

Falcon Field Master Tenant Lease – Form dated February 11, 2019

**Falcon Field Airport**  
**Master Tenant Lease**

The City of Mesa  
a municipal corporation  
(Landlord)

and

Falcon Warbirds Foundation, Inc.  
Wings of Flight Foundation, Inc.  
(Tenant)

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**MASTER TENANT LEASE  
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## MASTER TENANT LEASE

This Master Tenant Lease Agreement (this "Lease") is made and entered into on the Effective Date (as defined in Section 1.1 below) by and between the City of Mesa, an Arizona municipal corporation ("Landlord"), and the Tenant (as defined and identified in Section 1.1). Landlord and Tenant are sometime referred to collectively as the "Parties," or individually as a "Party."

### RECITALS

- A. Landlord is the owner of the real property along with the buildings and improvements thereon, if any, which are described and depicted in the attached Exhibit "A." This real property together with any buildings or other improvements thereon are collectively known as the "Premises."
- B. The Premises are 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. The restrictions and terms of these recorded instruments are collectively referred to as the "Transfer Restrictions."
- C. The real property, which is the subject of this Lease, in addition the obligations and restrictions contained in the Instrument of Transfer, is subject to the Assurances made by the Landlord in each Airport Improvement Program ("AIP") grant accepted as the airport Sponsor.
- D. Tenant, jointly proposed to Landlord to lease the premises from Landlord with the intent to continue promoting the history of Falcon Field and its role in WWII.
- E. Landlord desires to lease the premises to Tenant to promote the history of Falcon Field in World War II, aviation and for aeronautical purposes under the terms and conditions of this Lease.
- F. It is intended by Landlord and Tenant that this Lease be subject to the provisions of A.R.S. § 42-6201 et seq.
- G. It is intended by Landlord and Tenant that Landlord is a "Government Lessor" as defined in A.R.S. § 42-6201.

### AGREEMENT

In consideration of the terms and conditions in this Lease, the Parties agree as follows:

**1. DEFINITIONS AND ADDITIONAL PROVISIONS.**

1.1 **Definitions.** All references in this Lease to terms defined in this section of the Lease shall have the meanings specified herein.

- A. **Landlord's Name and Address** for Notice purposes:  
  
City of Mesa  
Falcon Field Airport  
4800 East Falcon Drive  
Mesa, AZ 85215
- B. **"Tenant"** is Falcon Warbirds Foundation, Inc, an Arizona corporation and Wings of Flight Foundation, Inc., an Arizona corporation, collectively "Tenant".
- C. **Tenant's Address** for Notice purposes is 4626 East Fighter Aces Drive, Mesa, AZ 85215.
- D. **"Effective Date"** is the date that the provisions of the Lease commence and are enforceable, which is January 1, 2020.
- E. **"Premises"** means the real property legally described in the attached Exhibit A and all buildings, structures, and other improvements presently existing thereon or as may be constructed pursuant to the terms of this Lease. The Premises is generally depicted on Exhibit B attached hereto. The approximate location of the Premises is identified on Exhibit C. In the event of any inconsistency between Exhibits A and B, Exhibit A shall control.
- F. **"Real Property"** means as described in the legal description attached as Exhibit A.
- G. **Premises Size** is 26,644 square feet.
- H. **Term.** The Initial Term and the Permanent Term may be collectively referred to herein as the "Term."
- I. **"Initial Term"** is a N/A commencing on N/A and ending on N/A.
- J. **"Initial Term Rent"** is N/A per N/A, which is calculated as follows: N/A.
- K. **"Permanent Term"** is a time period commencing on January 1, 2020 and ending on December 31, 2029 provided however, that Tenant is in full compliance with all the provisions, covenants, conditions and requirements of this Lease. Tenant shall have the option of extending the term of the Master

Tenant Lease, as amended, for an additional two (2) five (5) year terms by notifying Landlord at least ninety (90) days prior to the expiration of the Master Tenant Lease of Tenant's intent to exercise said Master Tenant Lease extension options. The rental rate for such Permanent Term shall be determined as provided in Section 4 of this Lease.

- L. **"Permanent Term Rent"** is \$ .22 per square foot x 26,644 square feet per month, plus applicable taxes, which is calculated as follows:  $\$.22 \text{ per sf} \times 26,644 \text{ sf} = \$5,861.68$  per month, plus applicable taxes. The rental rate for such Permanent Term shall be determined as provided in Section 4 of this Lease.

Tenant may be entitled to a discount of up to 25% discount of the Permanent Term Rent if the Airport Director, or her designated representative, has received documentation that Tenant has participated in or will be participating in a minimum of 2 free public events for each prior calendar month and for the current month, which included or will include making the hangar available to the general public for tours and aviation education activities and actively participating in City-sponsored events which directly promote Falcon Field Airport.

Example: If Tenant will not be participating in a minimum of 2 free public events which meet the criteria listed above during the month of June, then Tenant must have already participated in 2 events during the months of January through May of the current calendar year which have not been applied towards a discount during any of the previous months.

If event-related documentation is not received within 10 days after the end of the month, then the monthly rent is 100% of the rent owed to Landlord for that month. In-kind public services which do not qualify for the rental discount include, but are not necessarily limited to, the following: events which occur off-airport (including flyovers for events which are not sponsored or requested by Landlord), events which are held on-airport for which there is a fee for admittance, and private events where the general public is not invited.

If an event is held inside the hangar, Landlord must be notified no less than 14 days before the proposed event, and the Falcon Field Airport Management Plan for Temporary Use of an Aircraft Hangar for Assembly Gathering must be submitted to Landlord at least 7 days prior to the proposed event. If the Management Plan is not provided to Landlord at least 7 days prior to the proposed event, the event shall not be considered as a free public event for the purpose of the 25% discount of the Permanent Term Rent.

- M. **"Improvements"** means the Minimum Improvements and Additional Improvements collectively.

- N. **“Minimum Improvements”** means the development plans of the Premises attached hereto as Exhibit C.
- O. **“Additional Improvements”** means additions, alterations, changes, or other improvements collectively other than the Minimum Improvements.
- P. **“Commencement of Construction”** means both (i) the obtaining of a building permit by Tenant for the construction of all improvements included in the Minimum Improvements, and (ii) the actual commencement of physical construction on the Premises necessary to achieve Completion of Construction of the Minimum Improvements.
- Q. **“Construction Start Date”** is the day that is N/A days following the Lease Effective Date or N/A.
- R. **“Construction Completion Date”** is the day that is N/A days following the Construction Start Date.
- S. **“Completion of the Minimum Improvements”** means that all the Minimum Improvements have been completed, a permanent Certificate of Occupancy has been issued from the City of Mesa (if applicable), and Tenant has removed all construction equipment and unused construction materials from the Airport.
- T. **“Security Deposit”** means the amount to be received from Tenant prior to occupancy to cover the full and faithful performance by Tenant of all of the terms and conditions of the Lease, including without limitation, payment of the Rent. The Security Deposit shall be in the amount of \$5,861.68, which is equal to 1 month of rent.
- U. **Initial Insurance Coverage Amounts are as follows:**
1. Minimum Comprehensive General Liability (per occurrence): \$1,000,000. If the policy is to be written with an aggregate limit, that limit shall be not less than \$2,000,000.
  2. Minimum Hangarkeeper’s Liability: \$1,000,000 for any one aircraft and \$2,000,000 for loss in any one occurrence.
- V. **“Airport”** means Mesa-Falcon Field Airport, located in Mesa, Maricopa County, Arizona.
- W. **“Transfer Restrictions”** means the exceptions, reservations, restrictions, and conditions set forth in the Instrument of Transfer from the United States of America and the Reconstruction Finance Corporation to the City of Mesa for the

real, personal, or mixed property, herein known as Mesa-Falcon Field Airport, dated August 17, 1948.

- X. **“FAA”** means Federal Aviation Administration.
- Y. **“Falcon Field Airport Layout Plan (ALP)”** means the FAA-approved drawings used to graphically depict current and future airport facilities.

**1.2 Additional Provisions.** In addition to all the other terms and provisions of this Lease, Tenant shall comply with the following additional provisions:

1.2.1 The Leased Premises shall be used for the storage of airworthy vintage warbird aircraft. Vintage warbird aircraft are defined as military aircraft that operated during World War II and/or the Korean War. The City, in its sole discretion, reserves the right to allow the storage by Tenant of newer model military aircraft.

1.2.2 During the term of the Lease, both Tenants agree to continually practice and demonstrate a collaborative approach with the City and with each other. Any disputes or disagreements between the two Master Tenant Lease Tenants occupying the Leased Premises shall be resolved internally among the two Tenants. If the two Master Tenant Lease Tenants are unable to resolve a dispute or disagreement regarding the use of the Leased Premises, both Tenants agree to hire a third party mediator to resolve the matter(s) in question at their sole cost and expense. The third party mediator shall resolve the dispute or disagreement in a manner which complies with the Master Tenant Lease and any applicable City of Mesa City Codes and regulations. The third party mediator shall not be the City of Mesa or any of its employees, representatives, or elected officials.

1.2.3 Notwithstanding, Section 25, Tenant may not rent or sublease any portion of the Leased Premises to a third party for profit.

