#8

OCT 20 2014

ORDINANCE NO. 4571

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING THE CITY OF CHANDLER TO AMEND CHANDLER GROUND LEASE AGREEMENT NO. 016 WITH F&G ENTERPRISES, L.L.C. TO ALLOW LIMITED COMMERCIAL USES IN BUILDING AF.

WHEREAS, pursuant to ordinance No. 4497, adopted September 26, 2013, the City Council of the City of Chandler did authorize the City to enter into Chandler Ground Lease No. 016 ("Ground Lease") with F&G Enterprises., L.L.C. for the development and operation of up to three (3) aircraft hangars at the Chandler Municipal Airport; and

WHEREAS, the Ground Lease currently permits commercial uses in Building AG only; and

WHEREAS, the parties recognize and agree that, due to modifications to the site plan and the enlargement of the hanger row comprising Building AF, limited commercial uses are appropriate for Building AF; and

WHEREAS, the parties desire to amend the Ground Lease to permit limited commercial uses in Building AF; and

WHEREAS, said amendments will not significantly affect the final aircraft hangar facility development.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

SECTION 1. The Chandler City Council does hereby authorize the City of Chandler to enter into a First Amendment to Chandler Ground Lease No. 016 in substantially the form presented herein by staff to amend the Ground Lease with F&G Enterprises, LLC, permitting limited commercial uses in Building AF.

SECTION 2. The Mayor of the City of Chandler, upon approval as to form by the Chandler City Attorney, is hereby authorized to execute the first amendment for the Ground Lease referenced above.

INTRODUCED AND TENTATIVELY approved by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2014.

ATTEST:

_____ _____

CITY CLERK MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2014.

ATTEST:

_____ _____

CITY CLERK MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4571 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2014, and that a quorum was present thereat.

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY (K.SM)

PUBLISHED:

WHEN RECORDED, RETURN TO:

Chandler City Clerk
Mail Stop 606
PO Box 4008
Chandler, AZ 85244-4008

FIRST AMENDMENT TO CHANDLER GROUND LEASE NUMBER 016

THIS FIRST AMENDMENT TO CHANDLER GROUND LEASE NUMBER 16 (this "**Amendment**") is entered into as of the ___ day of _____, 2014, by and between the CITY OF CHANDLER, an Arizona municipal corporation (the "**City**") and F&G ENTERPRISES, LLC, an Arizona limited liability company (the "**Tenant**").

RECITALS:

A. City, as lessor, and Tenant, are parties to that certain City of Chandler Ground Lease Number 016, dated November 20, 2013, which was recorded as Instrument No. 20140412946, in the Official Records of Maricopa County, Arizona (the "**Lease**").

B. City and Tenant desire to modify the Lease as set forth below.

AGREEMENT:

NOW, THEREFORE, in consideration of the promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals and Definitions. The parties hereto acknowledge the accuracy of the Recitals set forth above. Any capitalized terms used in this Amendment and not defined herein shall have the meanings set forth in the Lease.

2. Use of the Premises. Section 8 of the Lease is hereby deleted in its entirety, and the following is inserted in its place:

8. **USE OF PREMISES.**

The Leased Premises shall be used only for lawful purposes and only in accordance with all applicable building and zoning codes and regulations. Lessee agrees that it will not disturb the City or any other lessee of the City by making or permitting

any unreasonable disturbance, noise, vibration, or other condition on or in the Leased Premises. No signs or other advertising matter, symbol, canopies or awnings shall be attached to or painted on or within the Leased Premises including windows and doors for the non-commercial uses in Building AE. No signs or other advertising matter, symbol, canopies or awnings shall be attached to or painted on or within the Leased Premises for any commercial uses in Buildings AF and AG including the windows and doors thereof, without the approval of the City, which shall not be unreasonably withheld. At the termination or sooner expiration of this Lease, all such signs, advertising matter, symbols, canopies or awnings attached to or painted on or within the Building by Lessee shall be removed by Lessee at its own expense, and Lessee shall repair any damage or injury to the Leased Premises and correct any unsightly condition caused by such removal.

