#13

APR 24 2008

Chandler • Arizona
Where Values Make The Difference

MEMORANDUM **Public Works Department – Council Memo No. PWA08-045**

DATE: APRIL 24, 2008

TO: MAYOR & COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
R.J. ZEDER, PUBLIC WORKS DIRECTOR
DANIEL COOK, DEPUTY PUBLIC WORKS DIRECTOR

FROM: GREG CHENOWETH, AIRPORT MANAGER

SUBJECT: ORDINANCE NO. 4056 APPROVING THE DEVELOPMENT AGREEMENT WITH CHANDLER AIRPARK BUSINESS CENTER, LLC, FOR THROUGH THE FENCE ACCESS TO CHANDLER MUNICIPAL AIRPORT.

RECOMMENDATION: Staff recommends that the City Council pass and adopt Ordinance No. 4056 approving the Development Agreement with Chandler Airpark Business Center, LLC, for Through the Fence Access to the Chandler Municipal Airport.

BACKGROUND/DISCUSSION: Surrounding the Chandler Municipal Airport there are a few hundred acres of the industrial and commercial land that are owned by private developers. Some of this land is adjacent to the Airport with potential direct access to the Airport and the Airport's taxiway system. The parcel of land at the northwest corner of Queen Creek Road and Cooper Road owned by Chandler Airpark Business Center, LLC, (CABC) approximately 21 acres, is one of these parcels with direct access to the Airport.

The CABC plans to develop their parcel for industrial and office uses with aviation-related features. The project will consist of several individual lots serviced by one or more taxilanes that will have access through the Airport perimeter fence and connect into the Airport's taxilane/taxiway system. It is estimated that there will be approximately 100 based aircraft in the project, and that the project will construct 22 hangers of varying size with a total of approximately 150,000 square feet of hanger space.

This Development Agreement establishes the following key provisions between the City and CABC.

- CABC and the City will enter into an Access Agreement for through the fence access to the Airport. This agreement will establish the terms of the access including the payment of fees, allowed and prohibited aeronautical activity outside the fence, compliance with Airport Rules, Regulations, and Minimum Operating Standards, compliance with Grant Assurances, taxilane construction, and other conditions for access.
- CABC and the City will enter into a Lease Agreement for a long-term lease at the current lease rate when the lease is signed for approximately 2.8 acres. This agreement provides for a market rate adjustment at the end of the lease term and each extension of the term, and a Consumer Price Index adjustment on an annual basis.
- The term of the Access Agreement and Lease Agreement will be a base term of 40 years with four extension terms of 10 years each.
- CABC will obtain the necessary City PAD zoning for the property for industrial/office use with aviation-related uses, but not including any commercial aviation activity, will obtain final development plan and final plat approval, and will incorporate a Users Association and execute and record Airpark CC&R's.
- The project and Association will develop and operate the aviation-related activities in compliance with the Airport Rules and Regulations, and Minimum Operating Standards.
- CABC will construct the necessary taxilane improvements for the project.

FINANCIAL IMPLICATIONS: The through the fence access to Chandler Municipal Airport will require that the owners/users of the Chandler Airpark Business Center pay several fees. These fees include: the lease fee for the ground lease; a fuel flowage fee for all self fueling in the project area (commercial sale of aviation fuel is not allowed); an Airport access fee that is a per square foot charge for each hanger in the project; and an Airport user fee that is one-half of the aircraft tie-down rate for each aircraft based in the project. These fees are approved by Council in the annual rates and fees adjustment.

It is estimated that at build-out the Chandler Airpark Business Center will pay approximately $75,000 per year in fees to the Airport. The project will start paying these fees when the project is constructed and aircraft are accessing the Airport.

ADVISORY COMMITTEE VOTE: At the April 9, 2008 regular meeting, the Airport Commission voted 7 to 0 recommending approval of the Airport Access Agreement and Ground Lease Agreement with Chandler Airpark Business Center, LLC, for Through the Fence Access to the Chandler Municipal Airport.

PROPOSED MOTION: Move that the City Council pass and adopt Ordinance No. 4056 approving the Development Agreement with Chandler Airpark Business Center, LLC, for Through the Fence Access to the Chandler Municipal Airport.

ORDINANCE NO. 4056

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING AND APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CHANDLER ("CITY") AND CHANDLER AIRPARK BUSINESS CENTER, LLC ("DEVELOPER") TO FACILITATE THE DEVELOPMENT OF AN AIRPARK ON PRIVATE REAL PROPERTY IMMEDIATELY ADJACENT TO THE SOUTH SIDE OF THE CHANDLER MUNICIPAL AIRPORT; AUTHORIZING CITY TO ENTER INTO A "THROUGH-THE-FENCE" ACCESS AGREEMENT WITH DEVELOPER; AND AUTHORIZING CITY TO ENTER INTO A LONG-TERM LEASE AGREEMENT WITH DEVELOPER FOR A PORTION OF AIRPORT PROPERTY TO BE USED AS A TAXILANE IN CONNECTION WITH THE AIRPARK.

WHEREAS, the City of Chandler desires to encourage the development of light industrial/office uses on private real property situated near and around the Chandler Municipal Airport, which it believes will be of significant benefit in furthering the economic well-being of the City; and

WHEREAS, Chandler Airpark Business Center, LLC, the owner of approximately 21 acres of undeveloped private real property abutting the south side of the Airport within Chandler, Arizona, and legally described in Exhibit "1", attached hereto and incorporated herein by this reference, desires to development said private property for such light industrial/office uses if some or all of the property can be subdivided into an airpark, whose lots would have aircraft access to and from the taxiway/runway system at the Airport; and

WHEREAS, the parties wish to enter into an agreement to facilitate the development of such an airpark, which agreement shall comply with the statutory requirements for a development agreement set forth in A.R.S. § 9-500.05; and

WHEREAS, as part of such a development agreement, the parties desire to commit (i) to entering into an access agreement to provide aircraft access between such an airpark and the Airport at a designated point of access and (ii) to executing a long-term lease for the use of an undeveloped portion of Airport as a taxilane in connection with such airpark, subject to certain terms and conditions, as stated in the development agreement, being satisfied within 36 months from the effective date of such a development agreement;

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

SECTION 1. The City Council does hereby authorize and approve the City of Chandler entering into the Development Agreement between the City of Chandler and Chandler Airpark Business Center, LLC in substantially the form and content shown in Exhibit "3", attached hereto and incorporated herein by this reference.

SECTION 2. The City Council does hereby authorize and approve the terms of the Access

Agreement identified in the Development Agreement as Exhibit "B" thereto in substantially the form and content shown in said exhibit.

SECTION 3. The City Council does hereby authorize and approve the terms of the Lease Agreement identified in the Development Agreement as Exhibit "C" thereto in substantially the form and content shown in said exhibit, and which shall affect that certain real property generally depicted and described in Exhibit "2", attached hereto and incorporated herein by this reference.

SECTION 4. The Mayor of the City of Chandler is hereby authorized to execute each of the above-referenced documents on behalf of the City of Chandler at such time as the execution of each respective document is required and all conditions prerequisite to the execution of each respective document has been satisfied.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2008.

ATTEST:

_____ _____
CITY CLERK MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this ____ day of _____, 2008.

ATTEST:

_____ _____
CITY CLERK MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4056 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2008, and that a quorum was present thereat.

_____
CITY CLERK

PUBLISHED:

APPROVED AS TO FORM:

_____
CITY ATTORNEY GAB

EXHIBIT "1" TO ORDINANCE NO. 4056

EXHIBIT 1

LEGAL DESCRIPTION

BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 2 SOUTH, RANGE 5 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP FLUSH MARKING THE SOUTHEAST CORNER OF SAID SECTION 11, FROM WHICH A BRASS CAP FLUSH MARKING THE SOUTH QUARTER CORNER OF SAID SECTION 11 BEARS SOUTH 89°00'30" WEST, A DISTANCE OF 2647.38 FEET;

THENCE SOUTH 89°00'30" WEST, ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 1506.69 FEET;

THENCE NORTH 00°59'34" WEST, A DISTANCE OF 55.03 FEET TO A POINT ON A LINE PARALLEL WITH AND 55.00 FEET NORTH OF THE SOUTH LINE OF SAID SOUTHEAST QUARTER;

THENCE NORTH 49°33'41" EAST, ALONG THE EASTERLY LINE OF THAT PROPERTY AS DESCRIBED IN DOCUMENT NO. 94-0066751, MCR, A DISTANCE OF 1897.62 FEET;

THENCE NORTH 00°23'12" WEST, A DISTANCE OF 59.05 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER;

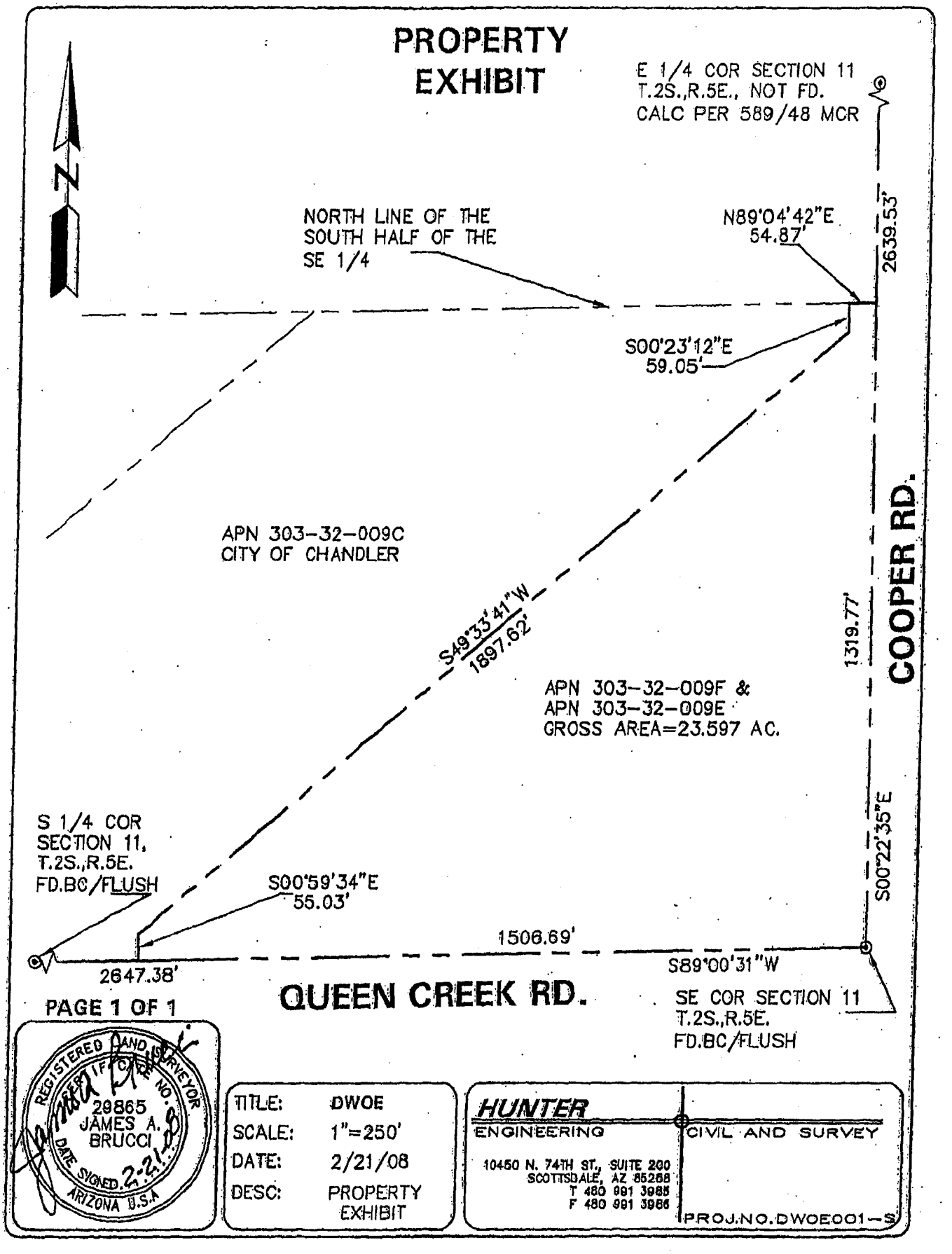
THENCE NORTH 89°04'42" EAST, A DISTANCE OF 54.87 FEET TO A POINT ON THE EAST LINE OF SAID SOUTHEAST QUARTER;

THENCE SOUTH 00°22'35" EAST, ALONG SAID EAST LINE, A DISTANCE OF 1319.77 FEET TO THE **POINT OF BEGINNING.**

SAID DESCRIPTION CONTAINING: 1,027,893 SQUARE FEET OR 23.597 ACRES OF LAND, MORE OR LESS.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
29865
JAMES A.
BRUCCI
Date Signed 2-2-00
ARIZONA, U.S.A.

PROPERTY EXHIBIT



PAGE 1 OF 1

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
29865
JAMES A.
BRUCCI
DATE SIGNED 2-21-08
ARIZONA U.S.A.

TITLE:	DWOE
SCALE:	1"=250'
DATE:	2/21/08
DESC:	PROPERTY EXHIBIT

HUNTER
ENGINEERING | CIVIL AND SURVEY

10450 N. 74TH ST., SUITE 200
SCOTTSDALE, AZ 85258
T 480 991 3985
F 480 991 3986

PROJ.NO.DWOE001-S

EXHIBIT "2" TO ORDINANCE NO. 4056

Exhibit "2" to Ordinance No. 4056

GENERAL DESCRIPTION OF LEASED PREMISES:

Undeveloped portion of Chandler Airport Property consisting of an 80-foot wide strip abutting the Airpark Property described in Exhibit "1" to this Ordinance No. 4056.

The strip is approximately 150,920 square feet and its location is generally depicted on the second page of this Exhibit "2". However, the final alignment will likely show a modification or adjustment at both the northeast and southwest ends of the leased premises. The final alignment, together with a surveyed legal description of the leased premises, will be completed as part of the future rezoning and development approvals for the Airpark Property and will be included as final exhibits at the time the Lease Agreement is executed. The actual size of the leased premises will be fixed as part of the final alignment and the survey.

