enable Landlord to complete the Razing and Restoration of the Premises, upon Landlord's submittal of certificates of costs as described below.

(ii) In the case of Tenant's election to restore the Improvements, (1) First, to Tenant, from time to time as the Restoration progresses, upon the request of Tenant and Tenant's submittal of certificates of costs as described below, and (2) Second, to Landlord, in the case of Tenant's failure to complete the Restoration, to enable Landlord to complete the Restoration or, in the event of Landlord's election to raze the Improvements, to complete the Razing and Restoration of the Premises, upon Landlord's submittal of certificates of costs as described below. Notwithstanding anything herein to the contrary, in the event Tenant fails to commence restoration of the Improvements within thirty (30) days after their destruction or

damage, and diligently pursue such restoration until completion, Landlord shall have the right to elect to raze the Improvements and restore the Premises to the condition existing at the time of the Commencement Date of this Lease, and, then, terminate this Lease.

D. Certificates of Costs. A certificate dated not more than fifteen (15) days prior to such request, signed on behalf of Tenant or Landlord, as applicable, shall be provided to the Trustee setting forth that the disbursements being requested are to pay or reimburse Tenant or Landlord, as applicable, or contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the Restoration or Razing and Restoration of the Premises, and shall be accompanied by invoices for such amounts. The Trustee shall make all certificates and other materials received pursuant to this Section 15 available, upon request, to Landlord and Tenant.

E. Disbursement of Remaining Proceeds. Upon receipt by the Trustee of evidence satisfactory to it that the Restoration or Razing is complete and paid for in full, Trustee shall pay to Tenant any remaining balance of the Proceeds.

F. Deficiency. If the Proceeds received by the Trustee shall not be sufficient to pay the entire cost of Restoration or Razing and Restoration of the Premises, Tenant shall pay the amount of any such deficiency. Under no circumstances shall Landlord be obligated to make any payment, reimbursement or contribution towards the cost of the Restoration or Razing and Restoration of the Premises.

G. Lease Obligations Continue. In no event shall Tenant be entitled to any abatement, allowance, reduction or suspension of Rent because part or all of the Premises shall be untenable due to the partial or total destruction thereof. No such damage or destruction shall affect in any way the obligation of Tenant to pay the Rent, and other charges herein reserved or required to be paid or release Tenant of or from any obligations imposed upon Tenant hereunder.

H. Termination of Lease. In the event the Improvements are razed and the Premises are restored to the condition in which they existed on the Commencement Date, this Lease shall

automatically terminate thirty (30) days after completion of the Razing and Restoration of the Premises. Tenant's obligations to reimburse Landlord for any amounts expended by Landlord in the Razing and Restoration of the Premises, and not reimbursed under paragraph (C) above, shall survive any termination of this Lease.

## **SECTION 16 - MAINTENANCE**

**16.01** Obligation to Maintain. Tenant shall repair and maintain the Improvements in good order and repair and keep the Premises in a neat, safe, clean and orderly condition, and appearance, as determined by the Landlord. Such obligation shall include without limitation the prevention of the accumulation of any refuse or waste materials that might be or constitute a fire hazard or a public or private nuisance.

**16.02** Landlord's Right to Effect Repairs. In the event that Tenant does not properly repair and/or maintain the Improvements, Landlord shall notify Tenant in writing of those areas that are not being properly repaired and/or maintained. If, however, after thirty (30) days, Tenant fails to make such repair and/or maintenance, Landlord may cause to have such repair and maintenance made and shall invoice Tenant for the repair and maintenance completed. Such amounts shall be payable to Landlord as additional rent, without any deduction or set off whatsoever. If Tenant does not pay said costs within thirty (30) days, this Lease shall be deemed to be in default, and Landlord shall be entitled to all legal remedies provided hereunder, subject to any applicable notice and grace period. Nothing set forth in this subsection 16.02 obligates Landlord to perform any maintenance of the Premises or repairs to Tenant's Improvements.

## **SECTION 17 - REPORTS**

**17.01** Reports. Tenant shall, within fifteen (15) days after receiving Landlord's request, submit a written report to Landlord's Airport Director listing all aircraft that are located on the Premises. Said report shall be prepared on a form supplied by Landlord, and include aircraft, make, model, registration number, owner's name, address and telephone number.



## **SECTION 18 - INSPECTION**

**18.01** Inspection. Landlord shall have the right upon reasonable notice and during business hours to inspect the Premises to determine if the provisions of this Lease are being complied with.

## **SECTION 19 - NON-EXCLUSIVE RIGHT**

**19.01** Non-Exclusive Right. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 1349, Title 49, of the United States Code.

## **SECTION 20 - DEVELOPMENT OF LANDING AREA**

**20.01** Development of Landing Area. Landlord reserves the rights to further develop or improve the landing area of the Airport as it sees fit regardless of the desires or views of Tenant and without interference or hindrance.

## **SECTION 21 - USE OF PUBLIC AIRPORT FACILITIES**

**21.01** Non-Exclusive Use of Public Airport Facilities. Tenant is granted the non-exclusive use of all public airport facilities including, but not limited to, taxiways, runways, aprons, navigational aids and facilities relating thereto for purposes of landing, take-off and taxiing of Tenant's and Tenants' subtenants' or invitees' aircraft. All such uses shall be in accordance with the laws of the United States of America, the State of Arizona, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations and ordinances of Landlord now in force or hereafter prescribed or promulgated by ordinance or by law.