A. Non-Commercial Restriction for Building AE. Lessee shall make Building AE available for ownership by individuals or business entities for non-commercial purposes to be used primarily for aircraft storage. Building AE shall not be used for any commercial purposes; provided, however, that the mere storage of aircraft used for corporate travel or other business use shall not be considered a commercial purpose. Nothing herein shall be deemed to permit or allow the operation of any commercial activities, including but not limited to charter service, air taxi service, or fixed-base operation from Building AE or any individual hangar units in Building AE.

B. Activities Permitted in Buildings AF, and AG. Lessee may make Buildings AF and AG available for lease or ownership by individuals or business entities for both: (i) noncommercial purposes to be used primarily for aircraft storage, and (ii) aviation-related (or aeronautical-related) commercial activities, including but not limited to charter service, air taxi service, or fixed-base operations. At no point during the term of this Lease shall the number of hangar units conducting commercial uses within either Building AF or Building AG exceed three (3) in the aggregate. By way of example, any combination of commercial uses conducted in any hangar unit within Building AF or AG that does not exceed three (3) in the aggregate are permitted (two (2) hangar units with commercial uses conducted in Building AF and one (1) hangar unit with a commercial use conducted in Building AG would be permitted, however, two (2) hangar units with commercial uses in Building AF and two (2) hangar units with commercial uses in Building AG would exceed three and is therefore not permitted). Any commercial use proposed for Building AF or AG must first obtain an Aeronautical Business Permit and a certificate of occupancy from the City prior to commencing any commercial activity.

C. Disturbance of Materials. Except as and to the extent necessary during construction of the Improvements, at no time shall Lessee remove or otherwise disturb valuable minerals, sand, gravel or water, from the site. These resources belong to the

City and may only be used with consent of and appropriate compensation to the City, except as and to the extent necessary during construction of the Improvements.

3. Revised Site Plan. The revised site plan dated August 27, 2014, attached hereto and incorporated herein by this reference, shall be added to Exhibit C of the Lease and shall replace any previously included site plan to Exhibit C of the Lease.

4. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Amendment.

5. Facsimile and Electronic Signatures. This Amendment may be executed by either or all parties by facsimile or electronic signature, and any such facsimile or electronic signature shall be deemed an original signature and Escrow Agent is hereby authorized and instructed to rely thereon.

6. Effect of Amendment. If there are any inconsistencies between this Amendment and the Lease, the terms of this Amendment shall govern and control. Except as provided for herein, all other terms and conditions of the Lease shall remain unchanged and the parties hereby reaffirm the terms and conditions of such Lease. This Amendment may only be amended by a document, in writing, of even or subsequent date hereof, executed by the parties hereto.

EXECUTED as of the date set forth above.

LESSOR:	**LESSEE**:
City of Chandler, an Arizona municipal corporation	F&G Enterprises, L.L.C., an Arizona limited liability company
By: _____	By: _____
Its: _____	Its: _____

Approved as to Form:

_____
City Attorney (KSM)

STATE OF ARIZONA)
) ss.
COUNTY OF Maricopa)

On this_____ day of _____, 2014, before me personally appeared_____, to me known to be the_____of the City of Chandler, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the same on behalf of said municipal corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
NOTARY PUBLIC in and for the
State of Arizona
My commission expires _____