1.2.4 Tenant may not charge a fee to anyone who wishes to hold or attend an event on the Leased Premises.

1.2.5 Tenant may accept donations that are related to Permitted Uses as stated in Section 8.3 of this Lease.

1.2.6 If the number of aircraft owned by Tenant as of April 18, 2019 exceeds the amount of space available in the Leased Premises, Tenant may request that Landlord provide a maximum of 4 City-owned hangars for additional aircraft. Tenant agrees to sign an Aircraft Hangar Storage Agreement for each hangar to pay Landlord the current monthly rental amount owed for the hangars which are rented.

1.2.7 Tenant may not stage, park or store aircraft on the non-exclusive aircraft ramp located to the west of the Leased Premises unless prior approval is received from the Airport Director. Aircraft must be stored in the Leased Premises and must be staged at a location

designated at the sole discretion of Landlord. Regardless of the designated staging location, Tenant shall immediately remove any oils, lubricants, or other materials and substances that are discharged from aircraft onto the ramp to prevent any of these materials or substances from being transported into the Leased Premises or any other building on the Airport.

1.2.8 Tenant may not stage or hold any events on the non-exclusive aircraft ramp located to the west of the Leased Premises that could cause damage to the ramp, cause oil or grease to spill onto the ramp, or interfere with the use of the ramp by other tenants for aircraft staging and taxiing purposes.

1.2.9 Tenant may propose to Landlord additional improvements to the Leased Premises. Approval of any additional improvements will be at the Landlord's sole discretion. Improvements approved by the Landlord shall be made at Tenant's sole cost and expense, and Landlord is not obligated and will not be required to compensate or reimburse Tenant for the cost or expense of any of said improvements.

1.2.10 **Joint and Several Liability.** The Tenant agrees that each party is jointly and severally liable for each other's acts, omissions, liabilities and obligations under this Lease and absolutely and unconditionally guarantees the prompt payment and performance of all obligations in this Lease. The Tenant agrees that its guaranty hereunder constitutes a continuing guaranty of payment and such obligations shall not be discharged until forgiven or terminated. The City reserves the right to renegotiate the Lease if a substantial change occurs in the Lease. The City will work in good faith with the Tenant if this occurs.

1.2.11 The parties acknowledge that the Landlord and Wings of Flight Foundation are parties to a prior and separate agreement. That prior and separate agreement will be honored by the Landlord and Wings of Flight Foundation through May 31, 2020.

## 2. TERM.

2.1 **Initial Term.** The Initial Term shall be for the time period stated in Section 1.1. Any extension of the term of the Lease will be under the Permanent Term of the Lease.

2.2 **Permanent Term.** The Permanent Term shall be for the time period stated in Section 1.1. The Lease will extend from the Initial Term into the Permanent Term only if Tenant is in full compliance with this Lease. The Permanent Term is a continuation of the Lease under the same terms except for the rental rate as provided in this Lease.

## 3. RENT.

3.1 **Initial Term Rent.** During the Initial Term, Tenant shall pay to Landlord rent in the amount of the Initial Term Rent (which amount is specified in Section 1.1) plus all applicable taxes. Whether the rental payments are annual, quarterly, monthly, or otherwise is specified in Section 1.1; and Tenant shall pay the Initial Term Rent on or before the dates specified in Section 1.1. Tenant shall pay the first payment of the Initial Term Rent on or before the Commencement Date.



**3.2 Permanent Term Rent.** During the Permanent Term, Tenant shall pay to Landlord rent in the amount of the Permanent Term Rent (which amount is specified in Section 1.1) plus all applicable taxes, and subject to the rental rate adjustment as provided in this Lease. Whether the rental payments are annual, quarterly, monthly, or otherwise as specified in Section 1.1, the Tenant shall pay the Permanent Term Rent on or before the dates specified in Section 1.1. Tenant shall pay the first payment of the Permanent Term Rent on or before the first day of the Permanent Term.

**3.3 Term and Proration.** The Initial Term Rent and the Permanent Term Rent may be collectively referred to as the "Rent." For the initial payment of the Initial Term Rent or the Permanent Term Rent, the Landlord may prorate the rental amount in order to adjust the first payment if the payment date does not fall on the first of the month or other date upon which future payments will be due.

**3.4 Payment of Rent.** Tenant shall, without prior notice or demand and without any set off or deduction whatsoever, pay the 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 until such sums are paid.

**3.5 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.

**3.6 Government Property Lease Excise Tax.** As required under A.R.S. §42-6206, Tenant is hereby notified of its potential tax liability under the Government Property Lease Excise Tax provisions of A.R.S. §42-6201, *et seq* "GPLET"). Failure of Tenant to pay the tax if and when due and after an opportunity to cure is an Event of Default that could result in the termination of Tenant's interest in this Lease and of its right to occupy the Premises.

#### **4. RENTAL RATE ADJUSTMENT TO THE PERMANENT TERM RENT.**

**4.1 Rate Adjustment.** The Permanent Term Rent shall be adjusted at one (1) year intervals, with the first adjustment to be effective on the day that is two (2) years after the Commencement Date, with subsequent adjustments to occur each year thereafter.

**4.2 Determination of Adjustment Amount.** The Permanent Term 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 Lease as "Initial Term Index"). The Index published most immediately preceding the adjustment date in question (hereinafter referred to in this Lease 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 Permanent Term Rent for the Initial Term Index 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 Permanent Term Rent. If the Extension Index has not increased over the Initial Term Index, the adjusted Permanent Term Rent shall be as set forth in Subsection 4.4 below.

**4.3 Rate Adjustment Example.** By way of example, assume that the initial Permanent Term Rent 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 Permanent Term Rent for the next year will be \$11,483.

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

**4.4 Maximum and Minimum Increases.** The Permanent Term Rent shall be subject to minimum and maximum increases every five (5) years. Specifically, the Permanent Term Rent shall not increase by more than 30% or less than 10% in each 5-year period beginning from the first year of the Permanent Term. If, at the end of a 5 year period, the Permanent Term Rent has not increased by at least 10% since the commencement of such 5-year period, the Permanent Term Rent shall be increased to such amount as would cause the Permanent Term Rent to equal 110% of the Permanent Term Rent in effect on the first day of such 5-year period.

**Example 1 Minimum 10% Increase:**

Year 1 – \$100	(Permanent Term Rent is \$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 even if the CPI-U has increased less than 1.16% from the preceding year)

**Example 2—Maximum 30% Increase:**

Year 1 – \$100	(Permanent Term Rent is \$100)
Year 2 = \$112	(12% increase)
Year 3 – \$124.32	(11% increase)
Year 4 = \$130.00	(4.5% maximum increase even if the CPI-U exceeds a 4.5% increase)
Year 5 – \$130.00	(0% increase regardless of the amount of increase in the CPI-U)

**4.5 Modifications and Replacement of Index.** If the Index is changed so that the base year differs from that in effect when the term commenced, 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, as reasonably determined by Landlord, shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discounted or

revised. If the CPI-U index is no longer published by the US Department of Labor, the parties shall use the US Department of Labor index or report most clearly approximating the CPI-U, as reasonably determined by Landlord. If the US Department of Labor ceases to publish any index that approximates the CPI-U, Landlord shall have the right to select such available replacement index as Landlord reasonably determines will most closely approximate the CPI-U.

**4.6 Delay in Adjustment.** If the Parties fail to timely recognize any adjustment of the Permanent Term Rent, the Permanent Term Rent shall adjust automatically notwithstanding such failure of the Parties, and any increased rent not paid as a result of such failure of the Parties shall be due and payable by Tenant within thirty (30) days following notice from Landlord.

## **5. SECURITY DEPOSIT.**

**Security Deposit.** Tenant shall, at execution of the Lease by Landlord, deposit with Landlord a Security Deposit in the amount specified in Section 1.1, with such deposit to be by cash or certified check. If Tenant defaults hereunder, Landlord may apply or retain all or any part of the Security Deposit for the payment of any sum due hereunder or any amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. Upon the application or retention of any or all of the Security Deposit by Landlord, Tenant shall, within fifteen (15) days after written demand by Landlord, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. If Tenant is in compliance with every provision of the Lease and owes no monies to Landlord at the expiration or termination of this Lease, the Security Deposit or any remaining balance thereof shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within thirty (30) days following expiration or termination of the Term.

## **6. TAXES.**

**Taxes and Rental Impositions.** With and in addition to the Rent and at the same times as Rent is payable, Tenant agrees to pay to Landlord as additional rent (or pay the appropriate governmental body) any and all excise, privilege, license or sales taxes, assessments, special assessments, enhanced municipal services district assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses and permit fees, and other governmental or quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever which, at any time during the Term may be assessed, levied, confirmed, imposed upon, or become due and payable out of or with respect to, or become a lien on or encumbering, the Premises or any part thereof, or any appurtenances thereto. Tenant will pay, prior to them 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. Further, Tenant shall also pay any governmental property excise taxes or other taxes imposed on this Lease or Tenant's lease of the Premises on or prior to the due date of such taxes. Within ten (10) days following request by Landlord, Tenant shall provide Landlord with evidence of payment of all such taxes or impositions.

## 7. UTILITIES.

**Utilities.** Landlord will at all times during the term of this Lease pay for water, sewer, gas, and electric utilities used on the Premises before the charges therefore become delinquent. All other utilities will be paid by Tenant during the term of this Lease.