TEMPORARY EXHIBIT A TO THE AIRPORT LEASE CONTRACT

CHANDLER AIRPARK BUSINESS CENTER - GROUND LEASE

APPROXIMATE LOCATION OF GROUND LEASE AREA

NO SCALE

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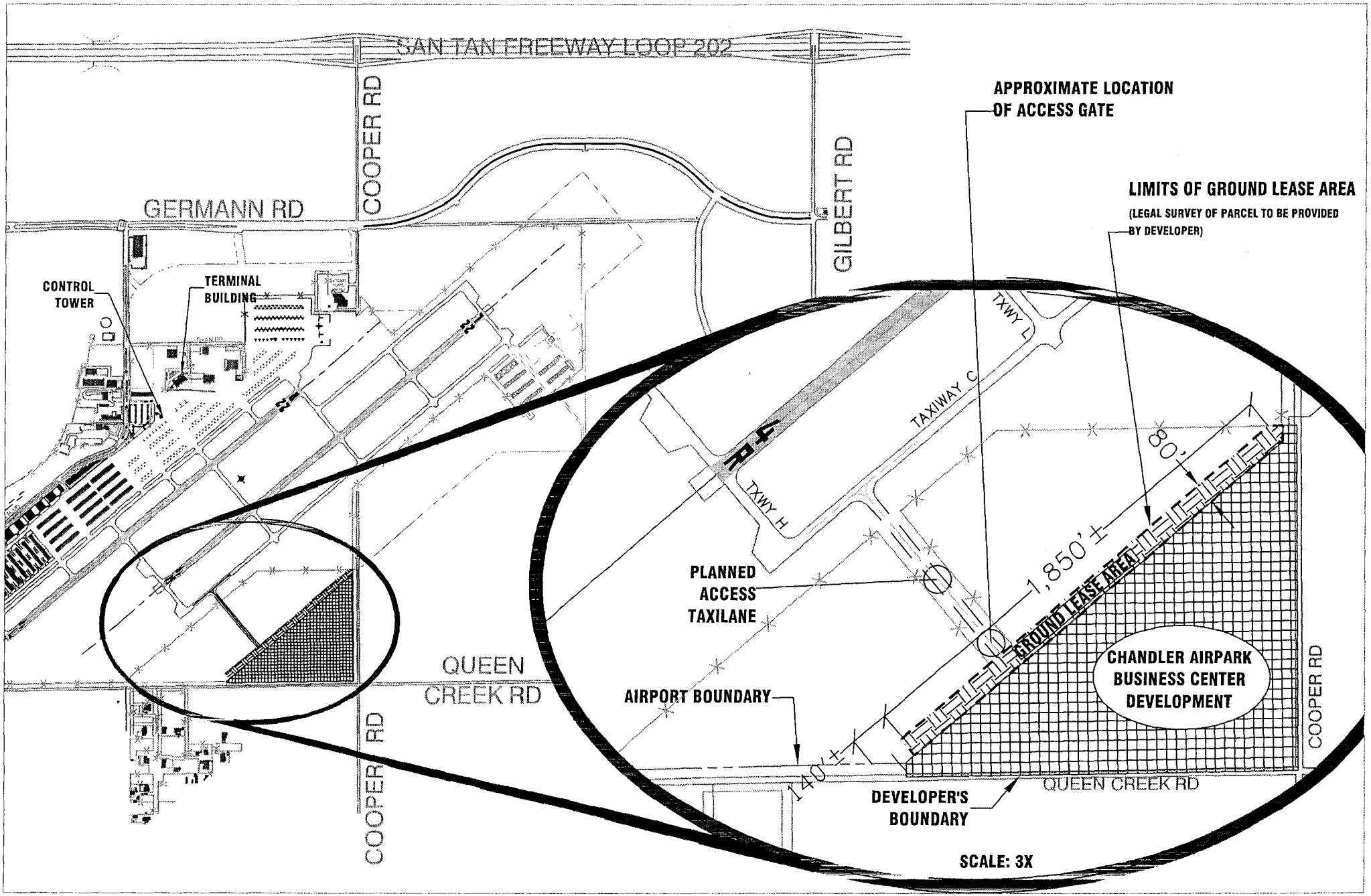

EXHIBIT "3" TO ORDINANCE NO. 4056

Exhibit "3" to Ordinance No. 4056

CITY OF CHANDLER
AIRPARK DEVELOPMENT AGREEMENT

This City of Chandler Airpark Development Agreement (this "Agreement") is made this ___ day of _____, _____, by and between the CITY OF CHANDLER, an Arizona municipal corporation ("City"), and CHANDLER AIRPARK BUSINESS CENTER, LLC, an Arizona limited liability company ("Developer") (collectively, the "Parties").

RECITALS

A. City owns and operates the Chandler Municipal Airport, a publicly funded general aviation airport located in the City of Chandler, County of Maricopa, State of Arizona (the "Airport).

B. Developer holds fee title to that certain real property located immediately adjacent to or contiguous with the Airport in the City of Chandler, County of Maricopa, State of Arizona, and more particularly described in attached Exhibit "A" (the "Airpark Property").

C. Developer intends to develop the Airpark Property for light industrial/office uses with aviation-related uses and to subdivide some or all of the Airpark Property as an airpark consisting of several individual lots serviced by one or more taxilanes that collectively function as an aircraft taxilane system capable of connecting the individual lots with the taxiway/runway system on the Airport (the "Airpark"). Developer desires that sufficient airport/airpark access for aircraft exist so that the users of the Airpark's aircraft taxilane system will be able to access the Airport from the Airpark and vice-versa.

D. Developer also intends to establish and record certain covenants, conditions and restrictions (the "Airpark CC&R's") to establish a general plan for the improvement, development, operation, maintenance and use of the Airpark and further intends to incorporate an association, whose membership, at all times, shall consist exclusively of the owners of individual lots within the Airpark (the "Association"), to manage, maintain and otherwise be responsible for the taxilanes and other common areas of the Airpark, to enforce the Airpark CC&R's and to be responsible for the payment of all fees, charges or other compensation to be paid by the Association or individual taxilane users to City for or in connection with the airport/airpark access.

E. City is willing to allow the taxilane users to have access to the Airport and to the Airport taxiway/runway system, but only through a designated point of access established by City, in its sole discretion, and provided that adequate safeguards are in place to assure compliance with all applicable federal, state and local rules, regulations and directives.

F. The Parties acknowledge and agree that they will mutually benefit from the development of the Airpark Property for light industrial/office use with aviation-related uses and the establishment of the Airpark; that sufficient airport/airpark access for the taxilane users will

most likely enhance development of the Airpark Property and the Airpark, stimulate economic development in the City of Chandler, and provide additional revenues to the Airport. The Parties acknowledge that this Agreement is a development agreement pursuant to the provisions of A.R.S. § 9-500.05.

AGREEMENT

NOW, THEREFORE, in consideration of the of the foregoing Recitals and the mutual promises and agreements set forth herein and other good and valuable considerations, the adequacy of which is hereby acknowledged, City and Developer agree as follows:

1. Definitions.

1.1. General Provision. Except as otherwise defined in this Agreement, the terms, phrases, words and their derivatives used in this Agreement shall have the meanings given in the Chandler Municipal Airport Rules and Regulations, 2006, as adopted by the Chandler City Council on July 24, 2006, and any subsequent amendments thereto (the "Airport Rules and Regulations"), or, where not so defined or given within the Airport Rules and Regulations, the meanings that may be given in Chapter 8 of the Chandler City Code, as amended.

1.2. Additional Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

(a) *Affiliate* or *affiliated* means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

(b) *Aviation-related uses* mean those aeronautical activities that are allowed to be conducted within the Airpark pursuant to subparagraph 3.4 of the Access Agreement (defined below).

(c) *Connecting Taxilane* means the taxilane on the Airport constructed and used for the purpose of connecting the Airpark's aircraft taxilane system with the Airport taxiway/runway system.

(d) *Control, controls* or *controlled* means the power to determine the policies or management practices of another person, generally a business entity, whether through ownership of voting securities, by contract or otherwise.

(e) *Person* means any human being, any governmental or political subdivision or public agency, any public or private corporation or limited liability company, any partnership, any firm, association or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity.

(f) *Taxilane Improvements* means all of the following: (a) the Airpark's aircraft taxilane system; (b) the Connecting Taxilane; (c) the designated access gate and gate

control mechanism at the point of access; (d) any staging area established in relation to or as part of the Airpark's aircraft taxilane system; (e) the perimeter fencing separating the Airpark and the property covered under the Lease (defined below) from the Airport; and (f) any related appurtenances.

(g) *Taxilane User or Airpark Taxilane User* means those persons lawfully operating aircraft on the Airpark's aircraft taxilane system, provided that the operation of aircraft on the Airpark's aircraft taxilane system is restricted to aircraft: (i) owned or leased with industry standard documents by the owner or beneficial occupant (tenant, subtenant or person otherwise holding legal possession) of a lot in the Airpark; and (ii) used by the owner or beneficial occupant or an employee, customer, visitor of the owner or beneficial occupant or any person(s) affiliated with the owner or beneficial occupant.

2. Airport Access Agreement and the Lease Agreement. City shall enter into an access agreement and a lease agreement with Developer and the Association in substantially the forms attached hereto as Exhibit "B" (the "Access Agreement") and Exhibit "C" (the "Lease"), in order to make airport/airpark access possible for the taxilane users, provided that Developer has completed all of the following actions within thirty-six (36) months from the effective date of this Agreement:

(a) Obtained Chandler City Council approval of an effective city ordinance rezoning the Airpark Property to PAD zoning for light industrial/office use and aviation-related uses;

(b) Obtained final development plan approval and final plat approval from City to allow for the establishment of the Airpark and a designated point of access acceptable to City between the Airpark, and including property covered under the Lease, and the Airport; and

(c) Executed and recorded the Airpark CC&R's; and

(d) Incorporated the Association.

3. Access Agreement Provisions. The Access Agreement shall include provisions for the following:

(a) The grant of a license to the Association for the purpose of allowing airport/airpark access for aircraft operated by the Airpark taxilane users, with the duration of the license being for a maximum period of eighty (80) years, consisting of a basic term of forty (40) years, together with four (4) extension terms of ten (10) years each. The Association may exercise the first ten-year extension by giving written notice to City no later than 90 days prior to the expiration of the basic term of the Association's intention to exercise the first extension. The Association may exercise each of the three remaining ten-year extensions by giving similar written notice to City no later than 90 days prior to the expiration of the preceding extension. The first extension term shall commence immediately upon the expiration of the basic term, and each additional extension term shall commence immediately upon expiration of the preceding extension term. All of the conditions, covenants and provisions of this Agreement shall be in effect during the basic term and any extension term. The basic term and/or each of the first three

extension terms shall be extended if the Association is not in default of any material obligations under the Access Agreement beyond any applicable cure periods.

(b) The grant by separate instrument of a non-exclusive easement to City to enter upon the Airpark taxilanes for the limited purposes provided in Sections 3.5(c) and 4 of the Access Agreement.

4. The Airpark CC&R's. The Airpark CC&R's shall be sufficient to assure City that: (a) the Airpark's aircraft taxilane system will be properly operated and maintained so as to meet all applicable local, state and federal standards; (b) the Association's members shall not use the Airpark for any commercial aviation activity except as permitted under the Access Agreement; (c) any commercial aviation activity permitted on the Airpark shall be conducted in compliance with all applicable federal, state and local laws and regulations; and (d) the Association shall be responsible for payment of all required fees and charges imposed on the Association or any of the taxilane users for access and use of the Airport and shall have adequate mechanisms to make assessment of its individual members to obtain reimbursement of the Association's payment of such fees and charges.

5. Conditions of Use. The PAD zoning and the Airpark CC&R's shall expressly prohibit any commercial aeronautical activity or commercial aviation activity on the Airpark except as permitted under the Access Agreement. The through-the-fence components of the PAD zoning shall be expressly conditioned upon construction of all of the Taxilane Improvements being completed.

6. Plat Approval. The preliminary and final plats approved for the Airpark Property shall expressly designate, describe and depict the Airpark, including without limitation the aircraft taxilane system therein, any related staging area, the lots serviced by the aircraft taxilane system, and the point of access of the Airpark's aircraft taxilane system to the Airport.

7. Construction of the Taxilane Improvements. Developer, at Developer's expense, shall construct or cause to be constructed all of the Taxilane Improvements in accordance with the terms and conditions of the Access Agreement.

7.1. Reimbursement Agreement. For a period of fifteen (15) years from the date of completion and acceptance of the Connecting Taxilane, City shall reimburse to Developer a portion of the cost of construction of the Connecting Taxilane if City authorizes or allows any Airport tenant to use the Connecting Taxilane to service or provide access to the taxiway/runway from the Airport tenant's leased premises on the Airport. The reimbursement obligation automatically ceases at the end of the fifteen-year period. Any such reimbursement shall be made by City only upon receipt of payment from the Airport tenant, which payment shall be included as a portion of the rent that the Airport tenant is required to pay under the tenant's lease. This reimbursement obligation shall not apply to any portion of the Connecting Taxilane that is subsequently incorporated by City as part of the widening or improvement of the taxiway/runway system on the Airport that is available to all aircraft utilizing the Airport. The amount of the reimbursement shall be determined as set out in attached Exhibit "D".

7.2. City Right to Construct. Nothing herein shall prohibit City, at its expense, from constructing or causing to be constructed some or all of the on-airport improvements included as part of the Taxilane Improvements. In such event, Developer shall not be entitled to any reimbursement for expenses incurred in constructing any of the Taxilane Improvements.

7.3. Compliance with Applicable Law. All construction of the Taxilane Improvements, whether by Developer, City or otherwise, shall be done in compliance with all applicable federal, state and local standards, rules and regulations.

8. Default Remedies. If City or Developer fails to substantially comply with any material term, covenant or condition contained herein, the non-breaching party may terminate this Agreement sixty (60) days after giving written notice of the noncompliance, if within such period the noncompliance has not been cured. If City fails to comply with the reimbursement provisions of subparagraph 7.1, and said failure remains uncured for a period of sixty (60) days following written notice thereof, then Developer, in addition to any other remedy provided herein, may seek to recover its damages from City.

9. Notices. All notices required or permitted to be given hereunder to any of the Parties to this Agreement shall be in writing and may be given in person or by United States mail or by delivery service. Any notice directed to a party shall become effective upon the earliest of the following: (i) actual receipt by that party; (ii) delivery to the designated address of that party, addressed to that party; (iii) delivery by overnight courier; or (iv) if given by certified or registered United States mail, forty-eight (48) hours after deposit with the United States Postal Service, postage prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of that party shown below or such other address as that party, from time to time, may specify by notice to the other party:

City:	Chandler City Clerk Mail Stop 606 P.O. Box 4008 Chandler, Arizona 85244-4008
With copies to:	Chandler Airport Manager 2380 S. Stinson Way Chandler, Arizona 85249
Developer:	Chandler Airpark Business Center, LLC Attn: Tim Williams P.O. Box 1651 Rancho Santa Fe, CA 92067
With copies to:	Burch & Cracchiolo, PA Attn: Ed Bull/Brennan Ray 702 E. Osborn Road, Suite 200 Phoenix, AZ 85014

10. Assignment.

10.1. Developer shall not assign, delegate, transfer or convey any rights, responsibilities or obligations arising from this Agreement without the express, written agreement of the City Manager or his designee, which shall not be unreasonably withheld, delayed, or conditioned.

10.2. Reimbursements payments to be made by City pursuant to subparagraph 7.1 above may be assigned by Developer upon effective written notice to the City's Airport Manager.