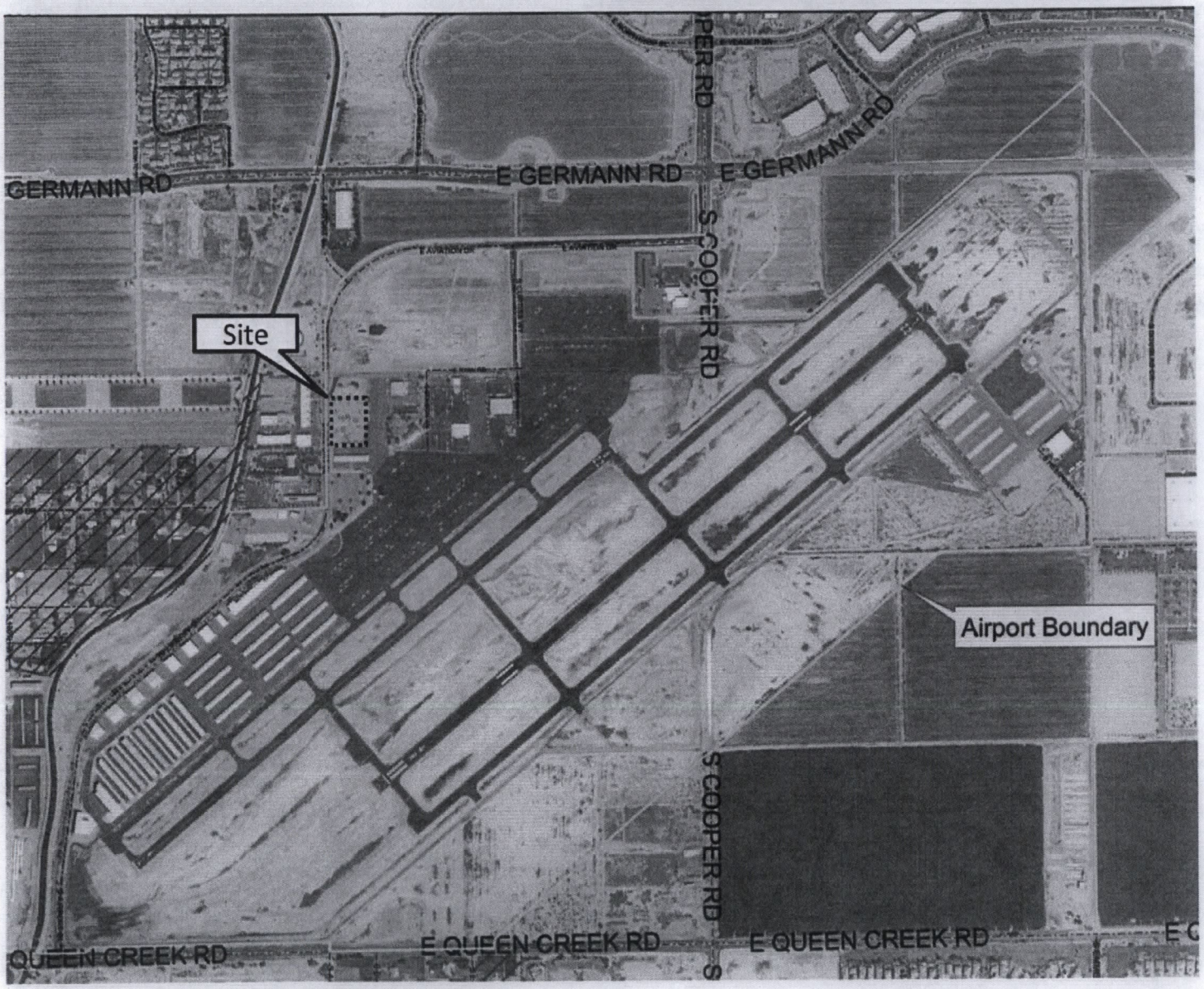
STATE OF ARIZONA)
) ss.
COUNTY OF Maricopa)

On this ___ day of _____, 2014, personally appeared before me Hyrum G. Hatch, to me known to be Manager/Member of F&G ENTERPRISES LLC, the Limited Liability Company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said Limited Liability Company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