**21.02** Operation of Airport. Landlord agrees, during the term of this Lease, to operate and maintain the Airport and its public airport facilities as a public airport consistent with, and pursuant to, the Sponsor's Assurances given by Landlord to the United States Government under the Federal Act.

**21.03** Reservation of Rights. Nothing contained herein shall be construed to prevent Landlord from

closing the runways, taxiways or aprons of the Airport on special occasions from time to time at the reasonable discretion of Landlord.

## **SECTION 22 - LEASE SUBORDINATE TO AGREEMENTS WITH U.S.A.**

**22.01** Lease Subordinate to Agreements with USA. This Lease is subordinate and subject to the provisions and requirements of all existing and future grant agreements between Landlord and the United States of America, all deeds of conveyance from the United States of America, all United States laws, including the Federal Aviation Act of 1958, relative to the development, operation, or maintenance of the Airport, and all FAA regulations.

## **SECTION 23 - WAR OR NATIONAL EMERGENCY**

**23.01** War or National Emergency. This Lease and all the provisions hereof shall be subject to whatever rights of the United States Government affecting the control, operation, regulation and taking over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

## **SECTION 24 - NONDISCRIMINATION**

**24.01** Nondiscrimination. Tenant assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Tenant assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. Tenant assures that it will require that its covered suborganizations provide assurances to Landlord that they similarly will undertake affirmative action programs and that they will require assurances from the suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

**24.02** Material Default, Non-Discrimination. Tenant's failure to comply with Subsection 24.01 above

shall constitute a material default of this Lease. In the event of default of any of the above nondiscrimination covenants, Landlord shall have the right to terminate the Lease, following any applicable notice and cure period, and to re-enter and repossess said Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

**24.03 Fair Accommodation.** Tenant shall take all action to ensure that its accommodations and/or services are furnished on a fair and equal basis, without bias, to all users. Tenant shall charge fair and reasonable prices, without bias, for each unit or service; provided that Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchases. Tenant shall upon written demand of Landlord furnish Landlord with a schedule of all prices for each unit or service to be charged to the general public.

**24.04 Compliance with Laws.** Tenant agrees to comply with all provisions of applicable federal, state, and local laws related to nondiscrimination, equal employment opportunity, and the Americans with Disabilities Act.

**24.05 Material Default, Compliance with Laws.** Noncompliance with provisions stated above shall constitute a material default thereof and, in the event of such noncompliance, Landlord shall have the right to terminate this Lease and the estate hereby created, following any applicable notice and cure period, without liability therefrom; or at the election of Landlord or the United States, either or both said Governments shall have the right to judicially enforce these provisions.

**24.06 Incorporation of Provisions.** Tenant agrees that it shall insert and incorporate these provisions into any contract by which Tenant grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Premises herein Leased.

## **SECTION 25 - UTILITIES**

**25.01 Utilities.** Tenant agrees that it will at all times during the term of this Lease pay for all utilities of every nature used by it on the Premises before the charges therefore become delinquent.

## **SECTION 26 - TAXES**

**26.01 Taxes.** Tenant agrees to pay, prior to their becoming delinquent, all taxes of every nature levied or assessed against either the interest of Landlord or Tenant on the Premises during the term hereof, and on all property of Tenant placed upon the Premises.

## **SECTION 27 - LITIGATION, ATTORNEY'S FEES**

**27.01 Litigation.** In the event Landlord shall, without fault on its part, be made a party to any litigation commenced against Tenant, Tenant shall pay Landlord's costs of defense, including but not limited to court costs and reasonable attorney's fees. In the event Tenant shall, without fault on its part, be made a party to any litigation commenced against Landlord, Landlord shall pay Tenant costs of defense, including but not limited to court costs and reasonable attorney's fees.

**27.02 Attorney's Fees.** If any dispute arising under the terms of this Lease shall result in litigation, the prevailing party shall, in addition to any other relief granted or awarded by the court, be entitled to an award of a reasonable attorney's fee to be determined by the court.

## **SECTION 28 - ASSIGNMENT-SUBLETTING**

**28.01 Assignment.** Tenant shall not sell, convey, assign, encumber or transfer this Lease, or Tenant's leasehold or fee interest in the Premises (as the case may be), or any portion thereof, or transfer or assign the majority ownership or controlling interest in Tenant (collectively referred to herein as "Assignment") without the prior written consent of the Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Any Assignment without Landlord's prior written consent shall be void and shall constitute a default by Tenant hereunder. The above prohibition on Assignments shall be construed to include a prohibition against any assignment by operation of law, assignment for the benefit of creditors, voluntary or involuntary bankruptcy or reorganization, or otherwise. The creation of any partnership, corporation, joint venture, or any other arrangement under which any person or entity other than Tenant is entitled to share in profits derived directly or indirectly from the Premises shall also be deemed an Assignment of this Lease. Any

sublease or other transfer of a portion of the Premises, whereby the subtenant or transferee obtains an ownership interest in all or a part of the Improvements on the Premises, shall be deemed an Assignment of this Lease. Any sublease or other transfer of a portion of the Premises shall be deemed a sublease of the Premises instead of an Assignment and shall not be subject to the consent requirements of this Subsection 28.01, provided, however, that Tenant retains full ownership of the Improvements on the Premises.