## 8. PREMISES AND USE OF PREMISES.

**8.1 Lease of Premises.** For and in consideration of the rents, covenants and agreements in this Lease, Landlord hereby leases to Tenant, and Tenant leases and accepts the Premises, subject to any prior, valid, existing claims or rights of way, including the Transfer Restrictions and any presently existing roads, easements, restrictions, and all other encumbrances of record and under the terms of this Lease. The Premises is also subject to all, current and future, applicable federal (including FAA regulations and rules), state, and City of Mesa laws, rules, regulations, ordinances, and policies.

**8.2 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 in this Lease, (ii) Tenant shall take possession of the Premises in an "AS IS" condition WITH ALL FAULTS and without warranties or representations from Landlord that the Premises, or any portions thereof, are suitable for a particular purpose, or can accommodate any particular building(s) or weight or size of aircraft, and (iii) this Lease confers no ownership 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 Landlord. Tenant hereby acknowledges that the Premises (in its current condition) is in a condition acceptable to Tenant.

**8.3 Permitted Use of the Premises.** Tenant shall use the Premises consistent and in accordance with the FAA-approved Falcon Field Airport Layout Plan, as may be amended, FAA policies, rules, regulations and guidelines, and the terms and conditions of the Development Plan in Exhibit C. Further, Tenant shall use the Premises primarily for aeronautical purposes, unless otherwise authorized by the City and the FAA, and in compliance with the terms and conditions of this Lease.

**8.4 Prohibited Uses.** The Premises shall not be used for any purpose in violation of this Lease or any City, state, federal (including the FAA) policies, rules, regulations, guidelines, orders, laws, statutes, by-laws, ordinances, or resolutions.

**8.5 Storage of Equipment and Materials.** Tenant shall not store on the Premises any type of equipment or material, including, but not necessarily limited to, non-airworthy aircraft, salvage aircraft, wreckage, unsightly aircraft components, and aircraft equipment outside of buildings unless screened by a method pre-approved in writing by Landlord. This provision does not preclude Tenant from parking airworthy aircraft or aircraft actively being repaired on the Premises.

Tenant may not store equipment or materials outside that are unrelated to an aeronautical use, including, but not 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 prior written consent of the Landlord.

**8.6 Prohibited Actions.** Tenant shall not commit waste on the Premises. Tenant shall not conduct any drilling operations, remove any sand, dirt, gravel or other substances from the Premises, or in any manner change the contour or grade of the Premises without Landlord's prior written consent, which may be granted or withheld in Landlord's sole and absolute discretion.

**8.7 Underground Storage Tanks.** Tenant shall not install, or use any existing, underground storage tanks without the prior written consent of Landlord, which may be given or withheld in the Landlord's sole discretion. If consent is granted by Landlord, Tenant shall comply with all applicable federal, state (including Arizona Department of Environmental Quality) rules and regulations, City of Mesa ordinances and regulations, and all requirements that may be imposed by Landlord as part of Landlord's consent to such use. Upon request of Landlord, Tenant shall further provide copies of documentation and certifications of compliance with all necessary Arizona Department of Environmental Quality rules and regulations concerning operation of any underground storage tank system on the Premises.

**8.8 Above Ground Storage Tanks.** Tenant shall not install any new above ground storage tanks on property located along runways and/or taxiways. Tenant shall not install any new above ground storage tanks on property not located along runways and/or taxiways without Landlord's consent and screening acceptable to Landlord. In the event Tenant wishes to utilize an existing above ground storage tank located on the Premises, Tenant shall comply with all applicable federal, state (including Arizona Department of Environmental Quality) rules and regulations, City of Mesa ordinances and regulations, and all requirements that may be imposed by Landlord as part of Landlord's consent to such use. Upon request of Landlord, Tenant shall further provide copies of documentation and certifications of compliance with all necessary Arizona Department of Environmental Quality rules and regulations concerning operation of any above ground storage tank system on the Premises.

**8.9 No Interference with Airport Operations.** Tenant, its employees, guests, invitees, contractors, subcontractors, vendors, visitors, subtenants, successors and assigns shall not interfere with the operation and use of the Airport by Landlord or other persons and organizations entitled to use the Airport; and Tenant shall conduct all work on the Premises, including construction, repair, and maintenance work, so as to not interfere with the use of the Airport.

**8.10 No Interference with Aircraft.** Tenant, by accepting the Lease, agrees for itself, its employees, guests, invitees, contractors, subcontractors, vendors, visitors, subtenants, 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 expense of Tenant.

## **9. USE OF PUBLIC AIRPORT FACILITIES.**

9.1 **Non-Exclusive Use of Public Airport Facilities.** Tenant is granted the non-exclusive right to use public airport facilities necessary for ingress and egress to the Premises, including taxiways, runways, taxilanes, aprons, and navigational aids (the "Airfield Areas") for the purpose of operating aircraft. Tenant's use of the Airfield Areas is on a non-exclusive, non-preferential basis with other authorized users. Further, Tenant's use of the Airfield Areas is subject to and shall be, at all times, in compliance and accordance with: (i) all laws, rules, and regulations of the United States of America, the State of Arizona, and the City of Mesa, including without limitation all laws and regulations related to aviation and air navigation; (ii) all requirements imposed on Landlord under any current or future federal or state grant programs or agreements; (iii) all applicable policies, rules, regulations, and ordinances of Landlord now in force or hereafter prescribed or promulgated by Landlord; and (iv) the terms and conditions of this Lease.

9.2 **Operation of Airport.** Landlord agrees, during its ownership of the Airport, 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 when accepting federal grants and pursuant to the Instrument of Transfer between the United States of America, the Reconstruction Finance Corporation, and Landlord.

9.3 **Reservation of Rights.** Notwithstanding any language in this Lease to the contrary, Landlord shall have the right to close the runways, taxiways, aprons or any portion of the Airport from time to time at the discretion of Landlord for, among other reasons, maintenance, repairs, emergencies, or special aeronautical occasions.

## **10. COMPLIANCE WITH LAWS, NOISE ABATEMENT, AND OBTAINING PERMITS.**

10.1 **Compliance with Laws.** Tenant shall observe and comply with the Instrument of Transfer restrictions and all applicable present and future laws, statutes, ordinances, policies, rules, regulations, requirements, all verbal and written directives promulgated by Landlord and other local, state, and federal governmental entities having jurisdiction over the Airport. Further, Tenant shall comply with Landlord's insurance companies' written policies covering the Airport, Airfield Areas, or Premises, or any part thereof. Any violation of this provision shall constitute a default under this Lease.

10.2 **Compliance with Noise Abatement Program and Procedures.** This Lease is expressly conditioned upon Tenant's and any assignees', subtenants', employees', guests', and invitees' adherence to and compliance with the Falcon Field Airport Noise Abatement Program and Procedures ("the "Noise Procedures"), as may be amended from time to time, a copy of which is attached hereto as Exhibit "E."

10.3 **Obtaining of Permits and Licenses.** Tenant shall promptly obtain all permits, licenses, certificates or other authorizations 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 current

provisions of the Mesa City Code, federal grant programs, state grant programs, Falcon Field Airport Master Plan (including the Airport Layout Plan), City of Mesa-Falcon Field Airport Planned Area Development Design Standards, environmental regulations, Surplus Property Instruments and regulations of the Federal Aviation Administration, Falcon Field Airport Noise Abatement Program and Procedures, and the rules and regulations governing Airport operations, all or which as may be amended from time to time.

## **11. IMPROVEMENTS, CONSTRUCTION, AND MAINTENANCE.**

**11.1 Minimum Improvements.** Tenant shall construct on the Premises the improvements (the "Minimum Improvements") shown on the Development Plan, which is attached as Exhibit "D." Tenant shall complete construction of the Minimum Improvements in accordance with the Project Schedule, which is set forth in Exhibit "E." In addition to complying with and obtaining all approvals required by the Mesa City Code, regulations, and the City of Mesa - Falcon Field Airport Planned Area Development Design Standards, as may be amended from time to time, Tenant shall submit to Landlord a site plan, elevations, and other plans reasonably requested by the Landlord. Prior to constructing any improvements, Tenant shall obtain the written consent of the Airport Director for the construction of the development and shall obtain all necessary FAA approvals (including FAA environmental reviews and FAA's Form 7460 approval).

**11.2 Commencement of Construction.** Tenant shall begin the Commencement of Construction of the Minimum Improvements on or before the Construction Start Date (as defined in Section 1.1.). 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 Construction Start Date. If Commencement of Construction does not occur on or before the Construction Start Date, this Lease shall automatically terminate, without any notice to Tenant or opportunity to cure, and be of no further force or effect except for Tenant's obligations that survive termination; provided further, if Tenant provides a written request before the Construction Start Date that provides good faith reasons for an extension of the date, Landlord in its sole and absolute discretion may extend the Construction Start Date.

**11.3 Completion of Construction.** Tenant shall achieve Completion of Construction of the Minimum Improvements by the Construction Completion Date. In addition to all other remedies provided in this Lease (including termination), if Tenant fails to achieve Completion of Construction of the Minimum Improvements by the Construction Completion Date, at the sole discretion of the Landlord, Tenant's rental rate will increase to 150% of the current rental rate in effect at the time of the default until Tenant has achieved Completion of Construction.

