

# ***COUNCIL DECISION REQUEST***

SUBJECT: Airport Lease

MEETING DATE: June 7, 2007

PAYSON GOAL: NEW:

EXISTING:

ITEM NO.:

TENTATIVE SCHEDULE:

SUBMITTED BY: Fred Carpenter

AMOUNT BUDGETED: N/A

SUBMITTAL TO AGENDA

EXPENDITURE REQUIRED: N/A

APPROVED BY TOWN MANAGER

CONT. FUNDING REQUIRED: N/A

\_\_\_\_\_ 

EXHIBITS (If Applicable, To Be Attached):

Draft lease

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## **POSSIBLE MOTION:**

I move to direct staff to issue a call for bids for lease of Payson Municipal Airport to an independent non-profit corporation.

## **SUMMARY OF THE BASIS FOR RECOMMENDED MOTION:**

At the March 8 special meeting, Council approved a motion directing the Town Manager to explore the possibility of entering into an airport lease with an independent non-profit corporation. Staff has concluded it is feasible to lease the airport to such an organization. However, it is necessary to obtain FAA and ADOT Aeronautics approval of the lease. We held a telephone conference with both agencies on May 1 during which several issues were resolved. We have yet to receive written confirmation regarding the agencies' approval but hope to receive it soon.

State statutes require that the lease be bid and that the bid be advertised for not less than 30 nor more than 60 days before the date set for submission of bids. Staff is confident enough that we will receive FAA and ADOT approval soon that we believe we issue the call for bids, with a written caveat that there could be changes if required by these two agencies.

**PROS:** (1) With a lease, the Town's direct daily operational responsibility for the airport will be greatly diminished;  
(2) With a lease, the Town's budgetary commitment to the airport for operational purposes will be greatly diminished

**CONS:**

**PUBLIC INPUT (if any):**

**BOARD/COMMITTEE/COMMISSION ACTIONS/RECOMMENDATIONS (if any) (give dates and attach minutes):**

JUN 07 2007 H.2

**AIRPORT LEASE AGREEMENT  
BETWEEN**

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**AND THE TOWN OF PAYSON**

*May 1, 2007 Draft  
[awaiting FAA & ADOT  
opinion letters]*

May 1, 2007

# ***TABLE OF CONTENTS***

1.	<b>Parties.</b>		
2.	<b>Effective Date and Term.</b>		
3.	<b>Lessor/Town's Consideration.</b>	24.	<b>Interest; Dispute Resolution; Attorneys' Fees and Costs</b>
4.	<b>Lessee's Consideration.</b>		<b>No Partnership; No Third Party Beneficiaries.</b>
5.	<b>Airport Operations.</b>	25.	<b>Counterparts.</b>
6.	<b>Airport Development and Improvement.</b>	26.	<b>No Waiver.</b>
7.	<b>Routine Maintenance and Repairs.</b>	27.	<b>Non-Appropriation.</b>
8.	<b>Consultation.</b>	28.	<b>Construction of Lease; Further Documentation.</b>
9.	<b>Ownership and Revenue of the Leased Premises and Leased Personal Property.</b>	29.	<b>Time of Essence; Time Periods.</b>
10.	<b>Existing Leases and Agreements.</b>	30.	<b>Severability.</b>
11.	<b>Subleases.</b>	31.	<b>Authority.</b>
12.	<b>Lessee's Organizational Requirements.</b>	32.	<b>Representations and Warranties.</b>
13.	<b>Lessee's Accounting and Required Reporting.</b>	33.	<b>Entire Lease.</b>
14.	<b>Approval by the FAA and ADOT.</b>	34.	<b>Binding and Effective.</b>
15.	<b>Insurance.</b>	35.	<b>Right of Flight.</b>
16.	<b>Indemnity.</b>	36.	<b>Height Restriction.</b>
17.	<b>Termination.</b>	37.	<b>No Interference with Aircraft.</b>
18.	<b>Modification, Assignment or Transfer.</b>		
19.	<b>Taxes/Assessments.</b>	38.	<b>No Grant of Exclusive Right.</b>
20.	<b>National Emergency or Fire.</b>	39.	<b>Rights of United States Government.</b>
21.	<b>Condemnation or Acquisition by Others.</b>	40.	<b>No Interference with Airport Uses.</b>
22.	<b>Notice and Representatives.</b>	41.	<b>FAA Mandated Provisions.</b>
23.	<b>Applicable Law; Conflict of</b>	42.	<b>Remedies Cumulative.</b>
		43.	<b>Headings.</b>
		44.	<b>Abandonment of Leased Premises.</b>

**AIRPORT LEASE AGREEMENT  
BETWEEN**

**AND THE TOWN OF PAYSON**

**R E C I T A L S**

WHEREAS, the Town of Payson (“Town”) owns certain real property and operates a general aviation municipal airport (the “Airport”); and

WHEREAS, the Town wishes to lease to \_\_\_\_\_, an Arizona non-profit corporation (“Lessee”), certain portions of the real property, certain improvements on the real property, and certain personal property; and

WHEREAS, the Town seeks to ensure the viability of the Airport as a self-supporting enterprise and to ensure that the Airport continues to be managed and administered in a manner that will secure the Town's current and future fiscal interest in the facility; and

WHEREAS, the Town has received numerous Federal and State grants for the Airport and seeks to ensure that all of the assurances and requirements of such grants are met; and

WHEREAS, LESSEE is a non-profit corporation formed for airport or air terminal purposes; and

WHEREAS, the Parties are authorized to enter into this agreement pursuant to A.R.S. §§28-8423 through 8425,

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. **Parties.** The parties to this Airport Lease Agreement (“the Lease”) are both Town and Lessee described above (collectively, the “Parties”).
2. **Effective Date and Term.**
  - 2.1 This Lease shall be effective on the date the last Party signs it and shall continue in full force and effect until June 30, 2037 unless otherwise terminated as provided herein.
  - 2.2 The Lessee may, at its option, extend this Lease for an additional term of twenty (20) years by providing the Town with written notice of its intention to extend for such additional term no earlier than January 1, 2037 and no later than March 31, 2037; provided, however, that any such renewal shall comply with the extension provisions of A.R.S. § 28-8425, as amended.

3. **Lessor/Town's Consideration.**

3.1 Town shall lease to Lessee the following:

1. All of the real property together with the improvements thereon described on Exhibit A attached hereto (~~the "Leased Premises"~~). The term "Leased Premises" shall include the real property and improvements thereon described in this Paragraph 3.1 that are included in this Lease, together with such real property and improvements which may be included in this Lease at a future date.
2. The real property and aircraft hangars constructed thereon as described in Exhibit B on the first day of the month after at such time as the Town of Payson, Arizona, \$860,000 Excise Tax Revenue Obligations, Series 2003A and \$440,000 Taxable Excise Tax Revenue Obligations, Series 2003B are paid in full and the Town's obligations thereunder are fully satisfied. It is anticipated that such obligations will be fully satisfied in October of 2009.
3. ~~If the Town purchases real property and such real property is substituted under Arizona Department of Transportation grant \_\_\_\_\_ for the existing Town Yard property located at 1002 West Airport Road, the newly purchased real property shall be included in the leased area by an addendum hereto.~~
3. The Town Yard located at 1002 West Airport Road, as more particularly described in Exhibit C, ("the Town Yard"). On August 31, 2019, when the Federal Aviation Administration ("FAA") and the Arizona Department of Transportation, Aeronautics Division ("ADOT") assurances relating to the Town Yard expire, the Town Yard shall no longer be subject to this Lease or included as part of the Leased Premises. During the time that the Town Yard is included in the Lease, Lessee shall enter into and continue a sublease with the Engineering Department of the Town of Payson for the Town Yard with annual rent in the amount of \$ \_\_\_\_\_ in substantially the form of the sublease attached as Exhibit D.
4. Any and all property acquired by the Town pursuant to the 2008-2012 Airport Capital Improvement Plan (the "ACIP") as shown in Exhibit E attached h ereto.
45. All of the personal property described in Exhibit F attached hereto ("the Leased Personal Property").