**28.02** In the event that Landlord consents to an Assignment of this Lease, pursuant to a request from Tenant, Tenant shall cause to be executed by its assignee an agreement satisfactory to Mesa, whereby such assignee agrees to perform faithfully and to assume and to be bound by all of the terms, covenants, provisions and agreements of this Lease for the period covered by the assignment and to the extent the Premises assigned.

**28.03** Tenant shall include and incorporate into each sublease of the Premises a requirement that such subtenant agrees to perform faithfully and to assume and to be bound by all terms, covenants, provisions, and agreements of this Lease governing the use, operation and maintenance of the Premises. Landlord shall be identified as a third-party beneficiary to such obligation.

## **SECTION 29 - DEFAULT IN TERMS OF THIS LEASE BY TENANT**

**29.01** Events of Default. The occurrence of any of the following shall constitute an event of default hereunder:

A. The filing of a petition by or against Tenant for adjudication as a bankrupt or insolvent, or for its reorganization or for the appointment of a receiver or trustee of Tenant's property; an assignment by Tenant for the benefit of creditors or the taking of possession of the property of Tenant by any governmental officer or agency pursuant to statutory authority for the liquidation of Tenant.

B. Failure of Tenant to pay when due any installment of rent hereunder or any other sum herein required to be paid by Tenant, and the continuance of such nonpayment for fifteen (15) days after written notice from Landlord.

C. Abandonment of the Premises, as provided in Section 33 hereof.

D. Operation or maintenance of the Premises in violation of law, failure to maintain the required insurance, or any other misuse of the Premises.

E. Tenant's failure to perform any other covenant, condition or agreement of this Lease within thirty (30) days after written notice by Landlord's Airport Director. In addition to correcting the default, an administrative fee may be charged, as special damages, by Landlord to Tenant for the cost of monitoring correction of such default. At no time shall this fee exceed one percent (1%) of the total current annual rent paid to Landlord.

## **SECTION 30 - REMEDIES**

**30.01 Remedies.** In addition to any and all remedies available to Landlord as a matter of law and those set forth in other provisions of this Lease, Landlord shall, subject to any cure periods set forth herein, have the immediate right, upon Tenant's default in any term or condition of this Lease, to re-enter the Premises and occupy it and any improvements made by Tenant and to hold and/or re-lease the Premises and any improvements made by Tenant. No such re-entry or taking possession by Landlord shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant. Tenant shall peaceably quit the Premises upon written notification by Landlord to Tenant of Landlord's intent to re-enter the Premises and improvements placed thereon by Tenant. The various rights, elections, and remedies of Landlord and Tenant contained in this Lease shall be cumulative, and no one of them shall be construed as exclusive of any other or of any right, priority or remedy allowed or provided by law. Landlord shall use its best efforts to mitigate cost to Tenant.

## **SECTION 31 - SIGNAGE**

**31.01 Signage.** Tenant agrees to not construct nor maintain on the Premises outside of the Improvements, or that are visible from outside, advertising signs or messages, of any kind or description, except those pre-approved in writing by Landlord and are in compliance with the Mesa City Code, which determination shall be made at its sole discretion, and will not be unreasonably withheld or delayed.

## **SECTION 32 - UNLAWFUL USE**

**32.01 Unlawful Use.** No Improvements shall be erected, placed upon, operated or maintained on the Premises, nor shall business be conducted or carried on thereon in violation of the terms of this Lease or of any regulation, order, law, statute, by-law, or ordinance of any governmental authorities having jurisdiction thereof.

## **SECTION 33 - ABANDONMENT**

**33.01 Abandonment.** If Tenant, prior to the expiration or termination of this Lease by lapse of time or otherwise, relinquishes possession of the Premises without Landlord's written consent, or fails to open for business under usual business hours for a period of sixty (60) days, such occurrence shall be deemed to be an abandonment of the Premises and an event of default under this Lease. If Tenant abandons the Premises or is dispossessed by process of law or otherwise, any personal property belonging to Tenant and left on the Premises thirty (30) days following such abandonment or dispossession shall be deemed to have been transferred to Landlord, and Landlord shall have the right to remove and to dispose of the same without liability to account therefore to Tenant or to any person claiming under Tenant.

## **SECTION 34 - RESERVATIONS TO LANDLORD**

**34.01 Reservations to Landlord, Utility Easements.** Landlord reserves for itself all utility easements and rights-of-way over, across, and along the Premises reasonably necessary for the development of the Airport, including without limitation, easements for sanitary sewers, drains, storm water sewers, pipelines, manholes, connections, water, oil and gas pipelines, electric lines, cable television lines, and telephone and telegraph lines drains, and access to such easements. Landlord reserves the right to determine the location of such easements on the Premises in its reasonable discretion. Landlord also reserves the right to grant such easements and rights-of-way in, over, and upon, along, or across all or a portion of the Premises to third parties without the consent of Tenant.