**11.4 Construction of Additional Improvements.** Except for the Minimum Improvements, Tenant shall make no Additional Improvements to the Premises without the prior written consent of the Landlord, which may be conditioned or may be granted or denied in Landlord's sole discretion. Prior to constructing any Additional Improvements, Tenant shall submit a site plan, elevations, or other plans as reasonably requested by the Landlord, and Tenant shall obtain the written consent of the Airport Director for the construction of the Additional Improvements. The consent of the Airport

Director is in addition to (and does not replace) complying with and obtaining all approvals required by the Mesa City Code and regulations.

**11.5 Compliance with Mesa City Codes and Design Review.** Tenant shall obtain all necessary approvals from City of Mesa and comply with the Mesa City Code, the Falcon Field Airport Planned Area Development Design Standards, and all Mesa rules and regulations (including, without limitation, the Zoning Code, Subdivision Code, Building Code, Fire Code, and Engineering Code and requirements) for the design and construction of the Improvements. Tenant shall obtain a building permit prior to commencing any construction for which a building permit is required. Tenant shall not occupy or use any improvements for which a certificate of occupancy is required until a certificate of occupancy or temporary certificate of occupancy is issued. Tenant shall be solely responsible for payment of all permit, inspection, and all other fees and charges in connection with the design and construction of the Improvements.

**11.6 FAR Notification Requirements.** Tenant shall comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations prior to construction or material modification or alteration of any Improvements.

**11.7 Airport Review of Safety and Security Plans.** Tenant shall meet with the Airport Director, or his/her designee, 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, major repair, or major maintenance work on the Premises.

**11.8 Approval of Construction and Improvement Plans.** All proposed construction and improvement plans must be submitted and approved by the Landlord prior to (and separate from) submission for City building permits. All construction and improvements must comply with the most current Mesa-Falcon Field Airport Master Plan (Master Plan), Falcon Field Airport Planned Area Development Design Standards, Airport Layout Plan, and Development Plan as shown on Exhibit "D". Tenant understands that the Master Plan consists of recommendations for future development and that the recommended alternatives outlined in the Master Plan in no way constitute a commitment on the part of Landlord. It is further understood that proposed development items in the Master Plan are subject to the current and future needs of the Airport, as well as subject to funding availability. Tenant shall pay all required City fees (including development and building fees).

**11.9 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 Landlord's approval prior to construction. Such submittal and approval are in addition to Tenant's obligation to comply with applicable City Codes, and the City of Mesa - Falcon Field Airport Planned Area Development Design Standards.

**11.10 Non-Liability of Landlord.** No review or approval by Landlord or Landlord's employees or agents of Tenant's improvement plans, safety plans, security plans, or other plans or drawings shall constitute any representation or warranty by Landlord that such materials are accurate, correct, or complete, and Landlord shall have no liability if such materials contain inaccuracies, errors, or deficiencies of any nature. Tenant shall indemnify, defend and hold Landlord harmless from any claims, judgments, or actions (i) arising from any construction, maintenance, operation, or repair of



any improvements on the Premises or (ii) asserting that Landlord is liable in any manner as a result of Landlord's or its employees' or agents' approval of any plans.

**11.11 Obligation to Maintain.** Tenant shall repair and maintain the Improvements in good and working order and repair and keep the Premises in a first-class, 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, wreckage, debris, waste, or unsightly materials that might be or constitute a fire hazard, a public or private nuisance, or detract from the overall appearance of the Airport. Furthermore, Tenant agrees to maintain all landscaping and unpaved areas in a clean and orderly appearance and free of weeds and overgrowth. Dead foliage shall be removed and replaced by Tenant at its expense.

**11.12 Landlord's Right to Effect Repairs.** In addition to all other remedies allowed under this Lease, if Tenant does not properly repair or maintain the Improvements or Premises within fifteen (15) days after receiving written notice from Landlord, Landlord may cause such repair and maintenance to be made and may invoice Tenant for the costs of such repair and maintenance. If the repairs or maintenance involves an issue of health, safety, or welfare or are required for the use of the Airport, no written notice by Landlord is required, and Landlord may immediately begin repairs and maintenance and charge Tenant for the costs of such repairs and maintenance. Tenant shall pay all costs of such repairs and maintenance made by Landlord within thirty (30) days following demand for payment. 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 11.12 obligates Landlord to perform any maintenance of the Premises or repairs to Tenant's Improvements.

**11.13 Landlord-No Obligation to Maintain or Repair.** Nothing set forth in this Lease obligates Landlord to perform any maintenance or repairs to the Premises or to the Improvements. Landlord shall make all structure repairs to the Leased Premises, unless the repairs or damage is caused by the Tenant.

**11.14 Mechanic's Liens.** Tenant agrees to keep the Premises free of mechanics' and materialmen's liens of any kind or nature for any work done, labor performed, or material furnished for the Premises for Tenant or any contractor, employee, or subtenant of Tenant. To the extent permitted by law, Tenant further agrees to defend, indemnify and hold Landlord harmless 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 or the request of any contractor, employee or subtenant of Tenant. 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 and as requested by Landlord, Tenant agrees to obtain and record a Payment Bond that complies with A.R.S. §33-1003.

**11.15 Performance Bond/Irrevocable Letter of Credit.** If and as requested by Landlord, Tenant shall furnish Landlord with a performance bond or irrevocable letter of credit (ILOC), in the full amount of the Improvements, prior to construction of Improvements. The bond or ILOC must be issued by a company qualified to do business in the State of Arizona, rated "A" or better by the current

edition of the Best Rating Service, and shall ensure faithful and full observance and performance by Tenant of all the terms, conditions, covenants, and agreements set forth in this Lease.

## **12. OWNERSHIP AND RESTORATION OF IMPROVEMENTS.**

**12.1 Landlord's Ownership and Tenant's Restoration of the Improvements Upon Termination.** Except for Tenant's trade fixtures and personal property, the Improvements shall become the property of the Landlord at no cost or expense to Landlord—upon expiration or termination of this Lease; and with a further exception for underground and above ground storage tanks which are defined and discussed in the next section. At no time shall Tenant have the right to remove any Improvements from the Premises unless otherwise agreed to in writing by the Landlord. Notwithstanding the foregoing, if upon the expiration or other termination of this Lease, the Improvements 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 Improvements or require Tenant to restore the Improvements to a condition which is in substantial conformity with their original condition. Landlord shall exercise such right by giving written notice to Tenant within thirty (30) 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. Tenant shall restore the Improvements to a condition reasonably acceptable to Landlord.

**12.2 Tenant Ownership of UST and AST 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 underground storage tanks ("USTs"), and above ground storage tanks ("ASTs") and related equipment on the Premises shall remain the property and sole responsibility of the Tenant. At all times, Tenant shall remain the owner and operator of the USTs and ASTs, and Landlord shall not become the owner or operator of the USTs or ASTs. In no event shall Landlord be responsible for, owner of, or operator of the USTs or ASTs. At Landlord's sole discretion and upon request of Landlord, prior to and upon expiration of the Lease, all underground and above ground storage tanks shall be removed by Tenant. 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 any UST or AST, its related equipment, and all affected property, water, and soil. All such actions shall be performed pursuant to prescribed standards under the law. Tenant shall complete all actions required by this Section of the Lease within 60 days after expiration or other termination of this Lease. If Tenant does not complete all the requirements 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 any other provision of this Lease, Tenant shall not maintain any fuel or oil storage facilities on the Premises without the prior written consent of the Landlord, which it may give or withhold in its sole discretion.

## **13. INSURANCE.**

**13.1 Comprehensive General Liability.** Tenant, at its sole expense, shall maintain comprehensive liability insurance with minimum limits per occurrence of not less than the amount stated in Section 1.1. The policy shall include coverage for bodily injury, property damage, personal

injury, products, premises, and completed operations and shall insure against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of the Premises. Further, the policy shall insure performance by Tenant of the indemnity provisions of this Lease. The policy shall also either contain a provision for broad form contractual liability, including Leases, or shall attach an endorsement providing for such coverage. If the policy is to be written with an aggregate limit, the minimum aggregate limit shall be not less than double the minimum amount specified in Section 1.1.

**13.2 Property.** Tenant, at its sole expense, shall maintain on the Improvements, a broad form property policy, to the extent of 100% of full replacement value of the buildings and other insurable improvements. Notwithstanding Section 14.1, in the case of an insurable loss, an independent third-party trustee shall be appointed to receive and distribute insurance proceeds to assure repair, replacement, or reconstruction is completed according to the plans approved by both Tenant and Landlord. Tenant shall be solely responsible for payment of any deductible amount applicable to any loss and for payment of any costs of repair, replacement or reconstruction in excess of insurance proceeds.

**13.3 Hangar Keeper's Liability.** If hangars or structures are located on the Premises in which aircraft that are not owned by Tenant are placed for any reason or at any time, Tenant shall procure and maintain, at its sole expense, Hangar Keeper's Liability Insurance with a minimum coverage as stated in Section 1.1.

**13.4 Worker's Compensation.** If Tenant has employees, Tenant shall 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 this Lease.

**13.5 Employer's Liability.** If Tenant has employees, Tenant shall maintain, at its sole expense, Employer's Liability Insurance in such amounts as will fully comply with the laws of the State of Arizona.