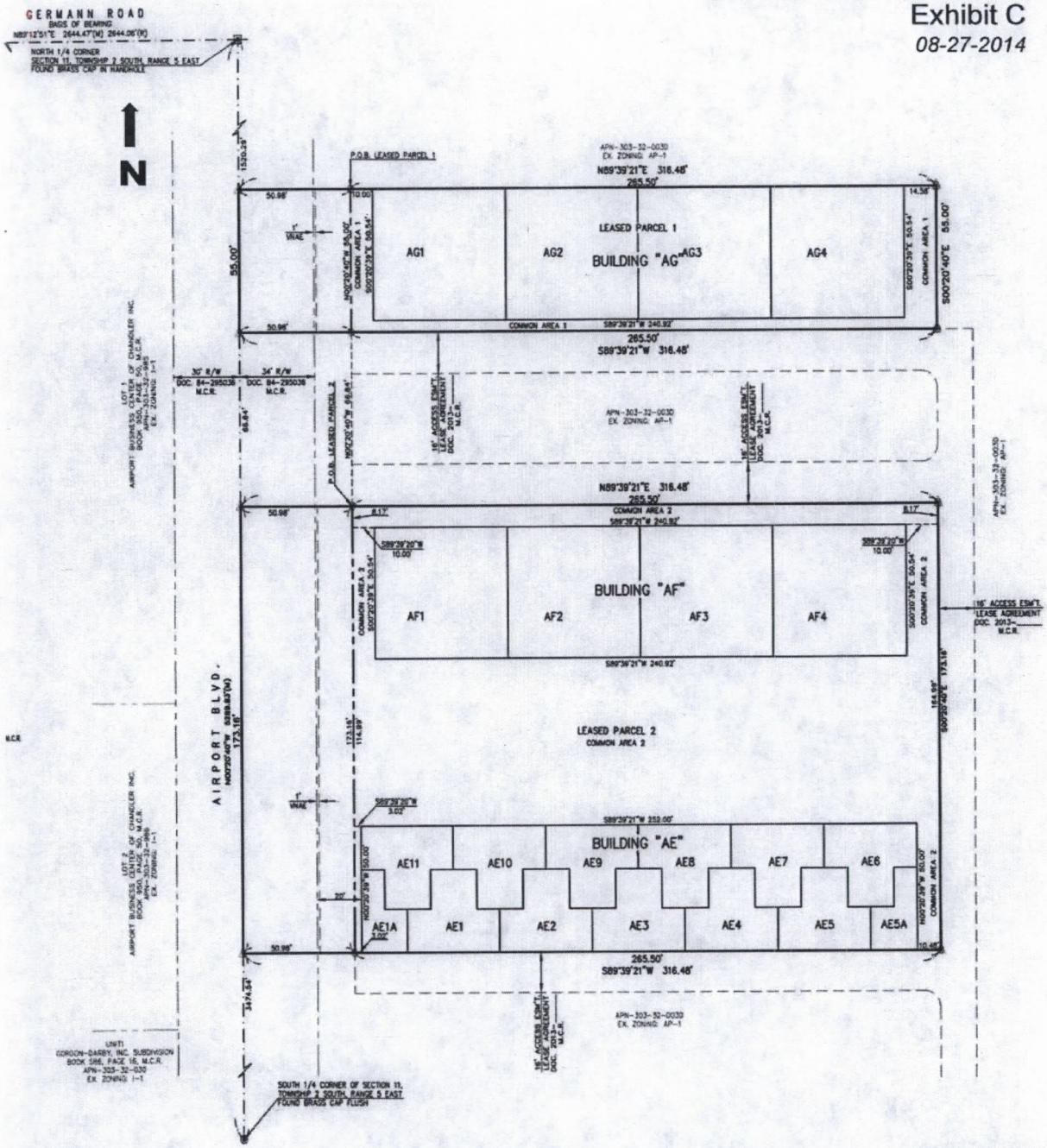
GIVEN under my hand and official seal this ____ day of _____, 2014.