3.2 During the term of this Lease, the Town shall assign to Lessee all of its interests in those existing Airport leases described in Exhibit G attached hereto. If the Town has received any rents which were paid to the Town prior to the effective date of this Lease, the amount of such rents attributable to the time period for which the Lessee has been assigned the Town's interest in such leases shall be prorated and forwarded to the Lessee.

3.3 The Town commits to providing: ~~the Town's portion of matching funds for all projects listed in the 2008-2012 Airport Capital Improvement Plan (the "ACIP") as~~

shown in Exhibit D attached hereto. But in no case, shall the Town's required contribution exceed \$\_\_\_\_\_.

1. the Town's portion of matching funds for all projects listed in the ACIP;
2. the Town's portion of matching funds (or the full cost if matching funds are not available) for all projects included in the Runway Safety Team recommendations, attached as Exhibit H; and
3. the Town's portion of matching funds for the Airport Master Plan Update to be complete by the end of 2008.

4. **Lessee's Consideration.**

- 4.1 Lessee shall pay to the Town the sum of \_\_\_\_\_ and 00/100 (\$\_\_\_\_.00) per year. The first payment shall be made on or before July 1, 2008, and subsequent payments shall be made on or before July 1 of each succeeding year during the term of the Lease. If the option to extend set forth in paragraph 2.2 is exercised, the Parties will negotiate a fair rental at that time. If the Parties cannot agree on a fair rental, the option to extend shall be cancelled and the Lease shall be terminated.

*Alternate 4.1 Lessee shall pay to Town the sum of \$\_\_\_\_\_ per year for the first \_\_\_\_\_ years of this Lease; \$\_\_\_\_\_ per year for the next \_\_\_\_\_ years of this Lease; and \$\_\_\_\_\_ for the last \_\_\_\_\_ years of this Lease.*

*Alternate 4.1 The Lease payment shall be increased during each of the [second through third] years of this Lease as follows: [e.g., consumer price index].*

- 4.2 As additional rental to the Town, Lessee shall establish and maintain an Airport Improvement Fund to be used directly for airport improvements or for matching funds for any grant-funded airport improvement. Lessee shall deposit in the Airport Improvement Fund its gross revenues, from whatever source derived, after deducting the following:
1. Lessee's expenses directly attributable to the operation of the Leased Premises.
  2. Interest at the coupon or stated rate upon Lessee's outstanding bonds issued for improvements to the Leased Premises.
  3. Amounts required to be paid into sinking funds annually for the redemption of sinking fund bonds issued for Airport improvements.
  4. Amounts required for serial maturity of bonds issued for Airport improvements.
  5. Amounts required to pay principal and interest on all other outstanding obligations incurred or assumed by Lessee for Airport improvements.
  6. A reasonable amount for operating and maintenance reserves.

- 4.3 During the term of this Lease, Lessee shall perform all of the Town's obligations under those leases described in Exhibit G attached hereto.
- 4.4 Upon 24 hours notice, Lessee shall allow the Town to inspect any and all Leased Personal Property and any and all portions of the Leased Premises, including any improvements thereon existing as of the date of this Lease, or constructed after the effective date of this Lease.

4.5 Lessee shall comply with the ACIP.

4.6 Beginning in the Town's fiscal year after the real property and aircraft hangars described in Exhibit B are included in the Leased Premises pursuant to paragraph 3.1(2), the Lessee shall annually pay to the Town the first ten thousand dollars (\$10,000.00) of revenue generated by such real property and aircraft hangars. Such payments shall be made annually until the total amount paid pursuant to this paragraph equals \$241,970.00. The Lessee shall have the right to make additional and/or early payments toward the \$241,970.00 without penalty.

4.7 The Town shall use any and all funds received by the Town from Lessee pursuant to this paragraph 4 for ACIP matching funds, to pay for the Runway Safety Team recommendations, or for any other Airport purposes.

## 5. **Airport Operations.**

5.1 **Public Use and Non-Discrimination.** Lessee agrees to operate the Airport for the use and benefit of the public, to make available all airport facilities and services to the public without unjust discrimination and to refrain from imposing or levying excessive, discriminatory or otherwise unreasonable charges or fees for any use of the airport or its facilities or for any airport service. Lessee agrees to provide space on the Airport, to the extent available, and to grant rights and privileges for use of the landing area and facilities of the Airport to all qualified persons, firms and corporations desiring to conduct aeronautical operations on the Airport. Lessee further agrees to promptly notify the Town, in writing, of any complaints received pertaining to any alleged violations of this Paragraph.

5.2 **Rates and Charges.** ~~A~~ The existing schedule of lease rates and other applicable airport charges shall remain in effect until the Lessee adopts new rates and charges. ~~be provided to the Town prior to the effective date of this Lease.~~ Lessee will provide written notice to the Town, its citizens, and the current Airport users of any proposed changes in the schedule no less than twenty (20) days prior to their proposed implementation date and shall provide an amended schedule prior to implementation of any such changes.

5.3 Administration and Promotion of Airport Operations. Lessee shall actively supervise and direct the operation and development of the Airport and the Leased Premises subject to the following terms and conditions:

1. It is the expectation of the Town that the Airport will operate as a self-supporting enterprise without financial subsidies or other payments by the Town except as expressly provided herein.
2. Lessee shall operate the Airport in a prudent and businesslike manner commensurate with a general aviation airport and prevent the commission of waste, extravagance, and unsound business practices.
3. Lessee shall diligently promote aeronautical activities at the Airport, seek to secure sub-tenants who wish to base aeronautical activities at the Airport, and promote other types of revenue producing activities as appropriate.

5.4 Airport Safety and Regulatory Compliance. Lessee shall operate the Airport safely and in compliance with all Local, State and Federal regulatory requirements. In furtherance of this obligation Lessee agrees to:

1. Take active charge of the management and supervision of airport activities, to include the establishment of written field rules and other pertinent rules and regulations as authorized by law, rule or regulation;
2. Abide by, comply with, conform to, and enforce all applicable Federal, State, County, and Town statutes, orders, rules, regulations, and ordinances which in any manner affect the use or operation of the Airport, including, but not limited to existing or hereinafter enacted rules and regulations of the FAA or any succeeding agency thereof;
3. Inspect the Leased Premises including, but not limited to, the runway, landing areas and taxiways and the lighting thereof, AWOS and wind socks on a regular basis, repair, and correct any conditions requiring minor and immediate repairs, and promptly advise the Town or its designated representative of any major disrepair or hazardous conditions and maintain, at Lessee's expense, the lighting of the runway, landing areas, and airport beacon during hours of darkness;
4. Operate the airport in accordance with the obligations of the Town to the Federal Government and/or the State Government as enumerated in applicable grant agreements, deeds of conveyance, statutes, rules or regulations, including but not limited to those grants listed in Exhibit I attached hereto.
5. Mark any temporarily unusable areas of the airport with red flags or equivalent markers during daylight hours and with suitable illumination or reflective devices at night.