**13.6 Additional Insureds.** The comprehensive general liability policy, property insurance, and hangar keeper's liability insurance shall name Landlord, its departments, officers, employees, officials, elected officials, volunteers, and agents as additional insureds or loss payee, as applicable.

**13.7 Insurance Policy Requirements.** 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 Landlord for payment of any premium or for assessments under any form of policy; (ii) the insurance company shall have no recourse against Landlord for payment of any premium or for assessments under any form of policy; and (iii) the policies are intended as primary coverage for Landlord and that any insurance or self-insurance maintained by Landlord shall apply in excess of and not contributory with the insurance provided by these policies.

13.8 **Certificates of Insurance.** Tenant shall continually maintain evidence of insurance. Upon Landlord's request, Tenant shall deliver Certificates of Insurance for the insurance policies required hereunder to the Landlord, together with an endorsement(s) to the insurance policy providing for the additional insured coverage. Failure of Landlord to request evidence of insurance shall not negate the requirement to obtain and maintain said Certificates of Insurance and endorsements.

In addition to the requirement above, Tenant must provide Landlord current insurance certificates for each aircraft stored in the Leased Premises.

13.9 **Waiver of Subrogation.** 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 sole expense, an appropriate waiver of subrogation endorsement from the insurer.

13.10 **No Limitation of Liability.** The insurance required by this Lease shall not limit Tenant's obligations under this Lease, including Tenant's obligations under the indemnification provisions of this Lease.

13.11 **Failure to Maintain Insurance.** Failure to maintain insurance as required by this Lease shall constitute a default under 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.

13.12 **Adjustment of Insurance Requirements.** The minimum insurance requirements as to type and amounts shall be subject to reasonable increases at the sole discretion of Landlord no more than once per calendar year.

#### **14. DESTRUCTION OF IMPROVEMENTS—TENANT'S RESTORATION OBLIGATIONS.**

14.1 **Restoration of Improvements.** If the Improvements or buildings on the Premises are damaged or destroyed (in whole or part) by reason of any cause whatsoever, Tenant shall repair, reconstruct, and rebuild the Improvements and any buildings to a condition equal to or better than existed prior to the damage ("Restoring the Premises") unless otherwise approved by Landlord. Tenant shall commence Restoring the Premises within sixty (60) days of the damage or destruction and shall diligently pursue to completion the repair or reconstruction. This Lease shall remain in full force and effect.

14.2 **Insurance Proceeds.** If the Improvements or buildings on the Premises are damaged or destroyed (in whole or part) by reason of any cause whatsoever, Tenant shall directly and immediately deposit all insurance proceeds received on account of such damage or destruction (the "Proceeds") with an independent escrow agent or trustee (the "Trustee") that is selected by Tenant and approved by Landlord. Tenant shall also deposit with the Trustee, within thirty (30) days following the damage or destruction, an amount equal to the deductible amount payable under Tenant's insurance policy, which amount shall be held and disbursed by the Trustee as part of the Proceeds. The Proceeds shall be released by the Trustee as follows: As Tenant progresses with Restoring the Premises, Trustee

will release the Proceeds to Tenant upon Tenant's submittal of certificates of costs (as described in Section 14.4). If Tenant fails to commence, diligently pursue, or complete Restoring the Premises, Trustee will release the Proceeds to Landlord to enable Landlord to completely restore the Premises.

**14.3 Failure to Commence Restoring the Premises.** If Tenant fails to commence restoration within ninety (90) days after the damage or destruction or fails to diligently pursue such restoration until completion, Landlord shall have the right to (and the right to use the Proceeds to) raze the Improvements and restore the Premises to the condition existing at the time of the Commencement Date of this Lease, terminate this Lease, and then request reimbursement of the Proceeds from Trustee.

**14.4 Certificates of Costs.** A certificate of cost is a signed request by Tenant or Landlord to Trustee (with a copy to the other Party) requesting Trustee to disburse Proceeds as a payment or reimbursement to Tenant or Landlord, as applicable, or contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with Restoring the Premises. All certificates of costs shall be accompanied by invoices for such amounts. The Trustee will promptly provide copies of all certificates and other materials received from the Party requesting payment to the other Party. Each of Tenant's certificate of costs shall also include a certification from an independent architect or contractor that such person has reviewed the budget for the work and certifies that the remaining Proceeds held by the Trustee following such disbursement are sufficient to complete the remainder of the restoration or replacement work. If the Tenant is unable to provide such a certification, Tenant shall pay the costs of restoration or replacement until Tenant is able to provide such certification. If a Party objects to any certificate of costs provided by the other Party prior to the Trustee making a disbursement pursuant to such certificate, Trustee may withhold the amount pending mutual instructions from Landlord and Tenant or receipt of a court order. Any objection to a certificate of cost must be in writing and state the costs to which objection is made and the basis for the objection.

A. **Disbursement of Remaining Proceeds.** Upon receipt by the Trustee of a statement with evidence reflecting that Restoring the Premises is complete and paid for in full, Trustee may pay Tenant any remaining balance of the Proceeds unless Landlord objects to such statement within ten (10) days following receipt of such statement and evidence.

B. **Deficiency.** If the Proceeds received by the Trustee are not be sufficient to pay the entire cost of Restoring 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 Restoring the Premises.

C. **Trustee's Costs.** Tenant shall pay all of Trustee's costs and fees and such payment shall be separate from the Proceeds.

**14.5 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 are damaged, destroyed, or 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 until the termination of the Lease as permitted by the Lease.

## **15. INDEMNITY AND HOLD HARMLESS.**

**15.1 Tenant Indemnification.** In addition to and without limiting other indemnity obligations in this Lease, and to the fullest extent permitted by law, Tenant shall defend, indemnify and hold harmless Landlord, its officers, employees, officials, elected officials, volunteers, and agents from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), relating to, arising out of, or alleged to have resulted from: (i) this Agreement or the use or occupancy of the Premises; (ii) any negligent acts, errors, mistakes or omissions by Tenant, or its agents, contractors, or employees in, on, or related to the Premises or Improvements; or (iii) Tenant's, or its agents', contractors', or employees' failure to comply with or fulfill the obligations established by this Lease.

A. Tenant's duty to defend, indemnify, and hold harmless shall arise in connection with any claim for damage, loss, or expenses including but not limited to claims resulting in bodily injury, sickness, disease, death, and any claims for loss of business and lost profits, and any claims for injury to, impairment, or destruction of any person or property.

B. The insurance coverage requirements in this Lease will in no way be construed as limiting the scope of Tenant's indemnity requirements in this Lease.

C. Tenant's duty to defend, indemnify, and hold harmless shall not include claims by third parties arising solely from the negligent acts or willful misconduct of the Landlord its departments, boards, commissions, council members, officials, agents and employees, or any person under Landlord's direction and control.

**15.2 Damage to Airport.** Tenant shall be liable for any damage (which is not merely ordinary wear and tear) to the airport and to any improvements thereon caused by Tenant or its officers, agents, employees, contractors, subcontractors, assigns, subtenants, guests, invitees, or anyone acting under Tenant's direction or control. All repairs for which Tenant is liable shall be made, at Landlord's option, (i) by Tenant at Tenant's expense, provided that the repairs are made timely and to Landlord's satisfaction as to the quality of repair or (ii) by Landlord at Tenant's expense.

**15.3 No Liability of Landlord.** Landlord, its departments, officers, employees, officials, elected officials, volunteers, and agents shall not be liable for any loss, damage, death, or injury of any kind whatsoever caused by Tenant's use of the Premises, or by any defect in any building or Improvements erected thereon, or arising from any accident, fire, or from any other casualty on the Premises or from other cause whatsoever, including use or storage of prohibited items, and Tenant hereby waives on Tenant's behalf all such claims against Landlord. Tenant will obtain insurance for its and Landlord's benefit covering any damages that would be imposed on Landlord in the absence of this Section.

## **16. ENVIRONMENTAL.**

**16.1 Use of Hazardous Material.** Tenant shall not cause or permit any Hazardous Material (as defined below) to be generated, brought onto, used, stored, or disposed of in, on, or about the Premises or the Improvements by Tenant or its agents, employees, contractors, subtenants, or invitees. Tenant, however, may use limited quantities of Hazardous Material if they are necessary for Tenant's use in its ordinary course of business conducted on the Premises and Tenant discloses to Landlord the types, amounts, and uses of such Hazardous Materials prior to bringing it onto the Premises (this exception does not apply to, or allow for, the disposal of Hazardous Materials on the Premises). Landlord may limit the amounts of such Hazardous Materials or require additional safety measures. Further, Tenant shall:

A. Use, store, and dispose of all such permitted Hazardous Material in strict compliance with all applicable statutes, ordinances, and regulations;

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

C. Comply with all manufacturer's recommendations regarding the use, storage, and disposal of permitted hazardous materials, to the extent such recommendations do not conflict with applicable legal requirements.

**16.2 Definition of Hazardous Material.** "Hazardous Material" means 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 Premises or Improvements. Hazardous Material includes without limitation: (i) any "hazardous substance" as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code §§ 9601-9675); (ii) any "hazardous waste" as defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code §§ 6901-6992K); (iii) 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; (iv) petroleum products; (v) radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code §§ 2011-2297G-4; (vi) asbestos in any form or condition; and (vii) polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs.