**34.02 Restoration of Premises in Event of Landlord Construction.** Landlord agrees that it will cause the surface of the Premises to be restored similar to its original condition upon the completion of any construction. Landlord further agrees that, should the exercise of the right set forth in this Subsection 34.01 temporarily interfere with the use of any or all of the Premises by Tenant, the rental shall be reduced in a proportion equal to the amount that said interference bears to the total use of the Premises. All construction shall be done in a manner that minimizes interference with use of the Premises to the extent reasonably possible.

**34.03 Reservation to Landlord, Avigation Easements.** There is hereby reserved to Landlord, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to create in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operation of, the Airport.

**34.04 Height Restrictions.** Tenant, by accepting this Lease, expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the Premises above the height limitations stated in FAR Part 77. In the event the aforesaid covenant is breached, Landlord shall have the right, at the expense of Tenant, to enter upon the Premises and remove the offending structure or object or cut the offending tree and charge the reasonable expense thereof to the Tenant, which Tenant shall assume and pay.

**34.05 No Interference with Aircraft.** Tenant, by accepting the Lease, agrees for itself, its successors and assigns, that it will not make use of the Premises in any manner which will interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard to aircraft or ground operations normally conducted on an airport. In the event that the aforesaid covenant is breached, Landlord shall have the right to enter upon the Premises and cause the abatement of such interference at the reasonable expense of Tenant.

## **SECTION 35 - PARTIAL INVALIDITY**

**35.01 Partial Invalidity.** If any term, covenant, condition, or provision of this Lease is held by a court



of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. If any term, covenant, condition, or provision of this lease is found to be invalid, void, or in violation of any agreement or granting instrument from the United States of America, it shall be deemed to have been deleted from the lease and the remainder of the provisions shall remain in full force and not be affected, impaired, or invalidated thereby.

### **SECTION 36 - MARGINAL CAPTIONS**

**36.01** Marginal Captions. The various headings and numbers herein and the grouping of the provisions of this Lease into separate sections and subsections are for the purpose of convenience only, and shall not be considered a part hereof.

### **SECTION 37 – NON WAIVER OF REMEDIES**

**37.01** Non-Waiver of Remedies. It is expressly agreed that neither the taking of possession of the Premises nor the institution of any proceedings by way of unlawful detainer, ejectment, quiet title, or otherwise, to secure possession of said Premises, nor the re-entry by Landlord with or without the institution of such proceedings, nor the re-renting or subletting of said Premises, shall operate to terminate this Lease in whole or in part, nor of itself constitute an exercise of Landlord's option to do so, but only by the giving of the written notice specifically specifying termination shall such termination be effected.

**37.02** Continuation of Lease in the Event of Default. In the event Tenant breaches this Lease, or any covenant, term or condition hereunder, and abandons the Premises, this Lease shall continue in force and effect for so long as the Landlord does not terminate Tenant's right to possession, and Landlord may enforce all rights and remedies of Landlord including, without limitation, the right to recover rental as it becomes due hereunder. Acts of maintenance or preservation or efforts to re-let the Premises, or the appointment of a receiver upon the initiation of the Landlord to protect the Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession.

**37.03** Waivers, Landlord's Right to Accept Rent. No waiver by either party of any breach, default or any of the terms, covenants or conditions of this Lease shall be construed or held to be a waiver or custom of waiver of any same, similar, succeeding or preceding breach, default or term of this Lease, as the case may be. To be effective, all waivers shall be in writing and signed by the party to be charged. In case of a breach by Tenant of any of the covenants or undertakings of Tenant, Landlord nevertheless may accept from Tenant any payments hereunder without in any way waiving Landlord's right to exercise the remedies hereinbefore provided for by reason of any breach or lapse which was in existence at the time such payment or payments were accepted by Landlord.

**37.04** No Limitation of Rights. It is expressly understood that the enumeration herein of express rights, options and privileges shall not limit Landlord, nor deprive Landlord of any other remedy or action or cause of action by reason of any default of Tenant, including the right to recover from Tenant any deficiency upon re-renting.

**37.05** No Limitation of Remedies. The specific remedies to which Landlord may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which they may be lawfully entitled in case of any breach or threatened breach by either of them or of any provisions of this Lease.

## **SECTION 38 - APPROACH PROTECTION**

**38.01** Approach Protection. Landlord reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Tenant from erecting or permitting to be erected, any building or other structure on the Airport, which in the opinion of Landlord would limit the usefulness of the Airport or constitute a hazard to aircraft.

## **SECTION 39 - FAA APPROVAL**

**39.01** FAA Approval. The provisions of this Lease are subject to review and objection by the Federal Aviation Administration.

## **SECTION 40 - HOLDING OVER**

**40.01 Holding Over.** Holding over by the Tenant after the expiration of this Lease shall not constitute a renewal of this Lease or give Tenant any rights under this Lease or in the Premises. Notwithstanding this provision, however, any holding over after the expiration of the term of this Lease, with the consent of Landlord, shall be construed to be a tenancy from month to month, callable upon thirty (30) days written notice, and at a rental of one hundred fifty percent (150%) of the total monthly rental as existed during the last year of the term hereof, and further upon the terms and conditions as existed other than rental during the last year of the term hereof.