5.5 Grant of Exclusive Rights Prohibited. Lessee understands and agrees that nothing contained herein shall be construed to grant or authorize the granting of any "Exclusive Right" within the meaning of Section 303 of the Civil Aeronautics Act of 1938 as amended except as expressly permitted by applicable Federal statute, rule or regulation.

5.6 Nondiscrimination and Affirmative Action Programs.

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1. Lessee will not unlawfully discriminate against any person including, but not limited to the following:
    - A. No person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Airport on the basis of race, color, sex or national origin.
    - B. In the construction of any improvements on, over or under the Airport or the furnishing of services thereon, no persons shall be excluded from participation or otherwise subjected to discrimination on the basis of race, color, sex or national origin.
    - C. Lessee shall maintain and operate the Airport in compliance with all other requirements imposed by Title 49, Code of Federal Regulations, Department of Transportation Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.
  2. Lessee shall insert the above nondiscrimination provisions of this Paragraph in any sublease, license or other grant of authority to any person, firm or corporation to provide accommodations and/or services to the public at the Airport.
  3. Any sublease, contract or agreement entered into in violation of the above nondiscrimination provisions shall be void.
  4. Lessee will, to the extent required by statute, regulation or rule, undertake an affirmative action program as set forth in 14 C.F.R. Part 152, subpart E to ensure that no person shall be excluded from participation in any covered employment activities or participation in or receipt of any services or benefits of any program covered by this subpart.
  5. Lessee shall not act arbitrarily with respect to any Airport lessee or sublessee, potential lessee or sublessee, or user.
  6. Lessee shall not grant an exclusive right to any lessee or sublessee.
  7. Lessee shall not deny access to the Airport to any person, firm or organization without reasonable basis.
  8. Lessee shall not act in violation of any federal or state grant assurances heretofore or hereafter made by the Town or by Lessee.
  9. Where required, Lessee shall fully comply with the National Environmental Policy Act, as amended.
  10. Lessee shall use its best efforts to mitigate aircraft and airport noise.
  11. Lessee shall not use any part of the Leased Premises which is subject to federal or state grant assurances for a non-airport use.

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12. Lessee shall establish rates and charges that are reasonable and nondiscriminatory and that are in conformity with FAA policy regarding airport rates and charges.
13. Lessee shall not expend airport revenue for purposes other than operations, maintenance, promotion ~~the operating~~ and capital costs of the Airport.
14. Lessee shall comply with FAA Order 5190-6, Airports Compliance Handbook.
15. Lessee shall operate the Airport in a manner that makes it as self-sustaining as possible.
16. Lessee shall maintain a current Airport Layout Plan.
17. Lessee shall fully comply with each and every Federal and State grant assurance made by the Town or by Lessee.
18. To the extent required by federal law, Lessee shall fully comply with 69 C.F.R., Part 23 and Part 26 (Participation by Disadvantaged Business Enterprises in Airport Concessions and Department of Transportation Financial Assistance Programs).

5.7 Utilities. Lessee shall pay all charges for gas, water, electricity, sewer, telephone, cable, refuse, or any other utility service furnished to or used in connection with Lessee's activities or obligations pursuant to this Lease.

5.8 Rules and Regulations. The Town's current Airport Rules and Regulations will continue in effect until new Rules and Regulations are adopted. Within eighteen six months (186) of the effective date of the Lease, Lessee shall adopt airport rules and regulations which shall address, at a minimum:

1. Prohibited conduct on the Airport.
2. Environmental management.
3. Traffic and ground transportation.
4. Aircraft operating restrictions.
5. Noise abatement recommendations.
6. Ground movement of aircraft.
7. Security.
8. Movement of vehicles on the airfield.
9. Fuel storage and handling.

Lessee will provide written notice to the Town, its citizens, and the current Airport users of any proposed changes in the Rules and Regulations no less than twenty (20) days prior to their proposed implementation date.

5.9 Airport Minimum Standards. The Town's current Airport Minimum Standards will continue in effect until new Airport Minimum Standards are adopted. Within eighteen six months (186) of the effective date of the Lease, Lessee shall adopt Minimum Standards which shall address, at a minimum:

1. Full-service fixed base operators.
2. Specialized aviation service operations.
3. Air taxi and charter services.

4. Fuel service.
5. Aircraft maintenance and repair.
6. Aircraft sales and rentals.
7. Flight training.
8. Flying clubs.

Lessee will provide written notice to the Town, its citizens, and the current Airport users of any proposed changes in the Airport Minimum Standards no less than twenty (20) days prior to their proposed implementation date.

~~5.10 The Rules and Regulations and Minimum Standards adopted pursuant to paragraphs 5.8 and 5.9 shall be submitted to the FAA and Arizona Department of Transportation, Aviation Division (“ADOT”).~~

## **6. Airport Development and Improvement.**

- 6.1 The Town shall have no present or future duty, responsibility, or obligation for alterations, capital improvements or maintenance on the Leased Premises except for those contributions for the 2008-2012 ACIP as set forth in Paragraph 3.3.
- 6.2 Lessee shall prepare and, as necessary, update a five-year development/capital improvement plan and shall provide a copy of the plan and updates to the Town for approval prior to submitting to the FAA or undertaking any improvements or other development activities.
- 6.3 Lessee shall advise the Town prior to the preparation of plans or specifications or selection of any architects, engineers or sublessees in connection with any alteration, capital improvement or maintenance project with a cost in excess of twenty thousand dollars (\$20,000.00) ~~ten thousand dollars (\$10,000.00)~~. The Town shall have the right to review and approve plans and specifications and to participate in the selection of such architects, engineers and sublessees. The Town may elect to participate in the oversight and management of projects to the extent that it deems necessary to protect its interest. The Parties may develop a management plan for individual projects specifying the roles and responsibilities of each Party.
- 6.4 In the erection, improvement and repair of all buildings, structures, works, runways, improvements, fixtures and personal property, and in furnishing supplies and materials for same or for other use by the Lessee having a value in excess of ten thousand dollars (\$10,000.00), Lessee shall advertise for bids for the work contemplated and for furnishing such supplies and materials and shall require sealed bids or proposals. Any such contract shall be let to the lowest, responsive, responsible bidder. Where appropriate, the Lessee may reject all bids and re-advertise for new bids. Agreements for the purchase of goods and services in

excess of \$10,000.00 are subject to prior approval by the Town. Lessee shall fully comply with the provisions of Arizona Revised Statutes, Title 34.