11. Further Assurances. Promptly upon the request of City or Developer, the other of the Parties shall do such further acts and shall execute, have acknowledged and deliver to the other of the Parties, as appropriate, any and all further documents or instruments reasonably requested in order to carry out the intent and purpose of this Agreement.

12. Other Important Provisions.

12.1. Modification and Waiver. Except as expressly provided herein to the contrary, no supplement, modification or amendment of any term of this Agreement shall be deemed binding or effective unless in writing and signed by the Parties. No waiver of any of the provisions of this Agreement shall constitute or be deemed a waiver of any other provision, nor shall any waiver be a continuing waiver. Except as otherwise expressly provided herein, no waiver shall be binding unless executed in writing by the one of the Parties making the waiver.

12.2. Exhibits. The Exhibits referred to herein and attached hereto (the "Exhibits") are incorporated herein by reference.

12.3. Litigation Expenses and Attorneys' Fees. In the event of litigation involving this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its costs and expenses incurred in such action from the other party, including without limitation the cost of reasonable attorneys' fees as determined by the judge of the court.

12.4. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this Agreement shall be deemed invalid or prohibited there under, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect.

12.5. Entire Agreement. This Agreement, including the Exhibits attached hereto, constitutes the entire agreement of the Parties. All terms and conditions contained in any other writings previously executed by the Parties and all prior and contemporaneous arrangements and understandings between the Parties are superseded hereby. No agreements, statements or promises about the subject matter hereof shall be binding or valid unless they are contained herein.

12.6. Counterparts. This Agreement may be executed by the signing in counterparts. The execution of this instrument by each of the Parties signing a counterpart hereof shall

constitute a valid execution, and this instrument and all of its counterparts so executed shall be deemed for all purposes to be a single instrument.

12.7. Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Arizona.

12.8. Headings and Construction. The descriptive headings of the paragraphs of this Agreement are inserted only for convenience and shall not define, limit, extend, control or affect the meaning or construction of any provision herein. Where the context requires herein, the singular shall be construed as the plural and neuter pronouns shall be construed as masculine and feminine pronouns, and vice versa. This Agreement shall be construed according to its fair meaning and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement.

13. Cancellation.

(a) Unless paragraph 2 above is extended by the City Manager or his designee upon request of the Developer, this Agreement shall automatically be deemed cancelled in the event Developer fails to complete all of the actions listed in paragraph 2 above within the time period stated therein.

(b) This Agreement may be cancelled or terminated by City in the event that City receives notice from an authorized agency of the federal government that this Agreement violates any federal rule or regulation or puts City in violation of any of its Airport grant assurances to the federal government. In the event of such notice, prior to such cancellation or termination by City, the Parties will use their best efforts to negotiate within a reasonable period of time amendments or modifications to this Agreement sufficient to meet the purposes of this Agreement and to satisfy the government agency that provided such notice.

(c) Pursuant to A.R.S. Section 38-511, City may, within three (3) years after execution of this Agreement, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of City is, at any time while this Agreement is in effect, an employee of Developer in any capacity or a consultant to Developer with respect to the subject matter of this Agreement.

(d) In the event this Agreement is cancelled or terminated for any reason, City shall give written notice of such event to Developer and the Association (if applicable), and shall record a copy thereof in the office of the Maricopa County Recorder.

14. Effective Date. The effective date of this Agreement shall be the date on which this Agreement is recorded by City with the Maricopa County Recorder.

IN WITNESS WHEREOF the parties hereto have affixed their signatures the date first above written.

CITY OF CHANDLER, an Arizona municipal corporation

By: _____

Its: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney GAB

DEVELOPER: CHANDLER AIRPARK BUSINESS CENTER, LLC, an Arizona limited liability company

By: _____

Its: _____

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing City of Chandler Airpark Development Agreement was acknowledged before me this ____ day of _____, _____, by _____, the _____ of Chandler Airpark Business Center, LLC, an Arizona limited liability company, for the limited liability company, being authorized so to do.

_____
Notary Public

My Commission Expires:

_____

Exhibit "A" to Development Agreement

EXHIBIT A

LEGAL DESCRIPTION

BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 2 SOUTH, RANGE 5 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP FLUSH MARKING THE SOUTHEAST CORNER OF SAID SECTION 11, FROM WHICH A BRASS CAP FLUSH MARKING THE SOUTH QUARTER CORNER OF SAID SECTION 11 BEARS SOUTH 89°00'30" WEST, A DISTANCE OF 2647.38 FEET;

THENCE SOUTH 89°00'30" WEST, ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 1506.69 FEET;

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THENCE NORTH 00°23'12" WEST, A DISTANCE OF 59.05 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER;

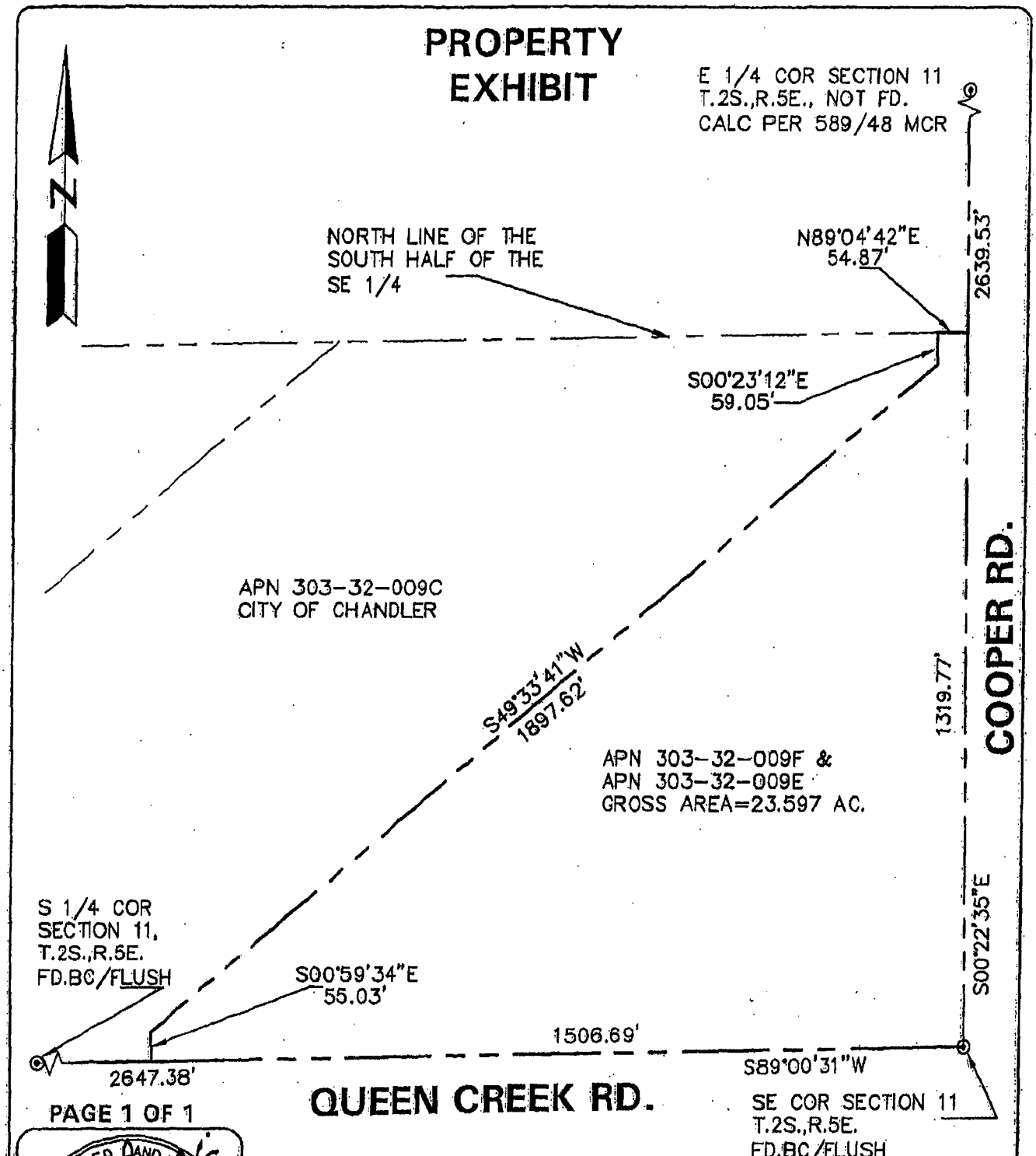
THENCE NORTH 89°04'42" EAST, A DISTANCE OF 54.87 FEET TO A POINT ON THE EAST LINE OF SAID SOUTHEAST QUARTER;

THENCE SOUTH 00°22'35" EAST, ALONG SAID EAST LINE, A DISTANCE OF 1319.77 FEET TO THE **POINT OF BEGINNING.**

SAID DESCRIPTION CONTAINING: 1,027,893 SQUARE FEET OR 23.597 ACRES OF LAND, MORE OR LESS.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
29865
JAMES A.
BRUCCI
Date Signed 2-2-00
ARIZONA, U.S.A.

PROPERTY EXHIBIT



PAGE 1 OF 1

REGISTERED LAND SURVEYOR
CERTIFICATE NO. 29865
JAMES A. BRUCCI
DATE SIGNED 2-21-08
ARIZONA U.S.A.

TITLE:	DWOE
SCALE:	1"=250'
DATE:	2/21/08
DESC:	PROPERTY EXHIBIT

HUNTER
ENGINEERING | CIVIL AND SURVEY
10450 N. 74TH ST., SUITE 200
SCOTTSDALE, AZ 85258
T 480 991 3985
F 480 991 3986

PROJ.NO.DWOE001-S

Exhibit "B" to Development Agreement

Exhibit "B" to Development Agreement

CITY OF CHANDLER
AIRPORT ACCESS AGREEMENT

This City of Chandler Airport Access Agreement (this "Agreement") is made and entered into this ___day of _____, 20___, between and among the CITY OF CHANDLER, an Arizona municipal corporation ("City"), CHANDLER AIRPARK BUSINESS CENTER, LLC, an Arizona limited liability company ("Developer"), and the _____ OWNER'S ASSOCIATION, an Arizona corporation (the "Association") (collectively, the "Parties").

RECITALS

A. City owns and operates Chandler Municipal Airport, a publicly funded general aviation airport located in the City of Chandler, County of Maricopa, State of Arizona, which is further described in Chapter 8 of the Chandler City Code (the "Airport").

B. Developer holds fee title to that certain real property located immediately adjacent to or contiguous with the Airport in the City of Chandler, County of Maricopa, State of Arizona, which was recently rezoned PAD for use as a light-industrial/office park with aviation-related uses pursuant to Chandler Ordinance No. ____ (the "Airpark Property"). That portion of the Airpark Property particularly described in attached Exhibit "A" is being developed and has been subdivided as an airpark consisting of certain individual lots, numbered ___ to ____, serviced by one or more taxilanes that function as an aircraft taxilane system capable of connecting the individual lots with the taxiway/runway system on the Airport (the "Airpark"), all as depicted in that certain plat approved by City and recorded with the Maricopa County Recorder at Book ____, Page _____ (the "Plat").

C. In order to establish a plan for the improvement, development, operation, maintenance and use of the Airpark, Developer has recorded certain covenants, conditions and restrictions to which the Airpark shall be subject and which are recorded with the Maricopa County Reorder as Instrument No. _____ (the "Airpark CC&R's"). Developer has also incorporated the Association, whose membership, at all times, shall consist exclusively of the owners of the individual lots within the Airpark.

D. Developer and the Association desire that the users of the Airpark's aircraft taxilane system have aircraft access from the Airpark to the taxiway/runway system at the Airport (the "Airport taxiway/runway") solely for the purpose of landing, taking off, flying over, taxiing, loading, and unloading of aircraft, but not for any commercial aeronautical activity or commercial aviation activity except as may be provided for herein. City is willing to grant the Association a license that will allow the taxilane users such access, provided that such airport/airpark access is through the designated point of access established by City, as shown on the Plat, and provided that all of the terms and conditions set forth in this Agreement are fully satisfied.

E. The Association desires to manage, maintain and otherwise be responsible for the taxilanes and other common areas of the Airpark, to enforce the Airpark CC&R's and to be responsible for the payment of all fees, charges or other compensation to be paid by the Association or individual taxilane users to City for and in connection with the airport/airpark access.

F. The Parties mutually desire that the Airpark's aircraft taxilane system be designed, constructed, operated and maintained in accordance with all federal, state and local rules, regulations and directives applicable to the Airport's operations.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and agreement set forth herein, the Parties covenant and agree as follows:

AGREEMENT

1. Definitions.

1.1. General Provision. Except as otherwise defined in this Agreement, the terms, phrases, words and their derivatives used in this Agreement shall have the meanings given in the Chandler Municipal Airport Rules and Regulations, 2006, as adopted by the Chandler City Council on July 24, 2006, and any subsequent amendments thereto (the "Airport Rules and Regulations"), or, where not so defined or given within the Airport Rules and Regulations, the meanings that may be given in Chapter 8 of the Chandler City Code, as amended.

1.2. Additional Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

(a) *Affiliate* or *affiliated* means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

(b) *Aviation-related uses* mean those aeronautical activities that are allowed to be conducted within the Airpark pursuant to subparagraph 3.4 below. The term does not include those aeronautical activities specifically prohibited pursuant to subparagraph 3.3 below.

(c) *Connecting Taxilane* means the taxilane on the Airport constructed and used for the purpose of connecting the Airpark's aircraft taxilane system with the Airport taxiway/runway system.

(d) *Control, controls* or *controlled* means the power to determine the policies or management practices of another person, generally a business entity, whether through ownership of voting securities, by contract or otherwise.

(e) *Person* means any human being, any governmental or political subdivision or public agency, any public or private corporation or limited liability company, any partnership,

any firm, association or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity.

(f) *Taxilane Improvements* means all of the following: (a) the Airpark's aircraft taxilane system; (b) the Connecting Taxilane; (c) the designated access gate and gate control mechanism at the point of access; (d) any staging area established in relation to or as part of the Airpark's aircraft taxilane system; (e) the perimeter fencing separating the Airpark and the property covered under the Lease (defined below) from the Airport; and (f) any related appurtenances.

(g) *Taxilane User or Airpark Taxilane User* means those persons lawfully operating aircraft on the Airpark's aircraft taxilane system, provided that the operation of aircraft on the Airpark's aircraft taxilane system is restricted to aircraft: (i) owned or leased by the owner or beneficial occupant (tenant, subtenant or person otherwise holding legal possession) of a lot in the Airpark; and (ii) used by the owner or beneficial occupant or an employee, customer, visitor of the owner or beneficial occupant or any entity or person(s) affiliated with the owner or beneficial occupant.

2. Grant of License. City herein grants to the Association a license allowing the Airpark Taxilane Users to have aircraft access to the Airport from the Airpark. The license is non-exclusive and nothing herein shall prevent City from accessing or using the Airport or shall prohibit City from permitting other persons to access or use the Airport. Nothing herein shall be construed to bar City from further alteration, development, expansion or improvement of the Airport, and City expressly reserves the right to do so, but City shall not limit or impede any rights of the Association as they pertain to Airport access without reasonable, prior written notice to the Association. In the event Association's rights to access the Airport are limited or impeded as a result of the City exercising its rights under this paragraph 2, the City shall use its best faith efforts to provide reasonable alternate through the fence access to the Airpark Taxilane Users.