**16.3 Notice of Release or Investigation.** If Tenant becomes aware of any actual or threatened release of any Hazardous Material on, under, or about the Premises or the Improvements, or becomes aware of 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 or the Improvements, Tenant shall (i) notify the Landlord within twenty-four hours (24) after learning of it, (ii) provide written notice of each stage of the release or investigation within five (5) days after learning of it, and (iii) simultaneously with such notice, furnish to Landlord copies of any claims, notices of violation, reports, or other writings received by Tenant which provide notice concerning the release or investigation.

**16.4 Asbestos Notification.** Tenant acknowledges that Landlord has advised Tenant that any buildings located on the Premises contain or, because of age, are likely to contain asbestos-containing materials (ACM). If Tenant undertakes any alterations, additions, or improvements to the

Premises, Tenant shall 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 a Landlord approved asbestos-removal plan and in accordance with all applicable environmental laws, including giving all notices required by law.

**16.5 Indemnification.** In addition to and without limiting other indemnity obligations in this Lease, and 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, and its employees, officers, and officials for all losses arising out of or resulting from the release of any Hazardous Material in, on, or about the Premises or Improvements, or the violation of any environmental law, by Tenant or Tenant's employees, agents, contractors, or invitees. This indemnification includes:

A. Tenant's obligations to indemnify, defend, and hold harmless includes, but is not limited to: (i) losses attributable to diminution in the value of the Premises, the Airport, or other property or improvements at the Airport; (ii) loss or restriction of use of rentable space in the Airport; (iii) adverse effect on the marketing of any space on the Airport; and (iv) 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.

B. If Tenant excavates or removes any soil from the Premises, whether or not such soil is contaminated, and notwithstanding any remediation responsibility Landlord may otherwise have, 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 increased costs or expenses 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 Premises and is only intended to extend to those acts committed by Tenant and Tenant's employees, agents, contractors, guests, and invitees, and not those committed by other parties or previous tenants. Tenant acknowledges that Tenant has been given the opportunity to review Landlord's records, if any, regarding the environmental history of the Premises.

C. Tenant's obligations to indemnify, defend, and hold harmless shall survive the expiration or termination of this Lease.

**16.6 Remediation Obligations.** If the presence of any Hazardous Material brought onto the Premises or the Improvements by Tenant or Tenant's employees, agents, contractors, guests, or invitees results in contamination of the Premises, the Airport, or any improvements on the Premises, including any building or structure, Tenant shall promptly take all necessary actions, at Tenant's sole expense, to return the Premises, the Airport, and any such improvements to the condition that existed before the introduction of such Hazardous Material. Tenant shall obtain Landlord's written approval



of the proposed remedial action prior to commencing the remedial action. This provision does not limit the indemnification obligations set forth in this Lease.

## **17. REPORTS AND COLLECTIONS FROM SUBTENANTS.**

**17.1 Aircraft Reports.** Tenant shall, within fifteen (15) days after receiving Landlord's request, submit a written report to Landlord, on a form supplied by Landlord, listing all aircraft that are located on the Premises, including, but not limited to, aircraft, make, model, registration number, owner's name, address, telephone number and any additional information requested by any federal or state agency, and any other information reasonably requested by Landlord.

**17.2 Tenant and Subtenants Report.** Tenant shall, within fifteen (15) days after receiving Landlord's request, submit a written report to Landlord on a form supplied by Landlord, which shall include, but not be limited to, the type of business (es) being conducted on the Premises, number of employees, Tenant's and Subtenants' name, address, and telephone number.

**17.3 Collections from Subtenants.** Tenant agrees to use best efforts to assist Landlord in the collection of any and all fees and charges that a subtenant owes to Landlord; and further, Tenant agrees that it will either (i) terminate its sublease with any subtenant that fails to pay fees and charges owing to Landlord for more than thirty (30) days after Landlord has provided written notice to subtenant with a copy to Tenant, or (ii) pay such fees and charges for subtenant within forty-five (45) days of Landlord's notice for payment.

## **18. INSPECTIONS.**

**18.1** With forty-eight (48) hours prior notice to Tenant, Landlord may enter upon the Premises, or any part thereof, for the purpose of ascertaining its condition or to inspect to determine if Tenant or subtenant is observing and performing the obligations assumed by it under this Lease, including fire inspections of privately-owned hangars, all without hindrance or molestation from Tenant. In the event Landlord believes there is a health, safety, welfare, or other emergency situation on the Premises, Landlord may enter and inspect the Premises without prior notice. Further, this provision of the Lease is not intended to limit any entry by Landlord in an emergency situation or in its maintenance or operation of the Facility or in Landlord's capacity as a municipality exercising its police power or in its criminal law enforcement capacity, nor to any entry authorized by any writ or warrant issued by any Court, nor to any entry authorized by any health or welfare statute, code, ordinance, rule or regulation.

**18.2** Pursuant to Section 106.1 of the International Fire Code (and the Mesa Fire Code) Inspection Authority, the Fire Code official is authorized to enter and examine any building, structure, marine vessel, vehicle or premises in accordance with Sec 104.3 for the purpose of enforcing this code.

**19. NON-EXCLUSIVE RIGHT.** Nothing in this Lease shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103, as amended in the future.

**20. LANDLORD'S RIGHT TO DEVELOP AND MODIFY AIRPORT.** Landlord reserves the rights to further develop, re-develop, improve, or modify the landing/take off areas, taxi areas, and aircraft parking areas of the Airport as it sees fit regardless of the desires or views of Tenant and without interference or hindrance from the Tenant. In addition, Landlord reserves the right to modify or alter any portion of the Airport in any manner desired by Landlord provided that Landlord continues to provide Tenant a means of access to the Premises, but not necessarily the same access that was in place at the time of execution of this Lease or any additional access.

**21. LEASE SUBORDINATE TO AGREEMENTS WITH USA.** This Lease is subordinate and subject to the provisions and requirements of all existing and future agreements (including but not limited to 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, as amended) applicable to the development, operation, or maintenance of the Airport, and all Federal Aviation Administration and Homeland Security regulations. Tenant agrees to comply with all such agreements and laws.

**22. WAR OR NATIONAL EMERGENCY.** This Lease and all the provisions hereof shall be subject to any 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.

**23. NON-DISCRIMINATION.**

**23.1 Non-Discrimination.** In accordance with 14 C.F.R. § 152.405, Tenant 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, sex, or handicap be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Tenant will not allow any person to be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. Tenant will require that its covered sub-organizations provide assurances to Landlord that they similarly will undertake affirmative action programs and that they will require assurances from the sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

**23.2 Fair Accommodation.** Tenant shall take all action to ensure that its accommodations and services are furnished on a fair and reasonable basis, without bias or unjust discrimination, to all users. Tenant shall charge fair and reasonable prices, without bias or unjust discrimination, 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 purchasers. 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.

**23.3 Compliance with Laws.** Tenant agrees to comply with all provisions of applicable federal, state, and local laws, including without limitation those laws related to non-discrimination, equal employment opportunity, and the Americans with Disabilities Act.

**23.4 Material Default, Compliance with Laws.** Tenant acknowledges that noncompliance with this Section shall constitute a material default of this Lease. In the event of such a default, Landlord shall have the right to terminate this Lease, 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 in any manner allowed by law.

**23.5 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 or services to the public on the Premises.

## **24. ASSIGNMENT.**

**24.1 Assignment.** Tenant shall not sell, convey, assign, encumber, or transfer this Lease, or Tenant's leasehold or other interest in the Premises, or any portion thereof, (collectively an "Assignment") without the prior written consent of the Landlord, which consent may be given or withheld in Landlord's sole discretion. Additionally, any transfer of the ownership or controlling interest of Tenant, by a factor of more than fifty percent (50%) from the ownership existing at the Effective Date, shall be deemed to be an assignment of this Lease. 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 Assignment without Landlord's prior written consent shall be void and shall constitute a default by Tenant. Further, any assignment for the benefit of creditors, including foreclosure or deeds in lieu of foreclosure, voluntary bankruptcy or reorganization, or otherwise without the written consent of Landlord shall be void.

**24.2 Assignment Instrument.** Prior to any assignment, Tenant shall have its assignee execute an agreement satisfactory to Landlord, 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 are assigned. No assignment shall release Tenant from any obligations under this Lease arising before the assignment. If the assignee is an entity that is indirectly or directly controlling, controlled by, or under common control with Tenant, or to any entity that acquires all or substantially all of Tenant's assets, then Tenant and the assignee shall be jointly and severally liable to Landlord for all Lease obligations. In no event shall Tenant have any right of approval or consent over amendments or extensions of the Lease following assignment thereof. This Lease shall control any conflict between this Lease and the terms of any assignment or any document related to any assignment. Landlord's consent to any assignment does not in any way expand or modify this Lease or waive, diminish, or modify any of Landlord's rights or remedies under this Lease.

## **25. SUBLEASING.**

**25.1 Subleasing.** Tenant may sublease all or a portion of the premises without Landlord's approval so long as Tenant and subtenant(s) comply with all terms of this Lease.

**25.2 Sublease Instrument.** Tenant shall include and incorporate into each sublease a requirement that the subtenant agrees to perform faithfully and to assume and to be bound by all terms,

covenants, provisions, and agreements of this Lease for the portion of the Premises being subleased. Landlord shall be identified as a third-party beneficiary to such obligations by the subtenant. Notwithstanding a subtenant's agreement to perform any obligation under this Lease, no sublease will release Tenant from its obligations and liability under this Lease. Tenant and the sublessee shall be jointly and severally liable to Landlord for all Lease obligations of the subleased portion of the Premises.