6.5 Lessee shall provide funds as necessary to expand, improve and develop the Airport and to relocate or replace existing facilities in or on any of the Leased Premises except those items as shown on the ACIP or items on the Runway Safety Action Plan as set forth in Exhibit H.

**D** 6.6 Lessee shall have the right to issue bonds and incur other obligations to the extent permitted by law subject to the following conditions:

1. No bonds issued by Lessee shall be a lien or charge upon the Leased Premises.
2. The Lessee shall not assign, mortgage, pledge, hypothecate or encumber this Lease or any portion of the Leased Premises except as expressly set forth herein.
3. Bonds issued or other obligations incurred or assumed by Lessee for the Airport shall not be obligations of the Town. Lessee shall have no power to pledge the credit of the Town in any way.

6.7 Any and all building, development, or improvements on the Leased Premises shall be subject to all of the Town's then existing Zoning, Design Review, and all other regulations contained in the Town Code or the Town's Unified Development Code.

## 7. **Routine Maintenance and Repairs.**

7.1 Lessee shall be responsible for the condition of the Leased Premises, including the Airport as well as all improvements, fixtures and personal property thereon, whether now on the Leased Premises or hereafter added. Lessee shall make all necessary repairs, inside and outside, structural or otherwise so as to maintain the Leased Premises in good order and condition and to keep them as an operational general aviation airport during the term of this Lease.

7.2 Lessee shall be responsible for all routine maintenance and repairs of the Leased Personal Property.

7.3 Should Lessee fail to discharge its obligations as set forth in this Paragraph 7, the Town reserves the right, but shall not be obligated, to maintain and keep in repair the Airport or any other portion of the Leased Premises or the Leased Personal Property in order to protect its interest and/or to comply with obligations arising from federal or state laws, rules, grant agreements or other agreements or to allocate funds to be used by Lessee for such purposes. Unless otherwise expressly provided in this Lease or by other properly-authorized written amendment, lease or agreement between the Parties, any such expenditures, once made, shall become obligations of the Lessee due and payable upon demand by the Town.

~~7.4 The Parties acknowledge that the sewer facilities on the Leased Premises, including, but not limited to a grinder pump, service off-site Town facilities. Lessee acknowledges that it shall be fully responsible for the prompt maintenance and repair, payment when due and before delinquent of Northern Gila County Sanitary District Fees, and prompt payment of all other costs associated with such sewer facilities.~~

8. **Consultation.** The Town, as owner of the Airport, has an ongoing interest in proper performance of management and administration activities at the Airport. In furtherance thereof, Lessee agrees to consult with the Town's designated representatives on matters of planning, policy development, management and administration and shall provide such periodic activity reports as may be requested by the Town.

9. **Ownership and Revenue of the Leased Premises and Leased Personal Property.**

9.1 Title to all buildings and structures on the Leased Premises shall remain with the Town. Title to any additions made to such buildings and structures by Lessee or any of its subtenants shall vest in the Town immediately upon their construction or installation. No building, structure or addition shall be removed from the Leased Premises without written consent of Town unless the lease, permit, license, or other agreement under which the building, structure or addition was affixed to the land provide a right of removal and said lease, permit, license or other agreement was presented to and approved by the Town before title vested in the Town.

9.2 Title to all Leased Personal Property shall remain with the Town. Any Personal Property purchased by Lessee, shall at the end of this Lease vest in the Town.

9.3 Lessee shall be entitled to all revenue generated by the Leased Premises, the existing leases thereon, and the Leased Personal Property.

10. **Existing Leases and Agreements.**

10.1 This Lease and the Leased Premises shall be subject to the terms and conditions of the following:

1. Any existing leases upon the Leased Premises as described in Exhibit G,
2. Any agreements applicable to the Leased Premises as described in Exhibit J, attached hereto, and
3. Any grant assurance agreements open or closed and any future grant agreements between the Town and the United States of America, the State of Arizona or any other funding entity as described in Exhibit K, attached hereto, and as hereafter made.

10.2 The Town assigns to Lessee any and all interests, obligations, and responsibilities in all existing leases and agreements applicable to the Leased Premises.

11. **Subleases.** Lessee may sublease any portion of the Leased Premises subject to the following restrictions:
- 11.1 No sublease shall violate any term of this Lease.
  - 11.2 All subleases shall specifically state that the Lessee's grant of authority at the Airport and over the Leased Premises is subject to the provisions of this Lease.
  - 11.3 All subleases shall specifically state that if the sublease or a term of the sublease violates this Lease, the sublease or such term of such sublease is void.
  - 11.4 No sublease shall extend beyond the term of this Lease.
  - 11.5 Lessee shall submit all proposed commercial subleases that are longer than one year ~~365 days~~ in duration to the Town for approval prior to execution by the Lessee.
  - 11.6 Lessee may submit noncommercial and short term subleases to the Town for approval prior to execution.
  - 11.7 The Town shall consider and approve or disapprove all subleases submitted to it within thirty (30) ~~45~~ days. If the Town does not take action on a sublease within thirty (30) ~~45~~ days, it shall be deemed approved.
  - 11.8 Subleases submitted to the Town for approval shall contain a provision stating "This sublease shall not be effective until approved by Town of Payson."
  - 11.9 All subleases approved by the Town are not assignable by a sublessee without written permission of the Town. Each such sublease agreement shall include a written provision that any action that purports to assign the sublease without the written approval of the Town shall be void and shall immediately terminate the sublease.
  - 11.10 If the Lessee's interest in this Lease terminates prior to the date specified in any Town-approved subleases, the Town shall assume the Lessee's position and such subleases shall continue in effect until their expiration dates, subject to other relevant terms and conditions of individual subleases.
  - 11.11 Subleases shall be restricted to such area as is actually required for the conduct of the sublessee's business activities. No sublease shall encompass so large an area as to prevent other sublessees from providing competitive aeronautical facilities or services.

11.12 No sublease shall be granted for less than adequate and full consideration. Such consideration may take the form of monetary payments as well as the construction of suitable permanent improvements and such other in-kind services as may be appropriate. Lessee shall establish sublease base rates and shall utilize a competitive bidding process for the award of subleases over and above the base rate if it is determined that such a process is required by law.

**D** 11.13 Lessee shall ensure that all commercial sublessees provide reasonable minimum levels of service. Minimum service specifications and compliance requirements shall be set forth in sublease solicitation documents and/or sublease agreements.

11.14 The Town reserves the right to direct Lessee to cancel or terminate any sublease for any of the reasons that this Lease may be cancelled or terminated.

## **12. Lessee's Organizational Requirements.**

12.1 Lessee shall be organized as a Nonprofit Corporation under the Laws of the State of Arizona and shall remain in good standing as such during the term of this Lease.

12.2 At all times during the term of this Lease, a majority of the membership of Lessee's Board of Directors shall either be (a) residents of the geographic area served by the Airport or (b) persons owning a business or real property within the geographic area served by the Airport.

12.3 The members of Lessee's Board of Directors shall serve staggered terms not exceeding four years. No member of Lessee's Board of Directors shall serve more than two consecutive terms.