2.1. Contingencies. The license granted herein is contingent upon each of the following conditions having first been satisfied:

(a) The Airpark is under actual construction;

(b) The Taxilane Improvements have been accepted by the City Engineer in accordance with applicable provisions of Section 47-8 of the Chandler City Code;

(c) The Airpark CC&R's are recorded and in effect; and

(d) Pursuant to paragraph 4 below, Developer has granted to City an easement for use of the Airpark taxilanes.

2.2. Conditions. The license granted herein is expressly made subject to the following conditions:

(a) Airport/airpark access is made available through this license solely for the purpose of allowing the landing, taking off, flying over, taxiing, loading, unloading, and towing of aircraft in connection with aviation-related uses allowed to be conducted by Airpark Taxilane Users. Only rotary-wing aircraft may be towed by an Airpark Taxilane User; towing of all other aircraft must be done by persons authorized by the Airport Manager to do so.

(b) Access to the Airport granted herein includes permission to use the airside and public area of the Airport for the above-stated purpose, and includes both permission to enter upon the Airport from the Airpark and to exit from the Airport to the Airpark.

(c) The license granted herein does not grant or authorize the storage of aircraft or any personal property, aviation or non-aviation related, upon the Airport. This restriction does not apply to the Airport property leased by City to Developer pursuant to Airport Lease Contract No. _____ (the "Lease") and the use of the real property that is the leased premises under the Lease shall be governed by the terms of the Lease.

(d) Any person accessing or using the Airport pursuant to the license herein granted shall comply, at all times, with all applicable requirements of all statutes, acts, ordinances, regulations, codes, and standards of legally constituted authorities with jurisdiction, including, but not limited to, provisions of Chapter 8 of the Chandler City Code and the Airport Rules and Regulations, and all applicable provisions of this Agreement.

(e) With the approval of the City Manager, the Airport Manager may impose emergency regulations when reasonably necessary to protect the immediate health and safety of the Airport. Such emergency regulations are limited to forty-five (45) calendar day's duration and take effect immediately upon execution by both the Public Works Director and the City Manager and posting a copy of the regulations at the Airport terminal building. Such emergency regulation shall terminate if not adopted by the City Council within such forty-five-day period.

2.3. License Term. The license granted herein shall be for a maximum period of eighty (80) years, consisting of a basic term of forty (40) years that commences on the date of this Agreement, together with four (4) extension terms of ten (10) years each. The Association may exercise the first ten-year extension by giving written notice to City no later than 90 days prior to the expiration of the basic term of the Association's intention to exercise the first extension. The Association may exercise each of the three remaining ten-year extensions by giving similar written notice to City no later than 90 days prior to the expiration of the preceding extension. The first extension term shall commence immediately upon the expiration of the basic term, and each additional extension term shall commence immediately upon expiration of the preceding extension term. All of the conditions, covenants and provisions of this Agreement shall be in effect during the basic term and any extension term. The basic term and/or each of the first three extension terms shall be extended if the Association is not in default of any material obligations under the terms and conditions of this Agreement beyond any applicable cure periods.

2.4. Waiver of Term Extension. The failure by the Association to provide timely written notice to City of the Association's intent to exercise an extension of the license term shall constitute a waiver of the Association's rights to extend the term of the license.

2.5. Compensation. As consideration for the grant of the license, Developer, from the date of this Agreement until the earlier of either a written acceptance by the Association for the operation and maintenance of the Airpark taxilane system provided to the City or the commencement of the through the fence operations through the designated access gate, and the Association thereafter, shall pay those fees, charges and other compensation established by the Chandler City Council for or in connection with airport/airpark access, as the same may be amended thereafter from time to time. Additional terms regarding the method and manner of making such payments are addressed in attached Exhibit "B".

3. Airpark Use. While this Agreement and the license granted herein are in effect, the use of the Airpark shall be limited as follows:

3.1. General limitations. Use of the Airpark shall be limited to those uses permitted under Chandler Ordinance No. _____, and further are made subject to the Airpark CC&R's and to the provisions of this Agreement.

3.2. Rotary-wing aircraft prohibited. Flight operations to or from the Airpark by any rotary-wing aircraft are strictly prohibited. Storage of rotary-wing aircraft is permitted at the Airpark and such aircraft may be towed to and from the designated heliport areas on the Airport through the designated access gate, but such aircraft may only be operated from designated heliport areas on the Airport.

3.3. Prohibited Aeronautical Activity. No commercial aeronautical activity or commercial aviation activity shall be permitted in the Airpark or elsewhere on the Airpark Property except as may be authorized in this Agreement. The following are aeronautical activities that are specifically prohibited uses in the Airpark:

(a) Flying clubs, flight schools (except as provided below in Subsection 3.4(e)) or any other commercial aeronautical activity consisting of renting or leasing, on a short term or hourly basis, light general aviation piston driven aircraft;

(b) Aircraft sightseeing;

(c) Crop dusting;

(d) The use and/or storage of fire suppression aircraft;

(e) Aerial advertising;

(f) Aircraft repair and maintenance servicing operations, *but* this does not prohibit the self-repair/maintenance of an owner's or tenant's own aircraft nor does it

prohibit a repair/maintenance service operation located outside the Airpark from entering the Airpark to repair/maintain an owner's or tenant's aircraft; and

(g) Storage of aviation petroleum products for sale or distribution to the public.

(h) Other "aeronautical activity" as defined by Chapter 8 of the City Code and not specifically identified herein, except to the extent that such activity is otherwise approved in writing by the City Manager or its designee as a permitted activity within the Airpark, and except for those aeronautical activities permitted within the Airpark pursuant to subparagraph 3.4 below.

3.4. Allowed Aeronautical Activity. The following are aeronautical activities that are specifically permitted uses within the Airpark:

(a) The storage and non-commercial use of aircraft to and from the Airport;

(b) Charter operations, *provided that* passengers are picked-up and dropped-off at the City's on-Airport terminal or by a fixed base operator (FBO) holding a certificate from City to provide such services at the Airport;

(c) Charter brokerage, *provided that* any aircraft used in such charter brokerage operation is not entering the Airpark, except for such aircraft as are based at the Airpark and not owned or leased by the brokerage operation or any person or entity that is an affiliate or subsidiary of such brokerage operation for use in the charter brokerage operation;

(d) Aircraft hanger sub-leasing;

(e) Pilot training in an office or classroom setting and/or in a simulator environment, *provided that*, in the event that actual in-plane training flights are needed, training for such flights shall originate and terminate at either the City's on-Airport terminal or through an FBO holding a certificate from City to provide such services at the Airport;

(f) Aerial photography;

(g) Aircraft surveying;

(h) Aircraft sales and leasing provided that any demonstration flights shall originate or terminate at the City's on-Airport terminal or through an FBO holding a certificate from City to provide such services at the Airport;

(i) Aircraft management; and

(j) Private aircraft fuel facility, *provided that* such use is for the purpose of the lot owner's or tenant's self-fueling only. Such use may be provided individually or in the form of a fuel co-operative among the Association's members. Notwithstanding any

other applicable health and safety regulations, whether federal, state or local, any person or entity operating a private aircraft fuel facility shall be subject to the requirements stated in subparagraph 3.5 below.

(k) Other "aeronautical activity" as defined by Chapter 8 of the City Code and not specifically identified herein, but only to the extent that such activity is approved in writing by the City Manager or its designee as a permitted activity within the Airpark.

3.5. Additional restrictions on Airpark use. The following additional restrictions shall apply to Airpark use:

(a) No person or entity having a fuel facility on the Airpark shall operate and maintain any mobile fuel service, mobile fuel service vehicle ("mobile fueler"), or mobile fuel service equipment.

(b) No open flame shall be allowed within fifty (50) feet of any fueling operation.

(c) A City-approved fuel flow meter shall be installed at any fuel facility with the flow indication meter in full view from the Airpark taxilane. City is herein granted authority to access the Airpark, both common areas and individual lot where any aircraft fuel facility is situated, during any reasonable time and upon reasonable written notice, but no less than 24 hours, for the purpose of randomly checking fuel meter readings. An individual lot owner or other beneficial occupant of such fuel facility may accompany, but shall not interfere or impede, the City employee or official conducting the check. The City employee or official may access the location of the facility for the above-stated purpose whether or not a lot owner or other beneficial occupant is present at the time the check is conducted.

(d) Any aircraft fuel facility shall be located exterior to any structures on the Airpark, shall be sited between the Airpark taxilane clearance area and any structures on the Airpark in full view from the Airpark clearance area, shall be constructed aboveground, or underground provided that the fuel flow meter and the connecting fuel lines to fuel tank are above-ground or otherwise readily visible, and shall be readily accessible from the Airpark taxilane.

(e) No structure, building or facility located upon any portion of the Airpark shall violate the Airport *imaginary surfaces* as defined in Federal Aviation Regulations (FAR), Part 77. No construction shall be permitted in the Airpark in excess of 35 feet in height without prior written approval from the Federal Aviation Administration (FAA) through proper submittal of FAA Form 7460.

(f) No motor vehicle of any kind, except in the course of performing maintenance/safety inspections or maintenance of the Connecting Taxilane and designated access gate, shall be used, parked upon, or impede aircraft movement through the designated access gate or along the Connecting Taxilane. Except in the case of emergency, notice in writing

of such impedance shall be provided to all lot owners or other beneficial occupants of record at least 24 hours in advance of such occurrence.

(g) No person shall conduct or operate any commercial aeronautical activity at the Airport or in the Airpark without first obtaining an aeronautical business permit pursuant to Chapter 8 of the Chandler City Code.

(h) No person shall engage in any aeronautical activity in or upon the Airpark if the activity or the extent, intensity or scope of the activity is such that City receives written notice from the federal government or from the State of Arizona that the conduct of the activity is deemed to constitute a breach of a Grant Assurance (defined in paragraph 16.10 below). If City receives such written notice, a copy thereof shall be provided to Developer, the Association and the person engaged in such activity, and upon receipt thereof the activity shall cease until the notice is rescinded or withdrawn by the public entity issuing the notice.

4. Grant of Easement to City. Developer shall grant to City a non-exclusive easement to enter upon the Airpark taxilanes for the purpose of: (i) assuring compliance by Developer and/or the Association with the terms of this Agreement and compliance by the Association with the terms and conditions of the license granted herein to the Association; (ii) allowing access by emergency and city service vehicles (including tugs); and (iii) allowing access for mobile airplane fuel services provided by any Fixed Base Operator (FBO) or other commercial aviation operator holding a certificate from City to provide such services upon the Airport. This grant of easement shall be by separate instrument, in form approved by the Chandler City Attorney, shall be consented to by any lender, lienholder or other encumbrancer of the underlying fee, and shall be deemed effective when recorded, and shall be in substantially the same form as is attached as Exhibit "C".

5. Taxilane Improvements.

5.1. Construction.

(a) Developer, at Developer's expense, shall construct and certify or cause to be constructed and certified all of the Taxilane Improvements described in Section 1.2(f)(b, c, and e) above.

(b) Construction of the Taxilane Improvements shall be in accordance with requirements for any zoning, platting or other development approvals, including but not limited to all building permit approvals, in connection with the Airpark Property or the Taxilane Improvements; in accordance with plans and specifications for the items in Section 1.2(f)(b, c, and e) above as approved by the Airport Manager; and in accordance with construction operation and safety requirements applicable to constructing the items in Section 1.2(f)(b, c, and e) above on the Airport.

(c) The Airport Manager shall approve any gate control mechanism prior to installation.

(d) The Airport Manager shall not unreasonably deny, delay, or condition the approvals under (b) and (c) above.

(e) City shall provide reasonable access to Developer or Developer's contractors or subcontractors as necessary for the construction of the Taxilane Improvements.

5.2. Ownership.

(a) Title to the Connecting Taxilane, perimeter fence, designated access gate and gate control mechanism at the point of access constructed by Developer or caused to be constructed by Developer shall vest in City upon completion of construction free and clear of any claims, liens, setoffs or encumbrances and upon written acceptance by the City. This provision does not apply to improvements made to the Airport property that is covered by the Lease and those improvements shall vest in accordance with terms of the Lease.

(b) Title to any improvements on the Airpark Property shall be vested in the Developer or Association.

5.3. Maintenance.

(a) Upon vesting of title to the City as provided in subparagraph 5.2(a), City, at its expense, shall maintain the Connecting Taxilane, perimeter fence, designated access gate and gate control mechanism at the point of access, and shall do so in a manner comparable to like public improvements on the Airport.

6. Assignment. Developer and/or the Association shall not assign, delegate, transfer or convey any rights, responsibilities or obligations arising from this Agreement without the written consent of the City Manager or his designee, which shall not be unreasonably withheld, delayed, or conditioned.

7. Indemnification.

7.1. By Developer or the Association. Developer, from the date of this Agreement until the earlier of either a written acceptance by the Association for the operation and maintenance of the Airpark taxilane system provided to the City or the commencement of the through the fence operations through the designated access gate, and the Association thereafter, shall, for the period that the Airpark taxilane system remains operational, indemnify and hold harmless City, its agents, officials, or employees, from and against all liabilities, losses, suits, claims, judgments, fines, or demands of every kind and nature (including all costs of investigation, reasonable attorney's fees, court costs, and expert's fees) arising out of, related to, or resulting from any activity or operation of Developer or the Association in fulfilling the terms and conditions of this Agreement; provided, however, that Developer or the Association shall not be liable for any loss occasioned by the gross negligence or willful misconduct of City, its agents, officials, or employees. The Parties shall give each other prompt and timely notice of any claim made or suit instituted which affects or may affect any other party.

7.2. By City. City agrees to indemnify, defend, save and hold the Developer, Association, its agents, officials, or employees, fully harmless from and against all liabilities, losses, suits, claims, judgments, fines, or demands of every kind and nature (including all costs of investigation, reasonable attorney's fees, court costs, and expert's fees) arising from, related to, or caused by the operation and maintenance of the point of access or the Connecting Taxilane, and the use thereof by any person, whether a person authorized pursuant to this Agreement or the license granted herein or not; provided, however, that the Association shall be liable to the extent of any injury, damage, or loss caused by the gross negligence or willful misconduct of the Association, its agents, officials, or employees.

8. Insurance.

8.1. Developer, from the date of this Agreement until the earlier of either a written acceptance by the Association for the operation and maintenance of the Airpark taxilane system provided to the City or the commencement of the through the fence operations through the designated access gate, and the Association thereafter, shall deliver to City a certificate of insurance acceptable to City showing comprehensive liability insurance coverage, insuring against bodily injury, death and property damage occurring in, on, or about the Airport or any portion of the Taxilane Improvements, whether on-airport or on the Airpark, with City named as an additional insured, with a combined single limit of liability for personal injury and property damage in an amount of not less than $1,000,000 as the result of any single occurrence or such greater amount as the City may generally require from other persons or entities operating aircraft at the Airport. The insurance shall provide for a minimum of thirty (30) days prior written notice of cancellation to City on non-renewal or termination.