## **SECTION 41 – CONDEMNATION**

**41.01 Condemnation.** If at any time during the term of this Lease the Premises or any part thereof is taken or condemned under the laws of Eminent Domain by any governmental authority other than Landlord, then and in every such case the leasehold estate and interest of the Tenant in said Premises taken shall cease and terminate. Tenant shall be entitled to participate and receive any part of the damages or award, where said award shall provide for moving or other reimbursable expenses for the Tenant under applicable statute in which event the latter sum shall be received by Tenant, and that portion of any award allocated to the taking of Tenant's building, improvements, trade fixtures, equipment and personal property, or to a loss of business by Tenant. None of the awards or payments to Landlord shall be subject to any diminution or apportionment on behalf of Tenant or otherwise.

## **SECTION 42 - NOTICES**

**42.01 Notices.** All notices given, or to be given, by either party to the other, shall be given in writing, by certified mail return receipt requested, and shall be addressed to the parties at the addresses hereinafter set forth or at such other address as the parties may by written notice hereafter designate. Notices and payments to Landlord, and notices to Tenant, shall be addressed as follows:

LANDLORD  
Airport Director  
Falcon Field Airport  
4800 Falcon Drive  
Mesa, AZ 85215

TENANT  
Horizon Land and Development, LLC  
4710 E. Falcon Dr., Ste. 106  
Mesa, AZ 85215

**42.02** It shall be Tenant's responsibility to notify Landlord in writing of any changes in the address for notices.

### **SECTION 43 - REPRESENTATIONS AND AMENDMENTS TO BE IN WRITING**

**43.01** Representations and Amendments To Be In Writing. No oral promises, representations or agreements have been made by Tenant or Landlord. This Lease is the entire agreement between the parties (including employees, leasing personnel and other personnel.) Tenant and Landlord have no authority to waive, amend or terminate this Lease or any part of it and no authority is to make promises, representations or agreements which impose duties or other obligations of each party unless done so in writing.

### **SECTION 44 - SUCCESSORS IN INTEREST**

**44.01** Successors in Interest. The covenants herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

### **SECTION 45 - FORCE MAJEURE**

**45.01** Force Majeure. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, or other cause, without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, that nothing in this Subsection 45.01 shall excuse Tenant from the payment when due of any rental or other charges required to be paid by Tenant

hereunder, except as may be expressly provided elsewhere in this Lease.

## **SECTION 46 - TIME**

**46.01** Time. Time is of the essence of this Lease.

## **SECTION 47 - NO PARTNERSHIP; NO THIRD PARTY RIGHTS**

**47.01** No Partnership; No Third Party Rights. Nothing contained in this Lease shall create any partnership, joint venture or other arrangement between Landlord and Tenant. Except as expressly provided herein, no term or provision of this Lease is intended to or shall be for the benefit of any person not a party hereto, and no such other person shall have any right or cause of action hereunder.

## **SECTION 48 – NO BINDING CONTRACT UNTIL EXECUTION; AUTHORITY TO EXECUTE**

**48.01** Authority to Execute. The person executing this Lease on behalf of or as representative for Tenant warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that this Lease is binding upon Tenant in accordance with its terms.

**48.02** No Binding Contract Until Execution. NEITHER THE PREPARATION NOR THE DELIVERY OF THIS LEASE TO TENANT FOR EXAMINATION SHALL BE DEEMED TO BE AN OFFER BY LANDLORD TO LEASE THE PREMISES TO TENANT BUT SHALL BE MERELY A PART OF THE NEGOTIATIONS BETWEEN LANDLORD AND TENANT. THE EXECUTION OF THIS LEASE BY TENANT SHALL BE DEEMED TO CONSTITUTE AN OFFER BY TENANT TO LEASE THE PREMISES FROM LANDLORD UPON THE TERMS AND CONDITIONS CONTAINED IN THIS LEASE, WHICH OFFER MAY BE ACCEPTED BY LANDLORD ONLY BY THE EXECUTION OF THIS LEASE BY LANDLORD.

**SECTION 49 – MISCELLANEOUS PROVISIONS**

**49.01** Governing Law. This Lease shall be governed by the laws of Arizona. The forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement shall be Maricopa County, Arizona.

**49.02** A.R.S. 38-511. Notice is hereby given of the applicability of Arizona Revised Statute Section 38-511.

**49.03** Survival. The obligations under Section 10 (Improvements, Ownership), Section 12 (Hold Harmless), Section 14 (Environmental Indemnification), Section 15 (Destruction of Improvements), Section 27 (Litigation, Attorney's Fees), Subsection 28.01 (Assignment), Section 30 (Remedies), Section 33 (Abandonment), Section 35 (Partial Invalidity), Section 36 (Marginal Captions), Section 37 (Non Waiver of Remedies), Section 40 (Holding Over), Section 42 (Notices), Section 44 (Successors in Interest), Section 46 (Time), Section 47 (No Partnership; No Third Party Rights), and Section 49 , (Miscellaneous Provisions), and any other obligations which reasonably should survive, shall survive expiration or other termination of this Agreement.