## **26. DEFAULT BY TENANT.**

**26.1 Events of Default.** The happening of any one of the following events shall be considered a material breach and default by Tenant (which shall include any assignee or subtenant) under this Lease:

A. **Monetary Default.** 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 may be an event of default under this Section. Tenant shall only be permitted one notice of failure to pay any installment of rent hereunder or any other sum herein required to be paid by Tenant within any consecutive twelve (12) month period during the Term of this Lease. A second monetary default within any consecutive twelve (12) month period shall be deemed an immediate Event of Default hereunder, without Tenant having the right to receive any additional notice of failure to pay and a time to cure; or

B. **Drugs, Guns, Felony.** The occurrence of any of the following on the Premises: storage on the Premises of weapons, ammunition or explosives in violation of applicable laws; use of the Premises as a location for manufacturing, handling, storing or selling of illegal drugs; or the commission of any felony on the Premises by Tenant or any officer or employee of Tenant that Landlord determines is inconsistent with the safe and orderly operation of the airport. Failure to cure such violation within ten (10) days following notice thereof from Landlord, shall constitute an immediate Event of Default and Tenant shall not be entitled to any notice or cure period if the violation constitutes an immediate danger to health or safety or is a felony under applicable state or federal law; or

C. **Compliance with Laws.** A violation of Section 10.1 shall be a material default subject to Subsection G of this Section; or

D. **Other Illegal Activities.** Operation or maintenance of the Premises in violation of applicable law and failure to cure such violation within ten (10) days following notice thereof from Landlord, shall constitute an immediate Event of Default and Tenant shall not be entitled to any notice or cure period if the violation constitutes an immediate danger to health or safety or is a felony under applicable state or federal law; or

E. **Abandonment.** Abandonment of the Premises as provided in Section 31 of this Lease; or

F. **Insurance, Lapse or Termination.** The lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, and failure to cure such

violation within ten (10) days following notice from Landlord of such violation. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage under this Lease to the Landlord; or

G. All Other Defaults Under the Lease. If default shall be made by Tenant in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions in this Lease other than those referred to in the foregoing subsections (A) through (F), and such default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if Tenant proceeds with due diligence during such thirty (30) day period to substantially cure such default and is unable by reason of the nature of the work involved, to cure the same within the required thirty (30) days, Tenant's time to do so shall be extended by the time reasonably necessary to cure the same as determined by Landlord, but in no event shall any cure period exceed ninety (90) days; or

H. Bankruptcy, Voluntary. If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall take the benefit of any relevant legislation that may be in force for bankrupt or insolvent debtors or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state, or other statute, law or regulation, or if Tenant shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or shall make any general assignment for the benefit of creditors; or

I. Bankruptcy, Involuntary. If a petition shall be filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation, and shall remain undismissed or unstayed for ninety (90) days, or if any trustee, receiver or liquidator of Tenant, or if all or a substantial part of its properties, shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated and unstayed for ninety (90) days.

J. Late Charge and Interest. In the event that any payment required to be made by Tenant to Landlord under the terms of this Lease is not received within the notice and cure period, if any, a late charge shall become immediately due and payable as a late charge in an amount equal to fifteen percent (15%) of the payment that is late. Further, in the event of Tenant's failure to pay Rent or any other amounts due under this Lease, Tenant shall pay Landlord interest on any such overdue payments and associated late charges at the rate of one-and one-half percent (1½%) per month until such sums are paid, but in no event an amount greater than permitted by law. The late charge and interest on overdue amounts shall not limit any claim by Landlord for damages due to Tenant's default.

K. No Implied Waivers. No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition hereof or to exercise any right or remedy consequent upon a breach hereof, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach. To be effective, all waivers must be in writing and signed by the Party to be charged. No waiver shall affect any other then existing breach not specifically waived or any subsequent breach.

L. **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.

## **27. TERMINATION.**

**27.1 Termination.** Upon the occurrence of any default by Tenant which is not cured within the applicable notice and grace periods, if any, set forth above, the Landlord at any time thereafter, but not after such default is cured, may give written notice to Tenant terminating this Lease and the Term hereby demised and all rights of Tenant under this Lease shall expire and terminate as though such date were the date originally set forth in the Lease for the termination of the Lease.

**27.2 Automatic Termination of Lease.** This Lease shall automatically terminate without further action and the Term hereby demised and all rights of Tenant under this Lease shall expire and terminate upon the occurrence of any of the following: (i) expiration of the Initial Term if Tenant does not extend this Lease for the Permanent Term; (ii) the Commencement of Construction does not occur on or before the Construction Start Date; or (iii) expiration of the Permanent Term. Nothing set forth herein waives Landlord's right to terminate this Lease for default.

**27.3 Tenant Liability Post-Termination.** Expiration or termination of this Lease shall not relieve Tenant of its liabilities or obligations under this Lease which have accrued prior to the termination or expiration hereof.

**27.4 Specific Performance.** If a default is not cured within the applicable notice and grace periods, if any, set forth above, Landlord may, at its option, commence an action for specific performance of the terms of this Lease pertaining to such default.

**27.5 Right to Re-enter and Re-Lease.** 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, to re-enter the Premises and occupy it and any improvements made by Tenant and to hold and 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.

**27.6 Additional Remedies Upon Termination.** Landlord shall have the right to recover from Tenant upon any termination of this Lease resulting from a Tenant default: (i) any brokerage commissions paid or payable by Landlord in connection with this Lease that is allocable to the portion of the term of the Lease following termination, (ii) any other expenses incurred by Landlord in

connection with this Lease that is allocable to the portion of the term of the Lease following termination, and (iii) the amount by which the present value of the Rent and other charges that would have been payable by Tenant during the remaining Term of this Lease in the absence of termination exceed the present value of the rent Landlord reasonably will collect for that time period.

**27.7 Continuation of Lease.** If there is a Tenant default, this Lease shall continue in force and effect for so long as the Landlord does not terminate this Lease, and Landlord may enforce all rights and remedies of Landlord including, without limitation, the right to recover Rent as it becomes due hereunder. Acts of maintenance, 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 this Lease.

**27.8 Remedies Cumulative.** If there is a Tenant default, Landlord, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach.

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

## **28. RESERVATIONS BY LANDLORD.**

**28.1 Utility Easements.** Landlord reserves for itself all utility easements and rights-of-way in, over, under, upon, across, and along the Premises reasonably necessary for the development of the Airport, including without limitation, easements for sanitary sewers, drains, storm water drains, pipelines, manholes, connections, water, oil and gas pipelines, electric, cable television, telephone and fiber optic lines, 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, under, upon, along, or across all or a portion of the Premises to third parties without the consent of Tenant.

**28.2 Restoration of Premises in Event of Landlord's 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 type of construction by Landlord on the Premises, except for construction completed by Landlord that is the responsibility of Tenant under the terms of this Lease. Landlord further agrees that, should the exercise of the right set forth in Section 28.1 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.

**28.3 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 the Airport or the operations of any aircraft through said airspace or landing, taking off, or operating at the Airport.

**28.4 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 foliage on the Premises above the height limitations stated in FAR Part 77 or any structure or object deemed by the Federal Aviation Administration to be a hazard to air navigation. 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, object, or foliage and charge the expense thereof to the Tenant, which Tenant shall assume and pay.

**29. 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, structure, object, or foliage on the Airport, which in the opinion of Landlord would limit the usefulness of the Airport or constitute a hazard to aircraft.

**30. FAA APPROVAL.** The provisions of this Lease are subject to review and objection by the Federal Aviation Administration. If the Federal Aviation Administration objects to any provision of this Lease, either Landlord or Tenant may terminate this Lease within five (5) business days following such party's receipt of notice of the objection. If objection is made by the Federal Aviation Administration and neither party terminates this Lease, this Lease shall be deemed amended to conform to the objection of the Federal Aviation Administration.

**31. ABANDONMENT.** If Tenant, prior to the expiration or termination of this Lease by lapse of time or otherwise, relinquishes possession of the Premises as its primary place of business 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, but not the obligation, to remove and to dispose of the same, without liability to account therefore to Tenant or to any person claiming under Tenant, or to require Tenant to dispose of the same, and, if Tenant fails to do so within thirty (30) days, to dispose the same and recover the costs of disposal from Tenant.

**32. 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 that are pre-approved in writing by Landlord and are in compliance with the Mesa City Code and the City of Mesa-Falcon Field Airport Planned Area Development Design Standards, which determination shall be made at Landlord's sole discretion.

**33. 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.

#### **34. MISCELLANEOUS PROVISIONS.**

**34.1 E-Verify Compliance.** To the extent applicable under A.R.S. § 41-4401 and 23-214, Tenant represents and warrants compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements of A.R.S. 23-214(A). Breach of the above-mentioned warranty shall be deemed a breach of the Lease and may result in the termination of the Lease by Landlord. Landlord retains the legal right to randomly inspect the papers and records of any employee who works under this Lease to ensure compliance with the above-mentioned laws.