8.2. Notwithstanding subparagraph 8.1. above, Developer shall also provide insurance in connection with the construction of the Taxilane Improvements in accordance with City's normal requirements for public works construction.

9. Surety Bonds. Prior to the construction of the Connecting Taxilane or any other on-airport Taxilane Improvements, unless waived in writing by City Manager or designee, Developer shall provide City with a performance bond and a payment bond as follows:

9.1. Performance Bond. The performance bond shall be in an amount equal to the total cost of the on-airport Taxilane Improvements. The condition of the bond shall be such that Developer shall faithfully perform the construction of the on-airport Taxilane Improvements in accordance with the approved plans and specifications. The bond shall be solely for the protection of City.

9.2. Payment Bond. The payment bond shall be in an amount equal to the total cost of the on-airport Taxilane Improvements. The condition of the bond shall be such that Developer shall promptly pay or cause to be paid all monies due to all persons supplying labor and materials in the construction of the on-airport Taxilane Improvements.

9.3. Additional Bond Requirements.

(a) Each bond shall be executed solely by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the director of the Arizona Department of Insurance pursuant to Title 2, Chapter 2, Article 1 of the Arizona Revised Statutes, and no such bond shall be executed by an individual surety or sureties.

(b) Each bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of the judgment such reasonable attorney's fees as may be fixed by a court of competent jurisdiction.

10. Compliance. Developer, from the date of this Agreement until the issuance of a certificate of occupancy within the Airpark, and the Association thereafter, in utilizing and/or exercising any rights or responsibilities arising under this Agreement shall insure, at their expense, that this Agreement remains in compliance with all applicable laws of the United States, the State of Arizona, and the City of Chandler, and all applicable rules or regulations promulgated there under.

11. Liability Issues.

11.1. Non-liability of City. Except for the gross negligence or willful misconduct of City, its agents, officials, or employees, City shall not be liable to the Association, any member of the Association, or any tenant, subtenant, guest, invitee or other person with legal possession of any lot within the Airpark for any acts or omissions of any person, whether or not a person authorized under the license granted herein, who enters the Airpark through the point of access; or for any conditions occurring on the Airpark resulting from the operations or activities of any such person; or for any loss or damage to any personal property or equipment of the Association, any tenant, subtenant, guest, invitee or other person with legal possession of any lot within the Airpark, caused by or resulting from operations or activities of any person entering the Airpark through the point of access. Except as provided herein, the risks described in this subparagraph 11.1 are expressly assumed by the Association, for itself, the members of the Association and for the owners or beneficial occupants of any of the lots within the Airpark, and such assumption of risk is a material inducement to City agreeing to permit access to the airport/airpark access to and from the Airpark.

11.2. Non-liability of the Association. Except for the gross negligence or willful misconduct of the Association, its agents, officials, or employees, the Association shall not be liable to City for any acts or omissions of any person, whether or not a person authorized under the license granted herein, who enters the Airport through the point of access; or for any conditions occurring on the Airport resulting from the operations or activities of any such person; or for any loss or damage to any personal property or equipment of City caused by or resulting from operations or activities of any person entering the Airport through the point of access. Except as provided herein, the risks described in this subparagraph 11.2. are expressly assumed by City.

11.3. Liability of Taxilane User. A taxilane user is directly responsible for the conduct of any person acquiring Airport access under color of the taxilane user.

12. Termination of Permission for Any Person to Access or Use Airport.

12.1. Termination Pursuant to City Code. Pursuant to the provisions and procedures of Section 8-8 of Chapter 8 of the Chandler City Code, the Airport Manager may withdraw, suspend or deny access and use of the Airport to any taxilane user or other person that might otherwise be authorized or entitled to access and use the Airport pursuant to the license granted herein.

12.2. Cooperation of the Association. If City withdraws, suspends or denies access and use of the Airport to any person in accordance with subparagraph 12.1 above, City shall give written notice thereof to the Association. Within fourteen (14) days of receipt of such notice, the Association shall use its best efforts to take reasonable steps to prevent such person from using the Airpark taxilane system and/or from entering the Airport through the point of access.

13. Remedies.

13.1. Default by Developer. If Developer or the Association fails to substantially comply with any material term, covenant or condition contained herein, City may: (a) if the non-compliance is a non-monetary default, (i) cancel this Agreement sixty (60) days after City gives written notice to Developer and/or the Association of the default, if within such period the default has not been cured; or (ii) where the default has caused a monetary loss to City or may expose City to liability for money damages, City may, if the default has not been cured within the sixty (60) day period, proceed with whatever steps City may deem necessary in order to enforce the rights and remedies available to City under this Agreement, at law or in equity, including, without limitation, the right of specific performance of this Agreement or to recover its damages from Developer and/or the Association; (b) if the non-compliance is a monetary default, (i) cancel this Agreement fifteen (15) days after City gives written notice to Developer and/or the Association of the default, if within such period the default has not been cured. Notwithstanding the preceding, if the event of default is a non-monetary default and the Developer and/or the Association is using its best efforts to the cure the default, but, through events and circumstances that are outside the scope of the Developer's and/or the Association's control, the Developer and/or the Association is unable to cure the default within the sixty (60) day time period, City shall provide a reasonable amount of additional time to cure the default. If the event of default is a monetary default and such default is not cured within the fifteen (15) day period, City may, but is not required to, prohibit any airport/airpark access to and/or from the Airpark by any and all taxilane users, without exception.

13.2. Default by City. If City fails to substantially comply with any material term, covenant or condition contained herein, Developer and/or the Association may: (a) if the non-compliance is a non-monetary default, (i) cancel this Agreement sixty (60) days after Developer and/or the Association gives written notice to City of the default, if within such period the default has not been cured; or (ii) where the default has caused a monetary loss to Developer and/or the Association or may expose Developer and/or the Association to liability for money damages, Developer and/or the Association may, if the default has not been cured within the sixty (60) day period, proceed with whatever steps Developer and/or the Association may deem necessary in order to enforce the rights and remedies available to Developer and/or the Association under this Agreement, at law or in equity, including, without limitation, the right of

specific performance of this Agreement or to recover its damages from City; (b) if the non-compliance is a monetary default, cancel this Agreement fifteen (15) days after Developer and/or the Association gives written notice to City of the default, if within such period the default has not been cured. Notwithstanding the preceding, if the event of default is a non-monetary default and City is using its best efforts to the cure the default, but, through events and circumstances that are outside the scope of City's control, City is unable to cure the default within the sixty (60) day time period, Developer and/or the Association shall provide a reasonable amount of additional time to cure the default.

14. Notices. All notices required or permitted to be given hereunder to any of the Parties to this Agreement shall be in writing and may be given in person or by United States mail or by delivery service. Any notice directed to a party shall become effective upon the earliest of the following: (i) actual receipt by that party; (ii) delivery to the designated address of that party, addressed to that party; (iii) delivery by overnight courier; or (iv) if given by certified or registered United States mail, forty-eight (48) hours after deposit with the United States Postal Service, postage prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of that party shown below or such other address as that party, from time to time, may specify by notice to the other party:

City:	Chandler City Clerk Mail Stop 606 P.O. Box 4008 Chandler, Arizona 85244-4008
With copies to:	Chandler Airport Manager 2380 S. Stinson Way Chandler, Arizona 85249
Developer:	Chandler Airpark Business Center, LLC Attn: Tim Williams P.O. Box 1651 Rancho Santa Fe, CA 92067
With copies to:	Burch & Cracchiolo, PA Attn: Ed Bull/Brennan Ray 702 E. Osborn Road, Suite 200 Phoenix, AZ 85014
Association:	_____ Owner's Association Attn: _____ _____ _____, Arizona _____

15. Further Assurances. Promptly upon the request of another party to this Agreement, a party shall do such further acts and shall execute, have acknowledged and deliver to the other party, as appropriate, any and all further documents or instruments reasonably requested in order to carry out the intent and purpose of this Agreement.

16. Other Important Provisions.

16.1. Modification and Waiver. Except as expressly provided herein to the contrary, no supplement, modification or amendment of any term of this Agreement shall be deemed binding or effective unless in writing and signed by the parties hereto. No waiver of any of the provisions of this Agreement shall constitute or be deemed a waiver of any other provision, nor shall any waiver be a continuing waiver. Except as otherwise expressly provided herein, no waiver shall be binding unless executed in writing by the party making the waiver.

16.2. Exhibits. The Exhibits referred to herein and attached hereto (the "Exhibits") are incorporated herein by reference.

16.3. Litigation Expenses and Attorneys' Fees. In the event of litigation involving this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its costs and expenses incurred in such action from the other party, including without limitation the cost of reasonable attorneys' fees as determined by the judge of the court.

16.4. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this Agreement shall be deemed invalid or prohibited thereunder, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect.

16.5. Entire Agreement. This Agreement, including the Exhibits attached hereto, constitutes the entire agreement among the parties. All terms and conditions contained in any other writings previously executed by the parties and all prior and contemporaneous arrangements and understandings between the parties are superseded hereby. No agreements, statements or promises about the subject matter hereof shall be binding or valid unless they are contained herein.

16.6. Counterparts. This Agreement may be executed by the signing in counterparts. The execution of this instrument by each of the parties signing a counterpart hereof shall constitute a valid execution, and this instrument and all of its counterparts so executed shall be deemed for all purposes to be a single instrument.

16.7. Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Arizona.

16.8. Headings and Construction. The descriptive headings of the paragraphs of this Agreement are inserted only for convenience and shall not define, limit, extend, control or affect the meaning or construction of any provision herein. Where the context requires herein, the

singular shall be construed as the plural and neuter pronouns shall be construed as masculine and feminine pronouns, and vice versa. This Agreement shall be construed according to its fair meaning and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement.

16.9. Non-Discrimination. As part of the consideration hereof, Developer and the Association do 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 otherwise subjected to discrimination in the use of the Airpark taxilane system; (2) that in the construction of any improvements on, over or under the Airpark taxilane system 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 otherwise be subjected to discrimination; and (3) that the Airpark taxilane system shall be used, operated and maintained in compliance with all other requirements imposed by or pursuant to 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.

16.10. Subordination to Federal/State Agreements. The provisions of this agreement shall be subordinate to any existing or future agreement between City and the United States Government or State of Arizona relative to the operation or maintenance of the Chandler Municipal Airport, the execution of which has been or may be required as a condition precedent to the receipt of Federal or State funds for the development of the Airport ("Grant Assurance"). Failure of Developer and/or the Association to comply with any of the requirements of any existing or future agreement between City and the United States Government or the State of Arizona shall be cause for immediate termination of this Agreement. During a time of war, or of national or state emergency, City shall have the right to lease or otherwise allow use of the Airport taxiway/runway system, or any part thereof, to the United States Government or to the State of Arizona for military or other related government purposes, and, if such lease or use agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the lease or use agreement with the state or federal government, shall be suspended and reinstated at such time as the lease or use agreement with the state or federal government is terminated. Suspended time shall be considered as part of the term of this Agreement and will not extend the expiration date of this Agreement, however, during the suspended time the Association shall not be liable for the payment of any fees, charges, or other financial obligations due and owing the City under the terms of this Agreement.

16.11. Cit y Right to Develop the Airport. City reserves its right to further alter, develop, expand or improve the Airport during the term of this Agreement, provided that City shall not unreasonably interfere or prevent access to the Airport taxiway/runway system by the taxilane users. In the event the right to access the Airport is interfered with or prevented as a result of the City exercising their rights under this subsection, the City shall use their best faith efforts to provide reasonable alternate through the fence access to the Airpark Tenants. Nothing herein prohibits City from providing access to the Airport taxiway/runway system from other private property.

16.12. N o Agency. The Parties understand and agree that: (a) the requirements imposed on Developer and the Association by the terms of this Agreement shall not be construed to make Developer or the Association, or any of its officers, employees or agents, an officer, employee or agent of City; and (b) the requirements imposed on City by the terms of this Agreement shall not be construed to make City, or any of its officers, employees or agents, an officer, employee or agent of Developer or the Association.

16.13. No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between City and Developer or the Association. No term or provision of this Agreement 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.

16.14. Warrant y of Authority. City, Developer and the Association respectively warrant that the person executing this Agreement on behalf of each such party is authorized by the respective party to do so.

17. A.R.S. Section 38-511. Pursuant to A.R.S. Section 38-511, City may, within three (3) years after execution of this Agreement, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of City is, at any time while the contract is in effect, an employee of Developer or the Association in any capacity or a consultant to Developer or the Association with respect to the subject matter of this Agreement.

18. Effective Date. The effective date of this Agreement shall be the date first above written.

IN WITNESS WHEREOF the parties hereto have affixed their signatures the date first above written.

CITY OF CHANDLER, an Arizona municipal corporation

By: _____

Its: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

DEVELOPER: CHANDLER AIRPARK BUSINESS CENTER, LLC, an Arizona limited liability company

By: _____

Its: _____

ATTEST:

_____

ASSOCIATION: _____ OWNER'S ASSOCIATION, an Arizona corporation

By: _____

Its: _____

ATTEST:

_____

Exhibit "A" to Access Agreement

TO BE PROVIDED UPON COMPLETION OF REZONING AND DEVELOPMENT APPROVAL FOR THE AIRPARK PROPERTY.

Exhibit "B" to Access Agreement

THE METHOD AND MANNER BY WHICH PAYMENTS ARE TO BE MADE WILL BE CONSISTENT WITH PROCEDURES AND SCHEDULES APPROVED BY THE CHANDLER CITY COUNCIL OR SET OUT IN THE AIRPORT RULES AND REGULATIONS OR IN CHAPTER 8 OF THE CHANDLER CITY CODE. SPECIFIC PROCEDURES SHALL BE INCORPORATED HEREIN AT THE TIME THE ACCESS AGREEMENT IS EXECUTED.

Exhibit "C" to Development Agreement

Exhibit "C" to Development Agreement

CHANDLER MUNICIPAL AIRPORT
AIRPORT LEASE CONTRACT
NO. _____

1. PARTIES AND PURPOSE. This Airport Lease Contract (this "Lease"), dated _____ ____, 20___ (the "Effective Date"), is made by and between the City of Chandler, an Arizona municipal corporation ("Landlord"), and Chandler Airpark Business Center, LLC, an Arizona limited liability company ("Tenant"). The purpose of this Lease is to allow the use of a portion real property otherwise operated and maintained as part of the Chandler Municipal Airport to be utilized as a taxilane in connection with, and as part of, that certain Airpark described in the City of Chandler Airpark Development Agreement entered into by and between Landlord and Tenant and recorded with the Maricopa County Recorder on _____ as Instrument No. _____ (the "Airpark Development Agreement).