**SECTION 50 – ADDITIONAL PROVISIONS**

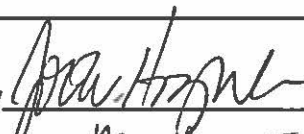
None

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first hereinabove written.

LANDLORD:  
CITY OF MESA, a Municipal Corporation

By   
Its Deputy City Manager

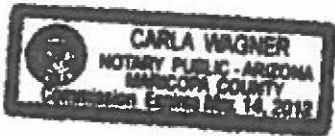
TENANT:  
Horizon Land and Development, LLC

By   
Its Member

STATE OF Arizona )  
County of Maricopa ) ss

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of November, 2009, by Bryan Raines, the Deputy City Manager of the City of Mesa.

(Seal and Expiration Date)

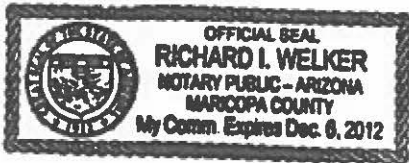


Carla Wagner  
Notary Public

STATE OF Arizona )  
County of Maricopa ) ss

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of November, by John Hagle, the member of Horizon Land Development.

(Seal and Expiration Date)



Richard I. Welker  
Notary Public  
Richard I. Welker

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

PARCEL 33A – REVISED

A portion of the Southwest Quarter of Section 3, Township 1 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Southwest corner of said Section 3;

Thence North 89 degrees 30 minutes 09 seconds East, along the south line of said Section 3, a distance of 983.19 feet;

Thence North 00 degrees 14 minutes 49 seconds East, a distance of 1267.07 feet;

Thence North 89 degrees 02 minutes 14 seconds East, a distance of 197.01 feet;

Thence South 01 degrees 04 minutes 30 seconds East, a distance of 138.50 feet;

Thence North 89 degrees 26 minutes 38 seconds East, a distance of 8.58 feet to the true point of beginning;

Thence North 89 degrees 26 minutes 38 seconds East, a distance of 115.37 feet;

Thence North 00 degrees 31 minutes 01 seconds West, a distance of 2.46 feet;

Thence North 89 degrees 26 minutes 38 seconds East, a distance of 17.50 feet;

Thence South 00 degrees 31 minutes 01 seconds East, a distance of 66.00 feet;

Thence South 49 degrees 16 minutes 08 seconds East, a distance of 80.80 feet to a point of curvature of a non-tangent curve to the left having a radius of 225.75 and the center of said curve bears South 39 degrees 38 minutes 56 seconds East;

Thence along said curve to the left through a central angle of 05 degrees 07 minutes 00 seconds, an arc distance of 20.16 feet;

Thence North 49 degrees 16 minutes 08 seconds West, a distance of 48.07 feet;

Thence South 89 degrees 22 minutes 09 seconds West, a distance of 142.36 feet;

Thence North 00 degrees 33 minutes 22 seconds West, a distance of 98.71 feet to the true point of beginning.