~~12.24~~ No person may serve on the Lessee's Board of Directors unless approved by the Town prior to election or re-election. The Town shall review the list of persons submitted for consideration for the Board of Directors and shall approve or disapprove each name submitted. ~~The Town may prepare its own list, or add to a submitted list, names of persons approved by the Town.~~ Biographical information shall be provided for each candidate for election ~~whether submitted by Lessee or the Town.~~ Lessee shall establish procedures for selection and removal of its Board of Directors consistent with this provision and shall include such procedure in its Bylaws.

~~12.3 Lessee shall include in its Bylaws a provision requiring its board members, officers and employees to adhere to the provisions of the State of Arizona conflict of interest statutes, A.R.S. §38-501 et. seq. as may be amended from time to time.~~

12.5 Lessee shall be subject to the Arizona Non-Profit Corporation conflict of interest rules as set forth in A.R.S. §10-3860 et. seq. (Director's Conflicting Interest Transactions).

12.46 Lessee shall post in three prominent locations within the Town limits of the Town of Payson and shall provide Town with notice of all of its Board's scheduled meetings. The scheduled meetings shall be open to the public.

12.57 Lessee shall maintain its records as public records and the public shall have the same right to such records as it has under A.R.S. §39-101 et. seq. (Arizona Public Records Law) and the Arizona cases interpreting such statute.

**D** 12.68 Lessee shall institute a substance abuse policy for its employees that is at least as strict as the Town's substance abuse policy.

~~12.7 No person may serve on the Board of Directors who:~~

- ~~1. Has or whose spouse has a financial interest in a lease, sublease, or contract with Town or Lessee.~~
- ~~2. Has or whose spouse has an ownership interest in any entity which has a financial interest in a lease, sublease, or contract with Town or Lessee.~~

12.89 No person serving on Lessee's Board of Directors shall receive compensation. This paragraph shall not preclude reimbursement for reasonable expenses.

### 13. **Lessee's Accounting and Required Reporting.**

13.1 Lessee shall keep complete and accurate books, records and accounts in regard to the financing, refinancing, construction, operation and maintenance of the Airport from which all revenues and expenses can be readily determined. Such books and records shall be open to inspection by the Town during regular business hours.

13.2 All accounts related to Lessee's operations pursuant to this Lease shall be audited annually at Lessee's expense, by a certified public accountant. Selection of the auditor shall be subject to the approval of the Town. A copy of the draft audit report shall be provided to the Town no more than 120 days after the conclusion of the Lessee's fiscal year. A copy of the final audit report, together with Lessee's written responses to the audit findings, shall be provided to the Town within 175 days of the conclusion of Lessee's fiscal year. If so requested by the Town, Lessee's Board of Directors and/or administrator shall meet with the Town to review the audit findings. In the event that either of the audit reports are not provided by the specified deadlines, the Town may, at its option, commission or complete the annual audit and charge the cost to Lessee. If any audit reports serious financial mismanagement or theft, this Lease may be immediately terminated by Town and in such event Lessee shall exit the Leased Premises and Town shall reenter the Leased Premises and take over operation of the Airport.

~~13.3 Lessee shall submit to the Town, no less than 75 days prior to the start of Lessee's fiscal year, a detailed statement of projected revenues and expenditures for that~~

fiscal year covering all portions of Lessee's operations conducted pursuant to this Lease. The budget submissions shall be in a form acceptable to the Town.

- ~~13.4~~ Within 45 days after submission of the proposed budget, the Town shall notify the Lessee of its approval or disapproval thereof. If the proposed budget is approved by the Town it shall constitute Lessee's adopted budget for the subject fiscal year. Failure by the Town to act on the proposed budget within 45 days of the submittal, shall be deemed approval of same.
- ~~13.5~~ If the proposed budget is disapproved, the Town and Lessee shall meet within ten (10) days of notification of disapproval to resolve any areas of disagreement. If a satisfactory agreement on the budget is not reached within ten (10) days of the initial meeting, the matter shall be resolved pursuant to Paragraph 23.
- ~~13.6~~ The Town is not obligated to approve any proposed budget of the Lessee that would require a contribution or other payment from the Town, except the Town's contribution as provided in Paragraph 3.3 for the 2008-2012 ACIP, or from any other source unless such contribution or payment has been formally approved by the designated source prior to submission of the proposed budget.
- ~~13.7~~ Once Lessee's adopted budget is approved and adopted it shall not be amended without formal written approval by the Town. The Town shall act on proposed budget amendments no later than 45 days after submission by Lessee. Failure by the Town to act on the proposed budget within the 45-day period shall be deemed approval of same.
- 13.83 Within 120 days after the conclusion of Lessee's fiscal year, Lessee shall deliver to the Town, no later than the date of delivery of the annual revenue and expenditure budget, a complete report summarizing the financing, refinancing, construction, operation and maintenance of the Leased Premises for the prior fiscal year. The Annual Report shall be in a form acceptable to the Town.
- 13.94 Lessee shall, not later than thirty (30) days after the effective date of this Lease, establish and fund a reserve account in an amount not less than \$10,000.00. Lessee shall maintain such reserve account in such amount during the term and any extended term of this Lease and shall use such funds solely to fund needed maintenance expenditures for the Leased Premises.
14. **Approval by the FAA and ADOT.** This Lease shall have no legal effect and shall not be binding upon the Parties until the Parties have received an opinion letter from written approval of this Lease by both the FAA and ADOT indicating that each does not object to this Lease.

15. **Insurance.**

Without limiting any liabilities or any other obligations of Lessee, Lessee shall provide and maintain, with forms and insurers acceptable to the Town, naming the Town as an additional insured, during the duration of this Lease the minimum insurance coverage as follows:

- 15.1 Workers Compensation Insurance to cover obligations imposed by Federal and State Statutes having jurisdiction of its employees and Employer's Liability insurance with a minimum limit of ONE HUNDRED THOUSAND DOLLARS (\$100,000).
- 15.2 Comprehensive General Liability insurance with a minimum combined single limit of TWO MILLION DOLLARS (\$2,000,000) each occurrence. The policy shall include coverage for bodily injury liability, property damage liability, personal injury liability (including coverage for contractual and employee acts), and blanket contractual. The policy shall contain a severability of interests provision.
- 15.3 Comprehensive Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each occurrence with respect to Lessee's vehicles or any vehicles included in the Leased Personal property, whether owned, hired, or non-owned, assigned to be used in the performance of the services.
- 15.4 The policies required by Sections 15.2 and 15.3 shall be endorsed to include Town, its elected officials, officers, attorneys, and employees as additional insureds, and shall stipulate that the insurance afforded for the Town, its elected officials, officers, attorneys and employees shall be primary insurance and that any insurance carried by the Town, its elected officials, officers, attorneys, or employees shall be excess and not contributory insurance.
- 15.5 Lessee and its insurers providing the required coverages shall waive all rights of subrogation against the Town and its elected officials, officers, attorneys, employees, and agents.
- 15.6 Prior to this Lease taking effect, Lessee shall furnish the Town with Certificates of Insurance as evidence that policies providing the required coverages, conditions, and limits are in full force and effect. Such certificates shall provide that not less than thirty days advance notice of cancellation, termination, or alteration shall be sent directly to the Town.
- 15.7 Town reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.
- 15.8 Costs for coverages maintained by Lessee shall not be charged to Town.