2. PREMISES AND IMPROVEMENTS.

2.1. PREMISES. Landlord leases to Tenant and Tenant leases from Landlord for the term of this Lease, at the rental, and upon all of the conditions set forth herein, that certain unimproved real property located in Maricopa County, Arizona, and legally described in attached Exhibit "A", which consists more or less of 150,900 square feet or 3.5±acres[1] (the "Premises"), and which is a portion of the real property owned and operated by Landlord as a municipal airport known as the Chandler Municipal Airport (the "Airport"), together with certain additional rights to the use and access of the Public Airport Facilities (defined below) as set forth in Paragraph 2.2 of this Lease. The location of the Premises and the portion of the Public Airport Facilities immediately adjacent to the Premises are conceptually shown in attached Exhibit "B".

2.2. NO AIRPORT ACCESS RIGHTS. Tenant shall acquire no rights of direct access by any pedestrian, vehicle, or aircraft, from the Leased Premises to the Airport through this Lease, but shall have only such rights of access as are provided for pursuant to the City of Chandler Airport Access Agreement described in the Airpark Development Agreement (the "Access Agreement"). .

2.3. IMPROVEMENTS. Subject to the Airport Manager's prior approval of Tenant's construction plans and specifications (the "Tenant's Plan"), and in accordance with the requirements set forth in attached Exhibit "C". Tenant, at Tenant's cost, shall construct those improvements set forth in the Tenant's Plan (the "Improvements"). The Improvements are summarized in attached Exhibit "D".

(a) The construction of the Improvements shall be deemed completed when a Certificate of Occupancy, Certificate of Completion, or its equivalent is issued for the Improvements by the Building Department (as defined in attached Exhibit "C")

(b) Title to the Improvements as identified in Exhibit D shall remain the property of Tenant during the term of this Lease but, except for movable property and trade fixtures of Tenant not permanently affixed to the Premises, title to the Improvements, shall automatically

[1] The size of the leased premises is approximate. The actual size will be established at the time that a surveyed legal description is provided.

pass to Landlord upon the expiration, termination, or any earlier cancellation of this Lease as provided herein. Notwithstanding the foregoing, Tenant agrees to execute, acknowledge and deliver to Landlord at or prior to the expiration, termination, or earlier cancellation of this Lease a proper recordable instrument prepared by Landlord quit claiming and releasing to Landlord any right, title and interest of Tenant in and to the Leased Premises and the Improvements.

2.4. PHASED CONSTRUCTION. All of the Improvements shall be constructed in one (1) phase unless the Tenant's Plan, as approved by the Airport Manager, provides for a second phase. In no event shall the Improvements be constructed in more than two (2) phases. construction of all of the Improvements shall be performed with diligent effort within a commercially reasonable time period. Surety Bonds as described in paragraph 2.5 shall be required for each phase of the construction of the Improvements, and the provisions of paragraphs 2.3(a) and (b) shall apply to the Improvements constructed in each phase.

2.5. SURETY BONDS. Prior to the construction of the Improvements, Tenant shall provide Landlord with a performance bond and a payment bond as follows:

(a) The performance bond shall be in an amount equal to the total cost of the Improvements. The condition of said bond shall be such that Tenant shall faithfully perform the construction of the Improvements in accordance with the approved Tenant's Plans. Such bond shall be solely for the protection of Landlord.

(b) The payment bond shall be in an amount equal to the total cost of the Improvements. The condition of said bond shall be such that Tenant shall promptly pay or cause to be paid all monies due to all persons supplying labor and materials in the construction of the Improvements.

(c) Each bond shall be executed solely by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the director of the Arizona Department of Insurance pursuant to Title 2, Chapter 2, Article 1 of the Arizona Revised Statutes, and no such bond shall be executed by an individual surety or sureties.

(d) Each bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of the judgment such reasonable attorney's fees as may be fixed by a court of competent jurisdiction.

(e) In the event that Tenant's lender, if any, requires such bonds, the bond requirements herein shall be satisfied if the bonds required by the lender meet the conditions of Paragraphs 2.5(a), (b), and (c), provided Landlord shall be named as a dual obligee or co-obligee under such bonds.

2.6. ACCEPTANCE OF PREMISES. Tenant acknowledges that Tenant has examined and conducted a Phase I environmental assessment of the Premises, and the adjoining portion of the Airport and accepts them upon signing this Lease in their condition as of the Effective Date, normal wear and tear excepted. Landlord has made no warranties, expressed or implied, as to any condition, apparent or unknown, affecting the Premises or the adjoining portion of the Airport, except as otherwise stated in this Lease. Tenant agrees to make any changes in the Premises reasonably needed to conform to any federal, state or local law applicable to the Tenant's use of the Premises. Landlord warrants that improvements existing on the Premises at the Effective Date, if any, do conform to all applicable federal, state and local laws.

2.7. UTILITIES TO PREMISES. Tenant shall be responsible for extension of all utilities to the Leased Premises.

3. TERM. The term of this Lease (the "Term") shall initially be for a period of forty (40) years, commencing on the Effective Date and ending on _____. Tenant shall have four (4) options to extend the Term for an additional ten (10) years each. Tenant may exercise the first ten-year option by giving written notice to Landlord no later than 90 days prior to the expiration of the initial period of the Term of Tenant's intention to exercise the ten-year option. Tenant may exercise each of the remaining ten-year options by giving similar written notice to Landlord no later than 90 days prior to the expiration of the preceding extension of the Term of Tenant's intention to exercise. The first ten-year extension of the Term shall commence immediately upon the expiration of the initial period of the Term, and each additional ten-year extension of the Term shall commence immediately upon expiration of the preceding additional period of the Term. All of the conditions, covenants and provisions of this Lease shall be in effect during the Term and any extension of the Term. The Term shall be extended if the Tenant is not in default of any material obligations under the terms and conditions of this Lease beyond any applicable cure periods.

4. RENT.

4.1. RENT PAYMENTS. Rent payments shall commence upon the date that the first building permit for the construction of the Phase 1 Improvements is issued by the Building Department or upon the 365th calendar day after the Effective Date of this Lease, whichever occurs first ("Rent Commencement Date"). All rent payments that are received by Landlord from Tenant shall be applied first toward any accrued late payment charges or interest, then to any other charges or fees stated in this Lease that may be due and owing, then to any back rent due and not yet paid, and then to the current rent.

4.2. MONTHLY BASE RENTAL. During the first year of the Term, Tenant shall pay to Landlord a monthly base rental of $ _____ (the "Monthly Base Rent"), which is based on an annual lease rate of $ _____[2] per square foot per year times _____ square feet divided by 12. On each one (1) year anniversary of the Rent Commencement Date, the Monthly Base Rent shall be increased in accordance with the provisions of Paragraph 4.3. When rent payments commence, the Monthly Base Rent due hereunder shall be payable in advance to Landlord on or before the first day of each month during the Term at the address stated herein or to such other persons or at such other places as Landlord may designate in writing and shall be paid in lawful money of the United States of America. The Monthly Base Rent for any period during the Term which is for less than one month shall be a pro rata portion of the monthly installment. The new Monthly Base Rent amount, which results from a rate increase in accordance with the provisions of Paragraph 4.3, shall be due and payable on the first day of the month following the anniversary date of the Rent Commencement Date.

4.3. MONTHLY BASE RENT INCREASE. Commencing on the first one (1) year anniversary of the Rent Commencement Date, and on each subsequent one (1) year anniversary thereafter, the Monthly Base Rent shall be adjusted in accordance with this paragraph. The rent

[2] The lease rate will be consistent with the lease rate in effect at the time this Lease is executed by the parties. Currently, the rate is $0.144/sf. However, the City is undergoing a reevaluation of its rates in light of market conditions in the area.

increase shall be determined by multiplying the current annual rent by the annual percent change in the Consumer Price Index for all Urban Consumers (CPI-U), as reflected in the U.S. Western Region Average CPI-U for All Items (Base period 1982-1984), for the month which is two (2) months prior to the month of the anniversary of the Rent Commencement Date ("the Adjustment Month") of the current lease year from the CPI-U for the Adjustment Month of the prior year, as those index figures are determined by the United States Department of Labor, Bureau of Labor Statistics. If there is no such CPI-U figure for the Adjustment Month of any year of the Term, then the Adjustment Month figure of the successor or most nearly comparable successor Index shall be used.

(a) The calculation of the annual rent increase shall be as follows:

(1) Determine the current annual rent by multiplying the current monthly rent by 12.

(2) Determine the CPI-U index point change by subtracting the previous year's CPI-U index figure for the Adjustment Month from the current year's CPI-U index figure for the Adjustment Month.

(3) Determine the CPI-U annual percent change by dividing the index point change by the previous year's CPI-U index figure for the Adjustment Month. This quotient can be expressed as a percentage by multiplying by 100.

(4) Determine the additional annual rent by multiplying the current annual rent by the annual percent change.

(5) Determine the new annual rent by adding the additional annual rent to the current annual rent.

(6) Determine the new monthly rent by dividing the new annual rent by 12.

(b) By way of example only, the following is shown for determining the annual percentage change:

CPI-U for current period	133.0
Less CPI-U for previous period	130.0
Equals Index Point Change	3.0
Divided by previous period CPI-U	130.0
Equals	0.023
Result multiplied by 100	0.023 x 100
Equals percent change	2.3 %

(c) In no event shall the minimum Monthly Base Rent for any year during the Term be less than the minimum Monthly Base Rent for the immediately preceding year.

4.4. MARKET ADJUSTMENT. If, at the end of the Term of the Lease or at the end of any subsequent extension of the Term, Tenant gives timely written notice of Tenant's intent to exercise an option to extend the Term, as provided under paragraph 3 above, then, in lieu of the increase in the Monthly Base Rent provided under paragraph 4.3 above, the Monthly Base Rent shall be adjusted to conform with then existing lease rate approved by the Chandler City Council. The new Monthly Base Rent amount, which results from this adjustment, shall be due and

payable on the first day of the month following the date that the extension or new extension of the Term commences.

4.5. ADDITIONAL RENT. Any other monetary obligation of Tenant to Landlord under the terms of this Lease shall be deemed rent and payment thereof shall accompany the next Monthly Base Rent payment made by Tenant to Landlord.

4.6. LATE PAYMENT INTEREST. If Landlord does not receive the monthly rent by the 10th of the month, then in addition to the overdue rent, Lessee shall pay interest on the rent payment then due at the rate of ten percent (10%) per annum. Such interest commences on the date the rent is due and accrues until such rent is paid. If Lessee does not pay the rent when due and interest is incurred each month for three (3) consecutive months, then beginning on the first day of the fourth consecutive month, all further rent called for herein shall automatically become due and payable quarterly in advance rather than monthly, notwithstanding any other provision in this Lease to the contrary, and regardless of whether or not the interest is paid or collected. The imposition of such interest, or the conversion to quarterly payments, does not prevent Landlord from exercising any other rights and remedies under this Lease, including the termination of this Lease.

4.7. NET RENT. It is the intention of the parties hereto that the rent specified in the Lease shall be net to Landlord in each year during the term of this Lease. Accordingly, all costs, expenses and obligations of every kind relating to the Premises (except as otherwise, specifically provided in this Lease) that may arise or become due during the term of this Lease shall be paid by Tenant, and Tenant shall indemnify Landlord against such costs, expenses and obligations. However, the rent to be paid under this Lease is in addition to, and not in lieu of, any requirement to pay any charges or fees that may be established pursuant to the Airport rules and any applicable license or permit fees required pursuant to the Chandler City Code and/or the Airport Rules.

5. USE OF PREMISES.

5.1. PERMITTED USES. Tenant shall use the Premises primarily as an aircraft taxilane in conjunction with the Airpark's aircraft taxilane system. To the extent that other uses are made of any portion of the Premises, only those uses permitted under the Access Agreement shall be allowed.

5.2. PROHIBITED USES. Any use prohibited in the Airpark by the Access Agreement is also prohibited on the Premises.

5.3. SIGNS. All signs installed by Tenant on the Premises shall conform to the requirements of applicable provisions of the Chandler City Code, including, but not limited to, the Sign Code and the Zoning Code.

5.4. COMPLIANCE WITH APPLICABLE LAWS. Tenant shall observe and comply with all applicable laws, ordinances, rules, and regulations of the United States of America, the State of Arizona, the County of Maricopa, and the City of Chandler and all agencies thereof, that are now in effect or hereafter promulgated; and further, Tenant will display to Landlord any and all permits, licenses or other evidence of compliance with all laws upon request of Landlord.

5.5. HAZARDOUS MATERIAL.

(a) As used herein, "Hazardous Material" shall mean any chemical, substance, material, waste or similar matter defined, classified, listed or designated as harmful, hazardous, extremely hazardous, dangerous, toxic or radioactive, or as a contaminant or pollutant, or other similar term, by, and/or which are subject to regulation under, any federal, state or local environmental statute, regulation or ordinance presently in effect or that may be promulgated in the future, and as they may be amended from time to time.

(b) Except for Hazardous Material normally used in Tenant's business in quantities customary for Tenant's business which shall be stored and used in accordance with applicable laws and regulations and manufacturer's requirements, Tenant agrees not to introduce any Hazardous Material in, on or adjacent to the Premises or in, on or adjacent to any portion of the Airport without (i) obtaining Landlord's prior written approval, (ii) providing Landlord with thirty (30) days prior written notice of the exact amount, nature, and manner of intended use of such Hazardous Material, and (iii) complying with all applicable federal, state, and local laws, rules, regulations, policies and authorities relating to the storage, use, disposal and clean-up of Hazardous Material, including, but not limited to, the obtaining of all proper permits.

(c) Tenant shall immediately notify Landlord of any inquiry, test, investigation, or enforcement proceeding by, against or directed at Tenant or the Premises concerning a Hazardous Material. Tenant acknowledges that Landlord, as the owner of the Premises, shall have the right, at its election, in its own name or as Tenant's agent, to negotiate, defend, approve, and appeal, any action taken or order issued with regard to a Hazardous Material by any applicable governmental authority, and such negotiation, defense, approval and appeal shall be at Tenant's expense to the extent the contamination was caused by Tenant or Tenants' agents, or occurred during the Lease Term.

(d) If Tenant's storage, use or disposal of any Hazardous Material in, on or adjacent to the Premises or the Airport results in any contamination of the Premises, the Airport, the soil, surface or groundwater thereunder, or the air above and around the Premises and the Airport, that (i) requires remediation under federal, state or local statutes, ordinances, regulations or policies or (ii) is at levels which are unacceptable to Landlord, in Landlord's sole and absolute discretion, Tenant agrees to clean-up the contamination immediately, at Tenant's cost and expense. Tenant further agrees to indemnify, defend and hold Landlord harmless from and against any claims, suits, causes of action, costs, damages, loss and fees, including reasonable attorneys' fees and costs, arising out of or in connection with: (i) any clean-up work, inquiry or enforcement proceeding relating to Hazardous Material currently or hereafter used, stored or disposed by Tenant or its agents, employees, contractors, or invitees on or about the Premises or the Airport; and (ii) the use, storage, disposal or release by Tenant or its agents, employees, contractors, or invitees of any Hazardous Material on or about the Premises or the Airport.

