

RESOLUTION NO. 2526

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT TO THE AIRPORT LEASE AGREEMENT BETWEEN THE PAYSON REGIONAL AIRPORT AUTHORITY AND THE TOWN OF PAYSON.

WHEREAS, the Town of Payson ("Town") and the Payson Regional Airport Authority ("PRAA") entered into a Airport Lease Agreement on August 29, 2007; and

WHEREAS, pursuant to Section 18.1 of the Lease Agreement, the Town and PRAA desire to amend such Lease Agreement; and

WHEREAS, on October 19, 2009, the PRAA approved the First Amendment to the Lease Agreement attached hereto as Exhibit A,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That the First Amendment to the Airport Lease Agreement Between the Payson Regional Airport Authority and the Town of Payson, a true and correct copy of which is attached hereto marked Exhibit "A" and made a part hereof by this reference, as though set forth in full at this point, be and is hereby approved in substantially the form attached.

Section 2. That Kenny J. Evans, Mayor of the Town of Payson, be and is hereby authorized to execute said First Amendment in substantially the form attached.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this ____ day of November 2009, by the following vote:

AYES ____ NOES ____ ABSTENTIONS ____ ABSENT ____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

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Exhibit A
to
Resolution 2526

**FIRST AMENDMENT TO THE
AIRPORT LEASE AGREEMENT BETWEEN
THE PAYSON REGIONAL AIRPORT AUTHORITY
AND THE TOWN OF PAYSON**

This First Amendment to the Airport Lease Agreement Between the Payson Regional Airport Authority and the Town of Payson (the "Airport Lease Agreement") is entered and shall be effective on this ____ day of _____, 2009, by and between the Payson Regional Airport Authority, a Arizona non-profit corporation (PRAA) and the Town of Payson, a Arizona municipal corporation ("Town") (collectively the "Parties").

RECITALS

- A. The Parties entered into the Airport Lease Agreement on August 29, 2007.
- B. Pursuant to Section 18.1 of the Airport Lease Agreement, the Parties may amend the Airport Lease Agreement. The Parties now desire to amend Sections 9 and 11 of the Airport Lease Agreement to clarify various sublease issues including ownership of improvements, allowable term of subleases, Town approval, and insurance requirements.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the Parties hereto state, confirm and agree as follows:

1. That Section 9 of the Airport Lease Agreement is amended and as amended shall provide as follows:
9. **Ownership and Revenue of the Leased Premises and Leased Personal Property.**
- 9.1 (A) FOR ALL BUILDINGS OR STRUCTURES WHERE THE TITLE WAS HELD BY THE TOWN AS OF THE DATE OF THIS LEASE AGREEMENT, TITLE SHALL BE AND REMAIN WITH THE TOWN. ~~Title to all buildings and structures on the Leased Premises shall remain with the Town.~~ IF THE LESSEE OR A SUBLESSEE MAKES ANY REPAIRS, ADDITIONS, OR IMPROVEMENTS TO SUCH BUILDINGS OR STRUCTURES, TITLE TO SUCH REPAIRS, ADDITIONS, OR IMPROVEMENTS SHALL VEST IMMEDIATELY IN 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.

(B) FOR ALL BUILDINGS OR STRUCTURES FOR WHICH THE TOWN IS TO COME INTO TITLE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO THOSE BUILDINGS AND STRUCTURES SUBJECT TO LEASES LISTED IN EXHIBIT G, THE TOWN SHALL TAKE TITLE IN THE MANNER AS PROVIDED IN THE RESPECTIVE LEASES/AGREEMENTS.

(C) IF THE LESSEE OR A SUBLESSEE CONSTRUCTS NEW BUILDINGS OR STRUCTURES ON THE LEASED PREMISES, TITLE TO SUCH BUILDINGS OR STRUCTURES SHALL VEST IN THE TOWN UPON TERMINATION OF THE SUBLEASE.

(D) FOR ALL BUILDINGS OR STRUCTURES FUNDED PRIMARILY WITH FAA, ADOT, OR OTHER GOVERNMENTAL AGENCY GRANT(S) OR FUNDS, TITLE SHALL VEST IN THE TOWN IMMEDIATELY UPON COMPLETION OF SUCH BUILDINGS OR STRUCTURES.

- 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.

2. That Section 11 of the Airport Lease Agreement is amended and as amended shall provide as follows:

- 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 BE MADE FOR AN INITIAL TERM OF MORE THAN THIRTY (30) YEARS AND THE POTENTIAL OF AN EXTENSION OR EXTENSIONS NOT EXCEEDING A TOTAL OF TWENTY (20) YEARS BEYOND THE INITIAL TERM ~~extend beyond the term of this Lease.~~
- 11.5 Lessee shall submit all proposed commercial subleases that are longer than one year 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) days. If the Town does not take action on a sublease OF ONE YEAR OR LESS within thirty (30) days, SUCH SUBLEASE 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. NOTICE OF THIS PROVISION SHALL BE INCLUDED IN ALL 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.

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.

11.15 ALL SUBLEASES SHALL REQUIRE THE SUBLESSEE TO PROVIDE ADEQUATE LIABILITY AND PROPERTY REPLACEMENT INSURANCE FOR ALL BUILDINGS AND STRUCTURES INCLUDED IN SUCH SUBLEASE. THE INSURANCE SHALL BE SATISFACTORY TO THE LESSEE AND THE TOWN, IF THE TOWN IS REQUIRED OR AUTHORIZED TO APPROVE THE SUBLEASE.

3. All other terms and conditions of the Airport Lease Agreement except as specifically amended herein shall remain in full force and effect as written. This Amendment shall be effective as part of the Airport Lease Agreement on and after the date above written.

IN WITNESS WHEREOF, the parties have executed this First Amendment the day and year set forth above.

**PAYSON REGIONAL
AIRPORT AUTHORITY**
an Arizona nonprofit corporation

TOWN OF PAYSON,
an Arizona municipal corporation

By _____
Jon Barber, its President

By _____
Kenny J. Evans, Mayor

APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this Lease Amendment and approved it as to form. When reviewing this Lease Amendment 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 Amendment 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 Amendment 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 Amendment.

Dated this _____ day of _____, 2009.

By _____
Samuel I. Streichman, Town Attorney