15.9 Every five years during the term or extended term of this Lease, Town may, in accordance with standard industry practice, require the amounts in this paragraph 15 to be adjusted.

16. **Indemnity.**

D 16.1 Lessee shall indemnify, defend, and save harmless the Town and all of its elected officials, officers, employees, attorneys, agents, representatives and insurers from any and all claims, demands, suits, actions, proceedings, loss, costs, and damages of every kind and description, including attorney's fees and/or litigation expenses, which may be brought or made against or incurred by the Town and/or its insurers, on account of loss of or damage to any property or injuries to or death of any person by reason of or arising out of any act or omission by Lessee, its employees, agents, representatives, or sublessees, or arising out of any defects in the methods, equipment or tools used, or the manner of carrying and managing operations at the Airport, or arising out of any act or omission of Lessee under this Lease, or the use of the Airport by Lessee or any other person, firm, or entity, or arising out of workmen's compensation claims, unemployment compensation claims, or unemployment disability compensation claims of employees of Lessee or out of claims under similar such laws.

16.2 Lessee shall further indemnify, defend, and save harmless the Town and all of its elected officials, officers, employees, attorneys, agents, and representatives from any and all claims, demands, suits, actions, proceedings, loss, costs, and damages of every kind and description, including costs of investigation and apprehension of persons involved, attorney's fees and/or litigation expenses, which may be brought or made against or incurred by the Town arising out of any act or omission on the part of Lessee, its employees, agents, representatives, or sublessees, or any operation of Lessee under or as a result of this Lease.

17. **Termination.**

17.1 The Town may terminate this Lease prior to its expiration date in the event of any of the following:

1. The filing of a petition for the adjudication of Lessee as a bankrupt, whether voluntary or involuntary.
2. Any general assignment by Lessee for the benefit of creditors.
3. Any act or occurrence which deprives the Lessee permanently of the ability to perform its obligations pursuant to this Lease except suspension of operations resulting from war or national emergency, in which case Town shall have the right to take over operations until such war or national emergency is over.
4. The material abandonment of operations at the Airport by Lessee.

5. Lessee's failure to adhere to any of the terms and conditions of this Lease after notice and opportunity to correct said deficiencies as provided in Paragraph 17.2.
6. An audit reports serious financial mismanagement or theft.

17.2 Except for defaults and breaches of the Lessee that create an immediate risk to the public's health and/or safety, the Town shall provide written notice to Lessee specifying the nature of the default or breach and Lessee shall have thirty (30) calendar days from the date of such notice to correct the default or breach. Lessee shall be granted an additional thirty (30) calendar days for compliance in the event that Lessee furnishes satisfactory evidence that it is continuously and diligently attempting to correct such default or breach. In the event of a default or breach by Lessee that creates an immediate risk to the public's health and/or safety, Town shall provide such notice, which may be written or verbal, as is reasonable or appropriate in the circumstances, specifying the nature of the default or breach and terminating the Lease on the Termination Date.

17.3 Except for violations of assurances to the FAA or ADOT that create an immediate risk to the public's health and/or safety, if the Lessee receives written notice of noncompliance with any assurances from the FAA or ADOT and does not take substantial steps to cure such noncompliance within 10 working days, the Town shall have the right to cure such noncompliance and charge any costs associated with curing such noncompliance to the Lessee. If it is not possible to cure such noncompliance, Lessor may immediately terminate this Lease and re-enter the Premises.

17.34 Lessee may terminate this Lease prior to its expiration date if the Town fails to abide by any of the terms and conditions of this Lease. Prior to such termination, the Lessee shall provide the Town with written notice of the alleged violations. The Town shall have thirty (30) calendar days from the date written notice has been given to the Town to correct such default or breach. The Town shall be granted an additional thirty (30) calendar days in the event that the Town furnishes satisfactory evidence that it is continuously and diligently attempting to correct such default or breach.

17.45 In the event of a termination of the Lease, Lessee shall assist Town in immediately reentering and taking possession of the Leased Premises, Lease Improvements, and Personal Property. Upon termination, all obligations of Lessee under the Lease shall be prorated to the Termination Date. Upon payment of the same, Lessee shall have no obligations under the Lease after the Termination Date. Town shall have no obligations to Lessee under the Lease from and after the Termination Date.

18. **Modification, Assignment or Transfer.**

18.1 No provision of this Lease shall be amended or otherwise modified, in whole or in part, except by an instrument in writing duly executed by the Town and the Lessee.

D 18.2 Lessee shall not assign, sublease, or transfer any right, title, or interest in the Leased Premises without the express written consent of the Town except as expressly provided in this Lease. The Town shall have the right to deny any assignment, sublease or transfer for any reason or for no reason. Any attempted assignment, sublease, or transfer in violation of this Paragraph 18.2 shall be void and shall immediately terminate this Lease without further act or formality.

18.3 Nothing in this Lease shall prohibit the Town from assigning or otherwise transferring its right, title or interest in the Lease to another party or from assigning its rights and obligations as set forth in this Lease. In the event of such transfer, it is understood that the Town's successor in interest shall be bound by the applicable terms and conditions of this Agreement.

19. **Taxes/Assessments.** Lessee shall pay, or cause to be paid promptly when due and payable, all taxes, assessments or any other charge of every kind and nature which may be levied, assessed or imposed in connection with the Leased Premises or Lessee's activities pursuant to this Lease. Lessee further agrees not to allow such taxes, assessments or other charges to become a lien on the Leased Premises or any structure or any fixture improvement or other property located thereon. Nothing contained herein shall be deemed to prohibit the Lessee from contesting the validity or amount of any such tax, assessment or other charge before the appropriate authority or court.

20. **National Emergency or Fire.**

20.1 During time of war or national emergency, the Town shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and or other area or facilities of the Airport. If such an agreement is executed, the provisions of this Lease, insofar as they are inconsistent with the provisions of the government agreement, shall be suspended. Any such agreement shall be at the sole discretion of and the sole responsibility of the Town. The Town may agree with Lessee to administer or otherwise discharge the Town's obligations pursuant to such agreement on such terms and conditions as may be mutually acceptable to the parties.

20.2 During the threat of, the existence of, or following a forest fire, Lessee shall agree to allow the Town to use and the United States Forest Service, any other Federal agency, or any State agency to lease portions of the Leased Premises for fire prevention, fire suppression, or post-fire revegetative activities.

20.3 Lessee shall not require the Town, the State of Arizona, or the United States, or any of their agencies or contractors, to purchase fuel or other services from Lessee or any sublessee at the Airport.

21. **Condemnation or Acquisition by Others.**

**D** 21.1 In the event that the Leased Premises or any part thereof, or the right and interest of Lessee in or to the Leased Premises or any part thereof shall be condemned, taken or acquired by a body having superior power of eminent domain, any compensation or award therefore shall be payable in accordance with the provisions of this paragraph 21:

21.2 Out of said compensation or award, there shall be paid to Lessee an amount equal to the sum of the following:

1. The amount required to redeem Lessee's bonds or to pay any of Lessee's obligations issued or incurred for the Airport and outstanding at the time title vests in the condemning power at the earliest dates after such decree of judgment when any such bonds may be called for redemption or such obligations may be paid, or if any such bonds or obligations are not subject to call or immediate payment, then the amount required to redeem or pay them at their maturity; less the following items:
  - A. The assets of any sinking fund established for the redemption of any bonds or other obligations issued, insured or assumed for the Airport, including interest thereon.
  - B. The proceeds remaining unexpended from the sale of any and all bonds issued, insured or assumed for the Airport.
  - C. Any cash set aside for redemption of bonds issued in payment of any obligations incurred or assumed for the Airport.
2. The interest on any such bonds or obligations from the last interest payment due prior to the vesting of title in the condemning power up to the date of such call or maturity;
3. The call premium, if any;
4. Any unamortized funds of Lessee, other than bond or other obligation proceeds, of Federal, State or Local grants, expended for capital improvements at the Airport.