# Exhibit "B"

## Map of Premises

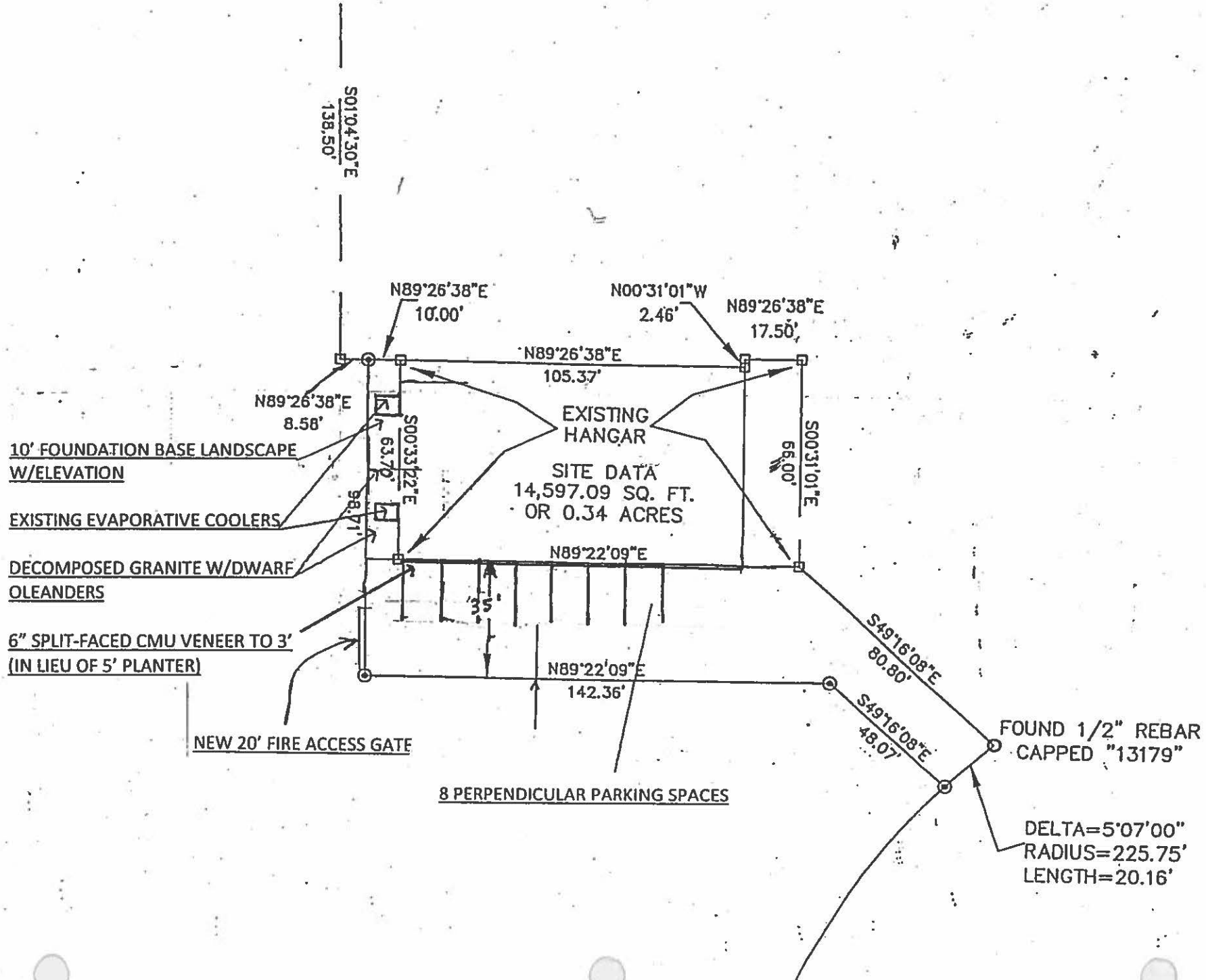




Exhibit D

DEVELOPMENT PLAN

Vacant land to the south of the hangar building will be developed as a paved parking area, while maintaining a 20 ft. clear fire lane access. The existing palm trees will be removed on the south side of the building and a 3'-0" high 6" split faced block veneer will be installed against the building on the south elevation. A 10 ft. foundation base landscaping (without trees), will be installed on the west side of the building.

EXHIBIT E  
SCHEDULE OF IMPROVEMENTS

Construction of improvements shall be completed no later than February 1, 2010.

# Exhibit "F"

## Bonds

STATUTORY PERFORMANCE BOND PURSUANT TO  
TITLE 34, CHAPTER 2, ARTICLE 2,  
OF THE ARIZONA REVISED STATUTES  
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, \_\_\_\_\_ (hereinafter called the Principal), as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_ and duly licensed and possessing a certificate of authority to transact surety business in the State of Arizona, with its principal office in the City of \_\_\_\_\_ (hereinafter called the Surety) as Surety, are held firmly bound unto the City of Mesa (hereinafter called the Obligee) in the amount of \_\_\_\_\_, (\$ \_\_\_\_\_) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee dated the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, to construct \_\_\_\_\_, Project # \_\_\_\_\_ which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall faithfully perform and fulfill all of the undertakings, covenants, terms, conditions and agreements of the contract during the original term of the contract and any extension of the contract with or without notice to the Surety, and during the life of any guaranty required under the contract and also performs and fulfills all of the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
PRINCIPAL SEAL

\_\_\_\_\_  
AGENCY OF RECORD

By \_\_\_\_\_

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
AGENCY ADDRESS

By \_\_\_\_\_

# Exhibit "G"

## Subordination to Lender

### LANDLORD'S SUBORDINATION TO LENDER

Borrower:

Lender:

THIS LANDLORD'S SUBORDINATION TO LENDER is entered into among \_\_\_\_\_ ("Borrower"), whose address is \_\_\_\_\_ (the "Premises"); \_\_\_\_\_ ("Lender"), whose address is \_\_\_\_\_; \_\_\_\_\_ and \_\_\_\_\_ ("Landlord"), whose address is \_\_\_\_\_.

Borrower and Lender have entered into, or are about to enter into, an agreement whereby Lender has acquired or will acquire a security interest or other interest in the Collateral, some or all of the Collateral may be affixed or otherwise become located on the Premises To induce Lender to extend the Loan to Borrower against such security interest in the Collateral and for other valuable consideration, Landlord hereby agrees with Lender and Borrower as follows.

**COLLATERAL DESCRIPTION.** The word "Collateral" means certain of Borrower's personal property in which Lender has acquired or will acquire a security interest, including without limitation the following specific property:

All Business Assets Including But Not Limited to All Inventory, Chattel Paper (Electronic and Tangible). Accounts, Equipment and General and Payment Intangibles, together with the following property:

**BORROWER'S ASSIGNMENT OF LEASE.** Borrower hereby assigns to Lender all of Borrower's rights in the Lease, as partial security for the Loan. The parties intend that this assignment will be a present transfer to Lender of all of Borrower's rights under the Lease, subject to Borrower's rights to use the Premises and enjoy the benefits of the Lease while not in default on the Loan or Lease. Upon full performance by Borrower under the Loan, this assignment shall be ended, without the necessity of any further action by any of the parties. This assignment includes all renewals of and amendments to the Lease or the Loan, until the Loan is paid in full. No amendments may be made to the Lease without Lender's prior written consent, which shall not be unreasonably withheld or delayed.