(e) Notwithstanding any other right of entry granted to Landlord under this Lease, Landlord shall have the right to enter the Premises or to have consultants enter the Premises from and after the Tenant's entry onto the Premises for construction of the Improvements, if applicable, and throughout the remainder of the Term at reasonable times for the purpose of determining: (i) whether the Premises is in conformity with federal, state and local statutes, regulations, ordinances, and policies, including those pertaining to the environmental condition of the Premises; (ii) whether Tenant has complied with this Paragraph 5.5; and (iii) the corrective measures, if any, required of Tenant to ensure the safe use, storage and disposal of Hazardous Material. Tenant agrees to provide access and reasonable assistance for such inspections. Such

inspections may include, but are not limited to, entering the Premises with machinery for the purpose of obtaining laboratory samples. Landlord shall not be limited in the number of such inspections during the Term. If, during such inspections, it is found that Tenant's use of Hazardous Material constitutes a violation of this Lease, Tenant shall reimburse Landlord for the cost of such inspections within ten (10) days of receipt of a written statement therefor. If such consultants determine that the Premises is contaminated with Hazardous Material or in violation of any applicable environmental law and the same was caused by Tenant or Tenant's agents, Tenant shall, in a timely manner, at its expense, remove such Hazardous Material or otherwise comply with the recommendations of such consultants to the reasonable satisfaction of Landlord and any applicable governmental agencies. If Tenant fails to do so, Landlord, at its sole discretion, may, in addition to all other remedies available to Landlord under this Lease and at law and in equity, cause the violation and/or contamination to be remedied at Tenant's cost and expense. The right granted to Landlord herein to inspect the Premises shall not create a duty on Landlord's part to inspect the Premises, or liability of Landlord for Tenant's use, storage or disposal of Hazardous Material, it being understood that Tenant shall be responsible for all liability in connection therewith.

(f) Tenant shall surrender the Premises to Landlord upon the expiration or earlier termination of this Lease free of Hazardous Material placed thereon by Tenant or Tenants' agents, and in a condition which complies with all governmental statutes, ordinances, regulations and policies, recommendations of consultants hired by Landlord, and such other reasonable requirements as may be imposed by Landlord.

(g) Tenant's obligations under this Paragraph 5.5 and all indemnification obligations of Tenant under this Lease shall survive the expiration or earlier termination of this Lease.

6. TENANT'S CONDUCT OF BUSINESS. In conducting commercial aviation activities on the Premises or at the Airport, Tenant shall act as follows:

6.1. NONDISCRIMINATION. Tenant agrees that:

(a) In the operations to be conducted pursuant to the provisions of this Lease and otherwise in the use of the Airport, Tenant shall not discriminate or permit discrimination against any person or class of persons by reason of race, color, creed, or national origin in any manner prohibited by any of the FAA Regulations or any amendments thereto.

(b) Tenant 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 of service; provided, that Tenant may make reasonable and non-discriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

(c) Tenant shall make its accommodations and/or services available to the public on fair and reasonable terms without unjust discrimination on the basis of race, creed, color, or national origin.

(d) Tenant's noncompliance with the provisions in Paragraphs 6.1(a), (b) and (c) shall constitute a material breach of this Lease. In the event of such noncompliance, Landlord may enforce compliance, terminate this Lease, or pursue such other remedies as may be provided by law. Landlord also reserves the right to take such action as the appropriate state or federal authority may direct in order to enforce compliance.

(e) Tenant agrees that it shall insert the above four provisions in any sublease, agreement or contract by which said Tenant grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises.

6.2. OPERATIONS.

(a) Tenant shall comply with the notification and review requirements covered in Part 77 of the FAA Regulations in the event any future structure or building is planned for the Premises, or in the event of any planned material modification or alteration to the exterior of any present or future building or structure situated on the Premises.

(b) Tenant shall not erect nor permit the erection of any structure or object, nor permit the growth of any tree, on the Premises that extends above a mean sea level elevation not approved by the FAA and Landlord. In the event the aforesaid covenant is breached, Landlord reserves the right to enter upon the Premises, without prior notice, and remove the offending structure or object, or cut the offending tree, all of which shall be at the expense of Tenant.

(c) Tenant shall not make use of the Premises in any manner that might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, Landlord reserves the right to enter upon the Premises, without prior notice, and cause the abatement of such interference at the expense of Tenant.

7. ADDITIONAL GENERAL CONDITIONS OF THE LEASE.

7.1. AERONAUTICAL BUSINESS PERMIT. Tenant acknowledges that the Airport Rules provide that no person shall conduct or operate any commercial aviation activity at the Airport without first obtaining an aeronautical business permit that must be in effect at the time the commercial aviation activity is performed. Accordingly, where Tenant's use of the Premises is for any type of commercial aviation activity, Tenant shall have and shall maintain a valid, effective aeronautical business permit at all times during the Term of this Lease. Furthermore, if any portion of the Premises is transferred, assigned or sublet, then said transferee, assignee or subtenant shall, at all times, have and shall maintain a valid, effective aeronautical business permit. The fee charged and the fee payment made for the aeronautical business permit shall be pursuant to the Airport Rules and shall not be deemed rent under this Lease, but the failure to have such permit at any time during the Term shall constitute a material breach of this Lease.

7.2. APPLICABLE LAWS. Tenants rights under this Lease shall be subject to all of the following matters that are now in effect or that may be in effect in the future during the Term: (i) applicable state and federal law; (ii) applicable city codes, ordinances, rules and regulations passed, adopted and/or approved by the Chandler City Council (including the Airport Rules and Regulations); and (iii) reasonable regulations established by the Airport Manager for the use and operation of the Airport.

7.3. AIRSPACE RESERVATION. There is hereby reserved to Landlord, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises and the Airport, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace for landing at, taking off from, or operating at the Airport.

7.4. USA AGREEMENTS. This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between Landlord and the United States of America relative to the development, operation or maintenance of the Airport.

7.5. NO EXCLUSIVE RIGHTS. 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 308 of the Federal Aviation Act.

7.6. USA/STATE EMERGENCY RIGHTS. This Lease and all the provisions hereof shall be subject to whatever right the United States of America or the State of Arizona now has, or in the future may have or may acquire, affecting the control, operation, regulation, and taking over of the Airport for the exclusive or nonexclusive use of the Airport by the United States of America or the State of Arizona during a time of war or national or state emergency.

8. INSURANCE; INDEMNITY.

8.1. INSURANCE.

(a) If Tenant uses the Premises for any type of commercial aviation activity during the Term of this Lease, then prior to undertaking such commercial aviation activity, Tenant, at Tenant's sole cost and expense, shall procure and maintain insurance coverage in the amount and type, and subject to the conditions, made applicable to such commercial aviation activity at the Airport and on the Premises under Section 11 of the Airport Rules.

(b) If Tenant uses the Premises solely for non-commercial aeronautical activities, then prior to undertaking such commercial aviation activity, Tenant, at Tenant's sole cost and expense, shall procure and maintain insurance coverage in the following amount and type: (i) comprehensive public liability insurance, insuring against bodily injury, death and property damage occurring in, on, or about the demised premises with limits of not less than $1,000,000.00 combined single limit; and (ii) fire and extended coverage insurance with respect to the Premises with limits of not less than eighty percent (80%) of the replacement value of the Improvements.

(c) All policies and certificates of insurance (i) shall be in such form and contain such conditions as are satisfactory to Landlord; (ii) shall name Landlord as an additional insured; and (iii) shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to Landlord. Evidence of such insurance shall be provided to Landlord promptly after a request thereof. The parties, understand, agree and acknowledge that, notwithstanding any other insurance requirements, hangarkeeper's liability insurance is required if any aircraft is located on the Premises for safekeeping, storage, service, or repair, and such insurance shall be in at least that minimum amount stated in the Airport Rules.

8.2. INDEMNIFICATION.

(a) Tenant does hereby covenant and agree to indemnify and save harmless Landlord from any and all fines, suits, claims, demands, actions and/or causes of actions of any kind and nature for personal injury or death or property damage arising out of or resulting from any activity or operation of Tenant on the Premises or in connection with its use of the Premises; provided, however, that Tenant shall not be liable for any injury, damage or loss occasioned by the gross negligence or willful misconduct of Landlord, its agents or employees. Landlord shall

give to Tenant prompt and timely notice of any claim made or suits instituted which in any way, directly or indirectly, contingently or otherwise, affects or might affect Tenant and Tenant shall have the right to compromise and defend the same to the extent of its own interest.

(b) Tenant hereby assumes all risk of, and waives all claim against Landlord for any loss, injury, death or damage to Tenant or Tenant's property, or to other persons or property sustained while in, on or about the Premises, except where such loss, injury, death or damage is the result of the negligence or intentional acts of Landlord, its agents and employees.

9. MAINTENANCE, REPAIRS AND ALTERATIONS.

9.1. MAINTENANCE AND REPAIRS. Tenant, at Tenant's own expense, shall provide all maintenance and repair of the Premises and the Improvements. All such maintenance shall be reasonably commensurate with a level of maintenance sufficient to maintain the Improvements and the remainder of the Premises in a presentable condition consistent with good business practice and equal in appearance and character to other similar improvements at the Airport.

(a) As part of its maintenance obligation, Tenant shall provide all janitorial and custodial services on the Premises and in the Improvements. Whether Tenant shall elect to furnish such services itself or engage the services of a janitorial firm, all such janitorial services shall be commensurate with the level of such services provided for by Landlord in similarly situated circumstances.

(b) Landlord, in order to maintain the Premises in the manner consistent with the general maintenance of the Airport or in order to maintain similar standards of custodial service throughout the Airport, may, but shall not be required to, assume some or all of the Tenant's maintenance obligation, including, but not limited to, Tenant's obligation for providing janitorial and custodial services, *provided that* Landlord shall first give written notice to Tenant, which shall advise Tenant of Tenant's failure to provide proper maintenance, or failure to maintain the proper standard of janitorial and custodial service, and Tenant shall have failed to adequately remedy the failure within thirty (30) days of the notice having been given. In the event that Landlord does take over the maintenance obligation, Tenant shall be responsible for the reasonable expense incurred by Landlord in doing so.

9.2. ALTERATIONS. Tenant shall make no significant additions, alterations or modifications to the Premises or the Improvements, nor shall Tenant install any fixtures (other than trade fixtures which can be removed without injury to the Premises or the Improvements), without first obtaining written approval of Landlord. Landlord's response to Tenant's request for approval shall be prompt, and such approval shall not be unreasonably withheld. Upon installation, Tenant shall furnish Landlord with a copy of the "as-built" drawings including utility installations and site plans detailing the nature of the additions, alterations or modifications.

10. PUBLIC AIRPORT FACILITIES.

10.1. LANDLORD'S CONTROL OF AIRPORT.

(a) Landlord reserves the right, in its sole discretion, to determine the nature and extent of the Public Airport Facilities.

(b) Landlord has the right to establish and from time to time change, alter and amend the Airport Rules, or such other reasonable rules and regulations, as may be necessary or

desirable for the proper and efficient operation and maintenance of the Airport and the Public Airport Facilities.

(c) Landlord shall have the sole and exclusive control of the Public Airport Facilities, and may at any time and from time to time during the Term exclude any person from use or occupancy thereof.

(d) Landlord shall have the right to make changes to the Public Airport Facilities or any part thereof, including, without limitation, changes in the location of the landing areas, the heliport, approach areas, runways, taxiways, and aircraft parking areas, as Landlord deems necessary or advisable for the proper and efficient operation and maintenance of the Public Airport Facilities.

(e) Notwithstanding any of the provisions of this Paragraph 10.1, Landlord shall not make changes in the Public Airport Facilities that materially and adversely affect Tenant's right of access and use of the Public Airport Facilities, except temporarily during periods of construction. In the event Tenant's rights to access the Airport are limited or impeded as a result of the Landlord exercising their rights under Section 10.1, Landlord shall use their best faith efforts to provide reasonable alternate access for the Tenant to access the active runway.

10.2. MAINTENANCE. Landlord shall maintain or cause to be maintained and repaired in good condition the Airport, including, without limitation, the landing areas, approach areas, runways, taxiways, aprons, aircraft parking areas, navigational and avigational aids, and lighting facilities. Landlord shall provide ramp cleaning and custodial services in the Public Airport Facilities portion of the Airport.

11. ASSIGNMENT AND SUBLETTING.

11.1. LANDLORD'S CONSENT REQUIRED. Tenant shall not voluntarily or by operation of law, assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Premises or the Improvements, without Landlord's prior written consent, such consent not to be unreasonably withheld, conditioned, or delayed. Any attempted assignment, transfer, mortgage, encumbrance, or subletting without such consent shall be void, and shall constitute a breach of this Lease. Any transfer of any ownership interest in Tenant is a transfer subject to Landlord's consent under this paragraph. Notwithstanding the foregoing to the contrary, the prior approval of Landlord shall not be necessary for the assignment of the Lease to the property owner's association established for purposes of maintaining the Premises and the real property identified in the Airpark Development Agreement, an entity owned or controlled by Tenant or by reason of a merger or consolidation of the Tenant with another corporation, including one formed by Tenant and created to carry on the purposes of Tenant. In such event, notice to Landlord of the Tenant's assignment to the property owners association, merger or consolidation shall be sufficient.

11.2. HANGAR STORAGE. Notwithstanding paragraph 11.1, if, pursuant to paragraph 5.1, Tenant is permitted to use the Premises for the commercial aviation activity of operating a hangar leasing service, then Tenant may sublet or assign individual hangar units that are part of the Improvements to third parties without prior written consent of Landlord provided that:

(a) The use of an individual hangar unit that is sublet or assigned is for the primary purpose of parking and storage of an aircraft owned by or under lease to the sublessee or assignee, and the sublessee or assignee is specifically prohibited from conducting commercial activity except as modified by the Access Agreement; and

(b) The terms and conditions of the subletting or assignment are not in conflict with, and expressly made subject to, all of the provisions of this Lease; and

(c) Tenant provides to the Airport Manager on a quarterly basis a list that identifies the name of each sublessee or assignee or other holder of an interest in a hangar unit (and where said person is a partnership, corporation or other business entity, the name of its principal contact) and the tail number of each aircraft stored or parked in the unit.

11.3. RELEASE OF TENANT. Regardless of Landlord's consent, no subletting or assignment shall release Tenant of Tenant's obligations or alter the primary liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder, except when the Tenant's obligations under this Agreement are expressly assumed in writing by the sublessee or assignee. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provisions hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting.

11.4. TRUST DEED BENEFICIARIES AND MORTGAGEES. Notwithstanding paragraph 11.1, Landlord agrees that it will consent to Tenant's assignment of this Lease (and the leasehold created hereby) for security purposes to Tenant's prime lender, but only under and pursuant to the terms and conditions contained in the form of City's Consent and Agreement attached hereto as Exhibit "E", which must be signed by such lender prior to Landlord's consent being given.