**34.2 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. Tenant acknowledges that Landlord may use the services of attorneys and paralegals who are employees of Landlord in connection with this Lease and, in such event, Landlord shall be entitled to an award of attorneys' fees that would reflect the costs that Landlord would have incurred if Landlord had elected to use non-employee legal services, with Landlord's employees being deemed to have charged such hourly rates for services as would a reasonable independent attorney providing services to Landlord.

**34.3 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 and the State of Arizona, 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.

**34.4 Condemnation.** If at any time during the term of this Lease the Premises or any part thereof are 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 along with 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.

**34.5 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, as well as regular U.S. mail, and shall be addressed to the parties at the addresses specified for each party in this Lease 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 stated in Section 1.

**34.6 Change of Address.** It shall be Tenant's responsibility to notify Landlord in writing of any change in the address for notices to Tenant. Tenant's failure to give such notice of change of address shall render notices sent by Landlord to an incorrect former address fully valid and binding on Tenant.

**34.7 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.

**34.8 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 34.8 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.

**34.9 Time.** Time is of the essence.

**34.10 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.

**34.11 Tenant 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.

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

**34.13 A.R.S. 38-511.** Notice is hereby given of the applicability of Arizona Revised Statute §38-511. Tenant understands and agrees that pursuant to the provisions of A.R.S. § 38-511, Tenant may cancel this Lease, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Lease on behalf of Tenant is at any time while this Lease or any extension thereof is in effect an employee of any other party to this Lease in any capacity or a consultant to any other party to this Lease with respect to the subject matter of the Lease.

**34.14 Entire Agreement, Incorporation, Order of Preference.** This Lease and the attached Exhibits (which are incorporated herein by this reference) constitute the entire agreement among the Parties pertaining to the subject matter hereof and shall not be changed or added to except in writing

signed by all Parties. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, pertaining to the subject matter hereof are hereby superseded.

**34.15 Construction.** The terms and provisions of this Lease shall be interpreted and construed in accordance with their usual and customary meanings and 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 Lease, whereby ambiguous or conflicting terms or provisions contained in this Lease shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Lease or any earlier draft of the same.

**34.16 Surviving Provisions.** All warranties, representations, and duties to indemnify, defend, and hold harmless shall survive the termination or expiration of this Lease. Additionally, all obligations to restore the Premises shall survive the termination or expiration of this Lease as well as any other section which reasonably should survive shall survive.

**34.17 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.

**34.18 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.

[SIGNATURES ON NEXT PAGE]



STATE OF Arizona )  
 ) ss  
County of Maricopa

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of November, 2019, by Dale Churchill, the President of Wings of Flight Foundation.

(Seal and Expiration Date)

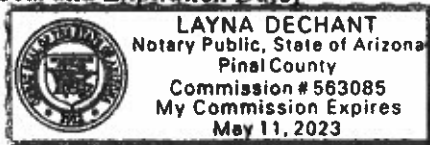


Layna Dechant  
Notary Public

STATE OF Arizona )  
 ) ss  
County of Maricopa

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of November, 2019, by Scott Andrews, the President of Falcon Warbirds Foundation.

(Seal and Expiration Date)



Layna Dechant  
Notary Public

## **Exhibit A**

### **Legal Description of Premises**

Falcon Field Airport, 4626 East Fighter Aces Drive, Mesa, AZ 85215; Tax ID: Portion of 141-36-001E.

Also known as that portion of Parcel 33/34 at Falcon Field Airport known as the West World War II hangar and attached office/storage building.

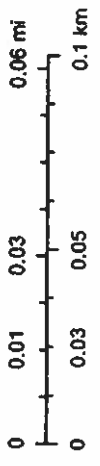
**Exhibit B**  
**Depiction of Premises**

# Exhibit "B" Depiction of Premises



7/25/2019 5:12:53 PM

1:2,257



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan,  
Office of Enterprise Technology/GIS  
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# Exhibit C Development Plan

N/A

**Exhibit D**  
**Falcon Field Noise Abatement**  
**Program and Procedures**

8/20/09

## Falcon Field Task Force Mission, Goals & Recommended Strategies

### MISSION

To suggest reasonable compromises that balance and respond to varying interests regarding how aircraft operations should be conducted at Falcon Field while ensuring the airport's long-term success

### GOALS

1. Update Falcon Field's business/economic plan to ensure the airport remains financially stable, that businesses continue to thrive, and while also ensuring recommendations protect the historical recreational uses at Falcon Field.
2. Identify reasonable ways for aviation academies and flight training schools to meet their business needs while responding to community concerns about flight training operations.
3. Seek reasonable ways to mitigate community safety and noise concerns.
4. Set reasonable procedures and/or expectations for Falcon Field and ensure all airport users are well informed and responsive to these agreed upon standards.

### STRATEGIES

By consensus, the task force recommends the strategies below be completed within the framework of these guiding principles: a) Recommendations need to be acceptable to the City and the Federal Aviation Administration (FAA); b) Rules must be reasonable and seek to balance community concerns and the needs of airport businesses; and c) All operational procedures and guidelines being proposed are to be followed to the maximum extent possible.

1. Work with FAA to create an expectation that (safety and weather permitting) training operations use the north runway (4L/22R) to fullest extent possible.
2. Work with FAA to provide priority of south runway (4R/22L) for non-training general aviation (i.e. recreational, business) and corporate aircraft uses.  
Note: Primary reason for items 1 & 2 is to seek more efficient (cutting down on waiting times in the cue) arrivals and departures for corporate and other non-training operations at Falcon.
3. Expect that there be no repetitive training operations at Falcon Field between 10 p.m. and 5:30 a.m. to the fullest extent possible and that all transient training flights (flights that originate from other airports) are discouraged during this time period.
4. Work with FAA to maximize use of the "calm wind" preferred runways of 4L/4R. Note: calm wind refers to use of a preferred runway when weather conditions permit. Runways 4L/4R are selected as preferred because they allow aircraft to minimize impacts to residential areas by flying over the Longbow golf course, industrial areas and the Salt River.
5. Encourage pilots, including those who are receiving flight training, to always fly tight patterns (for example, as close of a pattern to the airport as possible or  $\frac{3}{4}$ - to one-mile down wind) and to approach the runways when landing at or above the downward sloping path that is provided by the precision approach path indicator (PAPI) landing aid system. (See attachment 1)

6. Expect that RPM adjustments on aircraft engines are made smoothly and slowly to avoid creating a sudden noise event.
7. Departing aircraft will be expected to climb at  $V_y$  (i.e. in an altitude as quickly as possible) until reaching pattern altitude 2400 ft. (See attachment 2)
8. Maintain a min. of 1000' above ground when flying over populated areas, except when landing or taking off. Note: Task force's goal is to expect users to adhere to FAA regulations.
9. In accordance with FAR 91.119, training procedures that simulate an engine failure will be practiced only when there is no doubt that the aircraft can make a safe landing on the runway in the event an actual engine failure occurs.
10. Re-establish and emphasize the firm expectation that takeoffs must be completed according to the established Falcon Field noise abatement procedures (See attachment 3).
11. Expedite construction of 4R runway run-up area expansion to eliminate the need for Sabena to first taxi to Runway 22L (north) and then taxi to runway 4R (south) in order to use the preferred calm wind takeoff runway on 4R. Note: goal here is to make these run-up operations as seamless as possible as a way to further encourage regular use of the preferred runway.
12. Expedite the improvements along the shoulder areas on runway 4L-22R in order to exceed safety standards and to serve as another way to encourage all Sabena training schools to use this north runway for student operations.
13. Identify who is flying into and out of Falcon Field via City data collection. Note: this is public information and is available through the FAA air traffic control. The goal is to better understand who is flying into and out of Falcon Field and as a way to identify patterns that generate complaints and in order to pursue further constructive discussions with the pilots and/or FAA, when warranted.
14. Work with the FAA to explore raising the minimum descent altitude for the non directional beacon (NDB) approach into Falcon Field. Note: this is an instrument on the ground that pilots use when practicing approaches to Falcon.
15. Initiate an educational effort and extensive mailing campaign to all Arizona General Aviation airports, flight schools, flight publications, Airport/Facility Directory SW, dissemination to aviation groups, use of FAA pilot messages (ATIS or AWOS), bulletins to on-base pilots to and other users to make them aware of Falcon's operational expectations, particularly those occurring after tower operating hours.
16. Establish creative programs to positively reinforce those who follow noise abatement and flight safety rules and to help the City create a culture of compliance with these rules and holding each other accountable in constructive ways.
17. Work with FAA tower to ensure good communication. Tower should be asked to record an ATIS message at the end of the tower day that reminds aircraft operators to use the preferred runway (4R) when weather permits, and to remind them that, to the fullest extent possible, no repetitive flight training operations (such as touch and go's or stop and go's) should be conducted between 10 p.m. and 5:30 a.m., and that all aircraft training flights that originate at other airports are discouraged during this time period.
18. Acquire an automated surface operating system (ASOS) to advise pilots of current weather conditions on the airport.
19. Submit to the Arizona Department of Real Estate an updated Public Airport Disclosure Map that accurately reflects current traffic pattern airspace boundaries
20. Place full priority on pursuing the task force's consensus recommendations first. If additional tools, information and/or cooperation required, consider conducting a Part 150 study.

# Exhibit E Project Schedule

N/A