21.3 The balance, if any, of such compensation or award shall be paid to the Town, or to Lessee if Lessee remains intact and viable and if the remaining property is sufficient for Lessee to continue the Airport operations.

21.4 The amount paid to Lessee as provided herein shall, together with any funds remaining unexpended for the Airport from the proceeds of any such bonds or obligations, be set aside in a special fund. If, after payment of redemption of all of said bonds and obligations with interest and after the deduction of unamortized funds of Lessee as aforesaid, there shall remain any balance in said special fund,

including income and appreciation thereon, and if the Airport can no longer be operated, Lessee shall pay such balance to the Town.

21.5 If the whole of said demised Leased Premises or the right and interest of Lessee shall be condemned, taken or acquired, as aforesaid, then no further rental shall be payable hereunder. If only part of the said demised Leased Premises or if only part of the right and interest of the Lessee is condemned, taken or acquired and if such part is so substantial as to make it impractical to proceed with the operation of the demised Leased Premises for the Airport, no further rental shall be payable; provided, however, that possession of the demised Leased Premises remaining shall be promptly surrendered to the Town as if the term, hereof, shall have come to an end.

21.6 If, however, only a part of said demised Leased Premises or of the right and interest of Lessee in or to the same shall be condemned, taken or acquired, and the remaining is sufficient to conduct the operation thereof for the Airport, the obligations of Lessee under the provisions of this Lease relating to rent as well as under other provisions of this Lease, shall continue and remain unaffected by such condemnation, taking or acquisition.

22. **Notice and Representatives.**

22.1 All notices, filings, consents, approvals, and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered, or served if in writing and delivered personally or sent by certified United States mail, postage prepaid, return receipt requested, to:

Town:  
Town of Payson  
303 North Beeline Highway  
Payson, Arizona 85541  
Attention: Town Manager

Lessee:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. Notices, filings, consents, approvals, and communication given by certified mail shall be deemed delivered upon receipt if sent by certified mail addressed as set forth above. Notices delivered personally shall be deemed delivered upon delivery.

22.2 The person specified in paragraph 22.1 shall be the designated representative of each Party unless a different person is designated in writing.

23. **Applicable Law; Conflict of Interest; Dispute Resolution; Attorneys' Fees and Costs**

23.1. This Lease shall be governed and construed in accordance with the internal laws of the State of Arizona, without regard to principles of conflicts of law.

23.2 This Agreement is subject to A.R.S. § 38-511, the terms of which are incorporated herein, and which provides for cancellation of contracts by a municipality for certain conflicts of interest.

**D** 23.3 Mediation. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Lessee and Town. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the Town and the Developer shall request the presiding judge of the Superior Court in and for the County of Gila, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years of experience in mediating or arbitrating disputes relating to lease agreements, preferably involving airports. The cost of any such mediation shall be divided equally between the Town and the Lessee. The results of the mediation shall be non-binding upon the parties, and any party shall be free to initiate litigation subsequent to the moratorium.

23.4 Alternatively, any such dispute, controversy, claim, or cause of action may be litigated in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona, and both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum based upon lack of venue.

23.5 Neither Party shall be entitled to recover from the other Party any of its attorneys' fees, costs, expenses, or expert witness fees incurred in any dispute, controversy, claim, or cause of action, but each Party shall bear its own costs, fees, expenses, and attorneys' fees without contribution from the other Party, whether the same is resolved through mediation, arbitration, litigation in a court, or otherwise.

24. **No Partnership; No Third Party Beneficiaries.**

24.1 It is not intended by this Lease to, and nothing contained herein shall, create any employment relationship, partnership, joint venture, or other arrangement between the Town and Lessee, other than that of Town and Lessee.

24.2 No term or provision of this Lease is intended to, or shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other

person, firm, organization, or corporation shall have any right or cause of action hereunder.

25. **Counterparts.** This Lease may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.
26. **No Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Town of a breach of any of the covenants of this Lease shall be construed as a waiver of any proceeding or succeeding breach of the same or any other covenant or condition of this Lease.
27. **Non-Appropriation.** Except as provided in Paragraph 3.3 (~~relating to the 2008-2012 ACP~~) nothing herein shall be construed as obligating the Town to expend, or as involving the Town in any Lease or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated for this work.
28. **Construction of Lease; Further Documentation.**
- 28.1 This Lease shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of or against the party drafting this Lease. The Parties acknowledge and agree that each has had the opportunity to seek and utilize independent legal counsel in the drafting of, review of, and entry into this Lease.
- 28.2 Each Party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Lease.
29. **Time of Essence; Time Periods.**
- 29.1 Time is of the essence in this Lease and all of its parts.
- 29.2 Except as expressly provided herein, the time for performance of any obligation or taking any action under this Lease shall be deemed to expire at 5:00 p.m. (Payson time) on the last day of the applicable time period provided for herein. If the time for the performance of any obligation or taking any action under this Lease expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

30. **Severability.** If any portion of this Lease is found to be invalid, such finding will not affect the validity of the remainder of this Lease and to this end the provisions of this Lease are severable.
31. **Authority.** The Parties acknowledge and warrant that each of them is fully authorized and empowered to execute this Lease by and through the individual(s) executing hereinafter, and to carry out the terms hereof.

32. **Representations and Warranties.**

32.1 Lessee's Representations and Warranties. Lessee makes the following representations and warranties which are agreed to constitute a material part of the consideration hereunder, which are true and accurate as of the effective date of this Lease, and which shall survive the termination of this Lease:

1. **Action.** All actions on the part of Lessee which are required for the execution and performance by Lessee of this Lease have been duly and effectively taken. Lessee has full power and authority to enter into and perform its obligations under this Lease. The persons executing this Lease on behalf of Lessee have full power and authority to do so;
2. **Enforceable Nature of Lease.** This Lease constitutes a legal, valid, and binding obligation of Lessee, enforceable against Lessee in accordance with its terms;
3. **Violations; Consents; Defaults.** Neither the execution of this Lease nor the performance hereof by Lessee will result in any breach or violation of the terms of any law, rule, ordinance, or regulation, or of any decree, judgment, or order to which Lessee is a party now in effect from any court or governmental body. There are no consents, waivers, authorizations, or approvals from any third party necessary to be obtained by Lessee in order to carry out the intent of and operations contemplated by this Lease. The execution and delivery of this Lease and performance hereof by Lessee will not conflict with, or result in, a breach of any of the terms, conditions, or provisions of, or constitute a default under, or result in the creation of any new, or the acceleration of any existing lien, charge, or encumbrance upon the Leased Premises, or conflict with, or result in the breach of any of the terms, conditions, or provisions of any grant agreement with the United States of America to which the Town is a party;
4. **Governmental Restrictions.** There are no restrictions or stipulations from the United States of America, the State of Arizona, Gila County, or any other governmental authority threatening or impeding the use of the Leased Premises by Lessee for Airport purposes;
5. **Compliance.** Lessee will comply, in all respects, with all laws, ordinances, rules, regulations, requirements, and orders of federal, state, or local governments and/or their agencies with respect to this Lease and the Leased Premises identified herein;