_____
NOTARY PUBLIC in and for the
State of Arizona.
My Commission expires _____

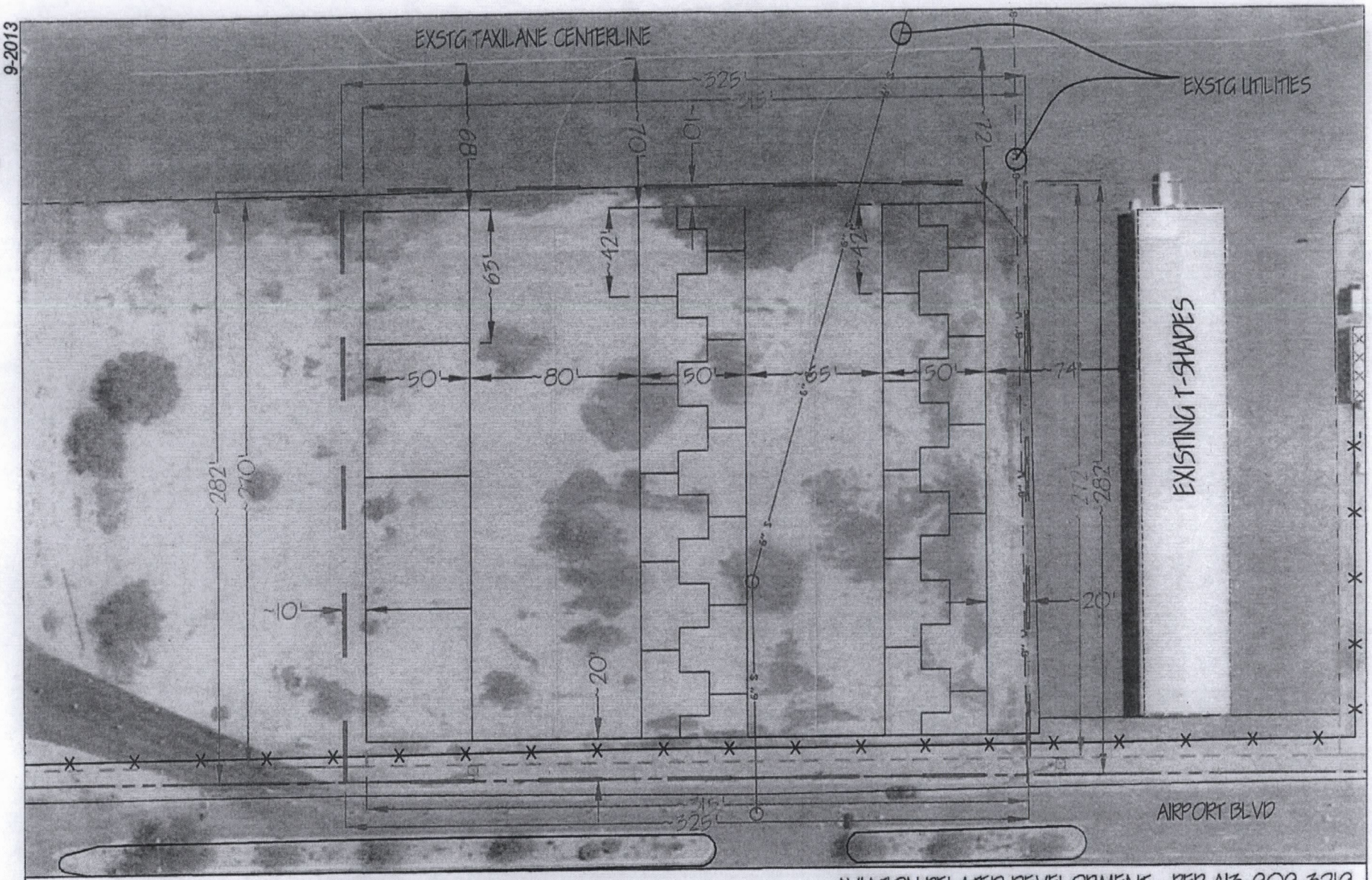
Chandler Ground Lease No. 016 Location Map



Chandler Ground Lease No. 016
F&G Enterprises Site Plan
Exhibit C
08-27-2014



Chandler Ground Lease No. 016
Original Site Plan
9-2013



Scale: 1" = 60'

LEGEND

- EXISTING AIRPORT PROPERTY LINE
- PROPOSED DEVELOPMENT LEASE LINE
- PROPOSED DEVELOPMENT BUILDING LAYOUT
- ORIGINAL RFP LOT LINES

AVIATION RELATED DEVELOPMENT - RFP A13-909-3219
PROPOSED DEVELOPMENT DIMENSIONS

SUBMITTAL BY: F&G ENTERPRISES