**CONSENT OF LANDLORD.** Landlord consents to the above assignment. If Borrower defaults under the Loan or the Lease, Lender may reassign the Lease, subject to and in compliance with the terms of the Lease and subject to Landlord's agreement. So long as Lender has not entered the Premises, Lender will have no liability under the Lease, including without limitation liability for rent. Borrower will remain fully liable for all obligations of Borrower as Lessee under the Lease. While Lender is in possession of the Premises, Lender will cause all payments due under the Lease and attributable to that period of time to be made to Landlord. If the Lease is later reassigned as permitted in the Lease, or Lender vacates the Premises, Lender will have no further obligation to Landlord subject to the terms of the Lease.

**LEASE DEFAULTS.** Both Borrower and Landlord agree and represent to Lender that, to the best of their knowledge there is no breach or offset existing under the Lease or under any other agreement between Borrower and Landlord. Landlord agrees not to terminate the Lease, despite any default by Borrower, without giving Lender written notice of the default and an opportunity to cure the default within the time periods set forth in the Lease to cure a default. If the default is one that cannot reasonably be cured by Lender (such as insolvency, bankruptcy, or other judicial proceedings against Borrower) then Landlord will not terminate the Lease so long as Landlord receives all sums due under the Lease, or so long as the Lease is reassigned to a new lessee reasonably satisfactory to Landlord.

In the event that Lender fails to cure a default under the terms of this Agreement and the Lease, in the time periods for curing a default set forth in the Lease, Lender's right to reassign the Lease shall terminate as of the date of the end of the applicable cure period, and Landlord may terminate the Lease, and this Agreement shall be of no further force and effect, and shall be deemed terminated as of the date of the termination of the Lease.

**DISCLAIMER OF INTEREST.** Landlord hereby consents to Lender's security interest (or other interest) in the Collateral and disclaims all interests, liens and claims which Landlord now has or may hereafter acquire in the Collateral, subject to the terms of the Lease. Landlord agrees that any lien or claim it may now have or may hereafter have in the Collateral will be subject at all times to Lender's security interest (or other present or future interest) in the Collateral and will be subject to the rights granted by Landlord to Lender in this Agreement.

**ENTRY ONTO PREMISES.** Landlord and Borrower grant to Lender the right to enter upon the Premises for the sole purpose of removing the Collateral from the Premises. The rights granted to Lender in this Agreement will continue for a period of fifteen (15) days after Lender receives notice in writing from Landlord that Borrower no longer is in lawful possession of the Premises. If Lender enters onto the Premises and removes the Collateral, Lender agrees with Landlord not to remove any Collateral in such a way that the Premises are damaged, without either repairing any such damage or reimbursing Landlord for the cost of repair.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement: This Agreement shall extend to and bind the respective heirs, personal representatives successors and assigns of the parties to this Agreement. The covenants of Borrower and Landlord respecting subordination of the claim or claims of Landlord in favor of Lender shall extend to include and be enforceable by any transferee or endorsee to whom Lender may transfer any claim or claims to which this Agreement shall apply. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. If Landlord is other than an individual, any agent or other person executing this Agreement on behalf of Landlord represents and warrants to Lender that he or she has full power and authority to execute this Agreement on Landlord's behalf. The parties shall not be deemed to have waived any rights under this Agreement unless such waiver is in writing and signed by the party waiving the rights.

**AMENDMENTS.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**NO WAIVER BY LENDER.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender nor any course of dealing between Lender and Landlord, shall constitute a waiver of any of Lender's rights or of any of Landlord's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole reasonable discretion of Lender.

**SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.



**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Agreement.** The word "Agreement" means this Landlord's Subordination to Lender, as this Landlord's Subordination to Lender may be amended or modified from time to time together with all exhibits and schedules attached to this Landlord's Subordination to Lender from time to time.

**Borrower.** The word "Borrower" means and all other persons and entities signing the Note in whatever capacity.

**Collateral.** The word "Collateral" means all of Borrower's right title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

**Landlord.** The word "Landlord" means \_\_\_\_\_, and is used for convenience purposes only. Landlord's interest in the Premises maybe that of a fee owner, lessor, sublessor or Penholder, or that of any other holder of an interest in the Premises which may be or may become prior to the interest of Lender.

**Lease.** The word "Lease" means that certain lease of the Premises, dated \_\_\_\_\_ between Landlord and Borrower.

**Lender.** The word "Lender" means \_\_\_\_\_ its successors and assigns.

**Loan.** The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing and however evidence.

**Premises.** The word "Premises" means the real property, and legally described as:

(Legal Description of the property where the subject business is located)

**BORROWER AND LANDLORD ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS LANDLORD'S SUBORDINATION TO LENDER, AND BORROWER AND**

LANDLORD AGREE TO ITS TERMS.

THIS AGREEMENT IS DATED \_\_\_\_\_

BORROWER:

By: \_\_\_\_\_  
Sign here

By: \_\_\_\_\_  
Sign here

LANDLORD:

By: \_\_\_\_\_  
Sign here

By: \_\_\_\_\_  
Sign here

LENDER:

By: \_\_\_\_\_  
Sign here