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6. Environmental Matters. Lessee, during the term or any extended term of this Lease, will not itself and will not allow any sublessee, assignee, FBO or user of the Airport to be in material violation of any applicable environmental law, regulation, ordinance, or order of any governmental entity, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Resource Conservation and Recovery Act, as amended, the Federal Clean Water Act, as amended, the Federal Clean Air Act, as amended, the Federal Toxic Substances Control Act, as amended, the National Environmental Protection Act, as amended, and any other federal, state, or local laws relating to contamination or adverse effects on the environment; and
7. Financial Ability. Lessee has and will maintain the financial capability to operate the Airport in a fiscally sound and prudent manner.

32.2 Town's Representations and Warranties.

1. Authority. Town has full power and authority to enter into and to perform its obligations under this Lease. The persons executing this Lease on behalf of the Town have full power and authority to do so;
  2. Enforceable Nature of Agreement. This Agreement constitutes a legal, valid, and binding obligation of the Town, enforceable against the Town in accordance with its terms.
33. **Entire Lease.** This Lease contains and sets forth the entire and exclusive agreement and understanding between the Parties hereto pertaining to the subject matter, and all prior and contemporaneous agreements and understandings, written or oral, are merged herein. This Lease may not be rescinded, canceled, terminated, supplemented, amended, or modified in any way whatsoever without the prior written consent of all Parties to this Lease.
34. **Binding and Effective.** Pursuant to A.R.S. § 28-8425, this Lease is binding and effective upon the Parties.
35. **Right of Flight.** There is hereby reserved to the Town, 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 Leased Premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operations of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on Payson Municipal Airport. The Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased Leased Premises.

36. **Height Restriction.** The Lessee by accepting this expressly agrees for itself, its successors, and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Leased Premises in violation of the Town's Unified Development Code. In the event the aforesaid covenants are breached, the Town reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Lessee.
37. **No Interference with Aircraft.** The Lessee by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from Payson Municipal Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Town reserves the right to enter upon the Leased Premises hereby leased and cause the abatement of such interference at the expense of the Lessee.
38. **No Grant of Exclusive Right.** It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).
39. **Rights of United States Government.** This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operations, regulation and taking over of said airport.
40. **No Interference with Airport Uses.** The Leased Premises and all uses thereon shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal, state, and local agencies for maintenance and operation. Lessee shall not cause or permit any activity or action on the Leased Premises which would interfere with its use for airport purposes.
41. **FAA Mandated Provisions.**
- 41.1 The Lessee for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree "as a covenant running with the land" that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- 41.2 The Lessee for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree "as a covenant running with

the land” that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that the Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

- 41.3 In the event of breach or violation of any of the requirements under this paragraph 14 ~~above nondiscrimination covenants~~, Town shall have the right to terminate the Lease and to reenter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed including expiration of appeal rights.
- 41.4 The Lessee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.
- 41.5 The Lessee assures that it will undertake an affirmative action program as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in Title 14, Code of Federal Regulations, Part 152, Subpart E.
- 41.6 This Lease shall be subordinate to the provisions and requirements of any existing or future Lease between the Town and the United States, relative to the development, operation or maintenance of the airport.
- 41.7 Lessee must comply with all FAA Airport Sponsor Grant Assurances set forth in Exhibit K attached hereto.
- 41.8 The requirements of Sections 4-2c, 6-2c, and 6-5 of FAA Order 5190.6A (Airport Compliance Requirements), attached hereto as Exhibit L are hereby incorporated into this Lease.

42. **Remedies Cumulative.** All remedies conferred on Town in this Lease shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law or in equity.
43. **Headings.** The descriptive headings of the paragraphs of this Lease are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.
44. **Abandonment of Leased Premises.** Lessee shall not vacate or abandon the Leased Premises at any time during the term of this Lease. If Lessee abandons, vacates, or surrenders the Leased Premises, or is dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the Leased Premises shall be deemed to be abandoned, at the option of Town, except such property as may be encumbered to Town, and all improvements shall become the property of the Town.

WHEREFORE, the Parties have caused this Lease to be executed by their duly authorized representatives.

\_\_\_\_\_  
 an Arizona nonprofit corporation

**TOWN OF PAYSON,**  
 an Arizona municipal corporation

By \_\_\_\_\_  
 \_\_\_\_\_, its \_\_\_\_\_

By \_\_\_\_\_  
 F. Robert Edwards, Mayor

Date signed: \_\_\_\_\_

Date signed: \_\_\_\_\_

STATE OF ARIZONA        )  
                                           ) ss.  
 Gila County                )

The foregoing Airport Lease was signed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, on behalf of the \_\_\_\_\_.

May 1, 2007

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

My commission expires:  
 \_\_\_\_\_

STATE OF ARIZONA        )  
                                  ) ss.  
Gila County                )

The foregoing Airport Lease was signed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by F. Robert Edwards, Mayor of the Town of Payson, on behalf of the Town.

**D**  
My commission expires:  
\_\_\_\_\_

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

*C:\Documents and Settings\twright\My Documents\aa Tim Wright\Tim Wright Word Perfect Documents\airport\Airport Lease May 1, 2007 awaiting faa and adot opinions.wpd  
SIS:drs May 16, 2007 (8:17am)*

**R**

**A**

**F**

**T**

**May 1, 2007**

## APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this Lease and approved it as to form. When reviewing this Lease for form, the Legal Department considers whether the following situations have been addressed:

1. Identification of parties;
2. Offer and acceptance;
3. Existence of consideration (we do not review to determine if consideration is adequate);
4. That certain provisions specifically required by statute are included (i.e., provisions concerning non-availability of funds and conflict of interest, A.R.S. § 38-511).

We have not reviewed the Lease for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the Lease or the underlying transaction. In addition, approval as to the form should not be considered approval of the underlying policy considerations addressed by the Lease.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2007.

By \_\_\_\_\_  
Samuel I. Streichman, Town Attorney

F

T

May 1, 2007

## Exhibits

- A Legal Description of real property to be leased. This will not include the 'T' or Box Hangers or the Town yard parcel
- B Legal Description of the 'T' and Box Hangers
- C Legal Description of the Town Yard
- D Draft Lease for the Town Yard
- E 2008-2012 ACIP
- F Description of personal property to be leased
- G All existing Leases and agreements that Lessee is assuming the Town interests in
- H Runway safety team recommendations
- I All existing applicable grants concerning the Airport and its operations
- J Existing Agreements
- K Airport Sponsor Grant Assurances
- L Sections 4-2c, 6-2c, and 6-5 of FAA Order 5190.6A

May 1, 2007