12. UTILITIES, TAXES, FEES AND EXPENSES. Tenant shall pay all utilities used in its operation of the Premises at the Airport during the term of this Lease, and such utilities shall be on the basis of metered charges. Tenant shall make timely payment of all taxes and assessments if any, levied against the Premises, or against Tenant's business operation at the Premises. Tenant shall be responsible for payment of all fees and expenses for all permits and licenses necessary for the conduct of Tenant's business upon the Premise during the Term.

13. DAMAGE OR DESTRUCTION OF PREMISES. In the event that the Premises, the Improvements or Public Airport Facilities are so damaged that the Premises can reasonably be deemed to be untenable or unusable by Tenant, there shall be a reasonable and proportionate abatement of the rentals, fees, and charges provided for herein during the period that the same are so untenable or unusable.

14. DEFAULTS; REMEDIES.

14.1. DEFAULTS BY TENANT. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

(a) The vacating or abandonment of the Premises by Tenant for more than ten (10) days;

(b) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant and following written notice and a fifteen (15) day opportunity to cure;

(c) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in paragraph 14.1(b) above, where such failure continues for a period of sixty (60) days after written notice thereof from Landlord to Tenant. Provided, however, that if the nature of Tenant's obligation is such that more than sixty (60) days are required for performance, then Tenant shall not be in default if Tenant commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion;

(d) Any of the following: (i) the making by Tenant of any general assignment or general arrangement for the benefit of creditors; (ii) the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (iv) the attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days; or

(e) The chronic delinquency by Tenant in the payment of monthly rental, or any other periodic payment required to be paid by Tenant under this Lease. "Chronic delinquency" shall mean failure by Tenant to pay monthly rental, or any other periodic payment required to be paid by Tenant under this Lease, within five (5) days as described in paragraph 14.1(b) above, for any three (3) months (consecutive or nonconsecutive) during any twelve (12) month period during the Term. In the event of a chronic delinquency, at Landlord's option, Landlord shall have the additional right to require that monthly rental be paid by Tenant quarter-annually, in advance, for the remainder of the Term.

14.2. REMEDIES. In the event of any such material default or breach by Tenant, Landlord at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any other right or remedy which Landlord may have by reason of such default or breach:

(a) Terminate this Lease by any lawful means, in which case Tenant shall immediately surrender possession of the Premises to Landlord. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises and the expenses of reletting, including necessary renovations and alteration of the Premises.

(b) Re-enter the Premises, without terminating this Lease, and remove any property from the Premises, in which case Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent and all other amounts due hereunder as they become due. No re-entry or taking possession of the Premises by Landlord pursuant to this paragraph 14.2 or other action on Landlord's part shall be construed as an election to terminate the Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Landlord's

election not to terminate this Lease pursuant to this paragraph 14.2(b) or pursuant to any other provision of this Lease shall not preclude Landlord from subsequently electing to terminate this Lease or pursuing any of its other remedies.

(c) Maintain Tenant's right to possession, in which case this Lease shall continue in effect, whether or not Tenant shall have abandoned the Premises. In such event, Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent and all other amounts due hereunder as they become due.

(d) Pursue any other or additional remedy now or hereafter available to Landlord under the laws of the State of Arizona, including, without limitation, the imposition of a landlord's lien against any property located within the Premises.

(e) The remedies set forth herein shall be deemed cumulative and not exclusive.

14.3. DEFAULT BY LANDLORD.

(a) Landlord shall not be deemed in default unless Landlord fails to perform any obligation required by Landlord within a reasonable time, but in no event later than sixty (60) days after Landlord's receipt of written notice by Tenant to Landlord, which specifies the obligations that Landlord has failed to perform. If the nature of Landlord's obligation is such that more than sixty (60) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such 60-day period and thereafter diligently prosecutes the same to completion.

(b) In the event of any material default or breach by Landlord, Tenant may take whatever steps are permitted under applicable law to terminate this Lease and/or to recover its damages from Landlord.

(c) No waiver or default by Tenant of any of the terms, covenants or conditions hereof required to be kept and observed by Landlord shall be construed to be or act as a waiver by Tenant of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Landlord.

14.4 CANCELLATION BY LESSEE

(a) Tenant, in addition to any other right of cancellation herein given by Landlord or any other rights to which Tenant may be entitled by law or otherwise, may cancel this Lease in whole and terminate all of its obligations hereunder at any time that Tenant is not in default in its payments to Landlord hereunder, by giving Landlord thirty (30) days advance written notice to be served as hereinafter provided, upon or after the happening of any one of the following events:

(1) The failure or refusal of the Federal Aviation Administration, at any time during the term of this agreement, to permit Tenant to operate into or from the Chandler Municipal Airport.

(2) Issuance, by any court of competent jurisdiction, of an injunction in any way preventing or restraining the use of the Airport or any part thereof for airport purposes which affects Tenant's operation; and the remaining in force of such injunction for a period of at least ninety (90) days if the injunction materially affects Tenant's normal operations.

(3) The inability of Tenant to use, for a period in excess of ninety (90) days, the Airport or any of the premises, facilities, rights licenses, services, or privileges leased to Tenant hereunder because of any law or order, rule, regulation, or other action or any inaction of the Federal Aviation Administration or any other governmental authority, or because of fire, earthquake, or other casualty or acts of God or the public enemy.

(4) The assumption by the United State Government or the State of Arizona, or any authorized agency of either government entity, of the operation, control, or use of the Airport and facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict Tenant for a period of at least ninety (90) days, from operating thereon for the conduct of Tenant's normal business.

(b) Tenant's performance of all or any part of this agreement for or during any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by Landlord shall not be deemed a waiver of any right on the part of Tenant to cancel this agreement for failure by Landlord so to perform, keep, or observe any of the terms, covenants or conditions hereof to be performed, kept and observed. No waiver of default by Tenant of any of the terms, covenants or conditions hereof required to be kept and observed by Landlord shall be construed to be or act as a waiver by Tenant of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Landlord.

15. CONDEMNATION. If the Premises is taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation") to such an extent as to render the Premises untenantable, either Landlord or Tenant shall have the option to terminate this Lease effective as of the date the condemning authority takes title or possession, whichever first occurs. If condemnation does not render the Premises untenantable, this Lease shall continue in effect, and Landlord shall promptly restore the portion of the Premises not taken to the extent possible to the condition existing prior to the condemnation. If, as a result of such restoration, the area size of the Premises is reduced, the rental shall be reduced proportionately. All condemnation proceeds shall be paid to Landlord, and Tenant waives all claim against such proceeds; provided, however, that Tenant shall be entitled to any award separately designated for Tenant's relocation expenses, or for damage to or taking of Tenant's trade fixtures or other personal property. Landlord and Tenant acknowledge that Tenant shall be entitled to the portion of condemnation proceeds attributable to the taking of any of the Improvements, but not to any such proceeds awarded to compensate for severance damages or costs to cure harm to the remainder of the Premises as a result of condemnation.

16. SUSPENSION AND ABATEMENT; FORCE MAJEURE. In the event that Landlord's operation of the Airport, or Tenant's operations at the Airport, is restricted substantially by action of the Federal Government or the State of Arizona, or any agency of either government entity, then either party hereto shall have the right, upon written notice to the other, to a suspension of this Lease and an abatement of a just proportion of the services and facilities to be afforded hereunder, or a just proportion of the payments to become due hereunder, from the time of such notice until such restrictions shall have been remedied and normal operations restored.

17. QUIET ENJOYMENT. Landlord agrees that, on payment of the rent and performance of the covenants and agreements on the part of the Tenant to be performed hereunder, and subject

to any conditions stated in this Lease, Tenant shall peaceably have and enjoy the Premises and all the rights and privileges of the Airport, its appurtenances and facilities granted herein.

18. SURRENDER OF POSSESSION. Upon the expiration of the Term or earlier termination of this Lease, Tenant's right to use the Premises and the Improvements, and any right of access and use of the Public Airport Facilities provided under this Lease, shall cease and Tenant shall forthwith upon such expiration or termination surrender the same and leave the Premises in good condition except for normal wear or tear. Except for movable property and trade fixtures of Tenant not permanently affixed to the Premises, title to all of the Improvements shall automatically pass to Landlord as provided herein.

19. GENERAL PROVISIONS.

19.1. DEFINITIONS OF TERMS. All definitions contained within Airport Ordinance No. 1426 and the Federal Aviation Act of 1958 including all amendments thereto shall be considered as included herein.

19.2. INSPECTION BY LANDLORD. L andlord may enter upon the Premises at any reasonable time for any purpose necessary, incidental to, or connected with the performance of its obligations hereunder, or in the exercise of its governmental functions, or for fire protection or security purposes.

19.3. NOTICE. All notices, copies of notices, consents or other communications given hereunder shall be in writing and may be given in person, by registered or certified United States mail, by delivery service, or by telephone facsimile. Any notice given to a party shall be deemed effective upon the earliest of the following: (a) actual receipt by that party; (b) personal delivery to the designated address of that party, addressed to that party; (c) delivery by overnight courier; (d) telephone facsimile with receipt confirmed; or (e) if given by certified or registered United States mail, forty-eight (48) hours after deposit with the United States Postal Service, Postage Prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of the party shown below or such other address as that party, from time to time, may specify by written notice to the other party:

To Landlord:
City Manager
City of Chandler
Mail Stop 605, Post Office Box 4008
Chandler, Arizona 85244-4008
Fax No.: (480) 782-2209

With a copies to:
Airport Manager
Chandler Municipal Airport
2380 South Stinson Way
Chandler, Arizona 85249
Fax No.: (480) 782-3541

And

City Attorney
City of Chandler
Mail Stop 602, Post Office Box 4008
Chandler, Arizona 85244-4008
Fax No.: (480) 782-4652

To Tenant:	Chandler Airpark Business Center, LLC Attn: Tim Williams P.O. Box 1651 Rancho Santa Fe, CA 92067 Fax No.:
With copies to:	Burch & Cracchiolo, PA Attn: Ed Bull/Brennan Ray 702 E. Osborn Road, Suite 200 Phoenix, AZ 85014 Fax No.: (602) 234-0341

19.4. ENTIRE AGREEMENT. This document contains the entire agreement between the parties hereto, and no term or provision hereof may be changed, waived, discharged or terminated unless the same is in writing executed by both parties hereto.

19.5. APPLICABLE LAW. Arizona law shall govern the construction, performance and enforcement of this Lease.

19.6. TIME OF ESSENCE. Time shall be of the essence in the performance of every term, covenant and condition of this Lease.

19.7. HEADINGS. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Lease.

19.8. WRITING. Any and all approvals, consent, and notices called for in this Lease shall be in writing.

19.9. BINDING EFFECT. All the covenants, stipulations and agreements in this Lease shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

19.10. SEVERABILITY. In the event that any covenant, condition, or provision contained in this Lease is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained; provided that the invalidity of any such covenant, condition or provision does not materially prejudice either Landlord or Tenant in their respective rights and obligations contained in the valid covenants, conditions or provisions of this Lease.

19.11. NO RECORDING; MEMORANDUM OF LEASE. Without the prior written consent of Landlord, this Lease shall not be placed of record. However, upon execution hereof, the parties shall execute and cause to be recorded a Memorandum of Lease substantially in the form attached hereto as Exhibit "F" in order to give notice of the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the day and year first above written.

LANDLORD: CITY OF CHANDLER, an Arizona municipal corporation

By: _____

Its: Mayor

ATTEST:

_____
City Clerk

TENANT: CHANDLER AIRPARK BUSINESS CENTER, LLC, an Arizona limited liability company

By: _____

Its: _____

ATTEST:

_____

Its: _____

EXHIBIT "A"

LEASE PARCEL LEGAL DESCRIPTION

TO BE PROVIDED UPON COMPLETION OF SURVEY AND PRIOR TO EXECUTION OF LEASE.

EXHIBIT "B"

DIAGRAM OF LEASED PROPERTY AND SURROUNDING AIRPORT FEATURES

TO BE PROVIDED WHEN FINAL ALIGNMENT FOR LEASED PREMISES IS APPROVED.

EXHIBIT "C"

REQUIREMENTS AS TO IMPROVEMENTS

These conditions and requirements (herein, the "conditions") relating to improvements in this Exhibit "C" shall control unless Landlord and Tenant have otherwise separately agreed in writing to more specific time periods for production and coordination of drawings, financing and commencement of construction. In the event such additional documentation becomes a part of this Lease, then the time periods set forth in such documents shall be logically coordinated, the intent being that the shorter time periods should control the parties' respective performances.

The conditions stated herein relate solely to reviews and approvals by the Airport Manager of the Chandler Municipal Airport, acting on behalf of Landlord under this Lease. The conditions do not affect in any way the procedures and requirements to be followed and met for obtaining development approvals from the City of Chandler necessary for issuance of any permits or approvals related to development within the City of Chandler. Nothing herein shall prohibit Tenant from proceeding with necessary development approvals simultaneous with obtaining the approvals stated below from the Airport Manager if doing so will assist the Tenant in meeting the construction and development deadlines called for in this Lease.

1. AIRPORT MANAGER APPROVAL OF TENANT'S IMPROVEMENTS.

As used in this Exhibit "C", the terms "improvements" or "structures" shall mean and include without limitation all permanent buildings, and all other structures or improvements of any kind located above ground level, plus any replacements, additions, repairs or alterations thereto. No improvement shall be constructed or maintained on the Leased Premises until the Airport Manager has first approved the design, density, size, appearance and location thereof—which approval shall not be unreasonably withheld. Before commencing any work of improvement or applying for any governmental permit or approval, Tenant shall first deliver to the Airport Manager for review two (2) sets of the preliminary site plan as submitted to the City's Planning and Development Services Department, and schematic building plans, including grading and drainage plans, exterior elevations, floor plans, site plans, and showing in reasonable detail existing topography and proposed type of use, size, land coverage, shape, height, location, material and elevation of each proposed improvement, all proposed ingress and egress to public or private streets or roads, all utilities and service connections, and all proposed landscaping, exterior materials and fences, parking, exterior lighting, signs, cut and fill, finished grade, runoff and concentration points. Nothing in this paragraph shall imply a submission standard higher than that required for a building permit, except as it relates to land use(s), utilities, infrastructure and impact upon adjoining properties and use(s) of adjoining properties.

The Airport Manager shall then have ten (10) calendar days during which to review such preliminary plans and specifications. Once the preliminary plans and specifications have been reviewed, but prior to commencing any such work, Tenant shall submit to the Airport Manager for approval the final plans and specifications for any proposed improvements in the same manner as provided above, which approval shall not be unreasonably withheld.

All plans and specifications shall be prepared by a licensed or registered architect or engineer, as the case may be.

The Airport Manager shall be deemed to have given approval unless, within ten (10) calendar days after all such plans and specifications have been received by the Airport Manager for review, the Airport Manager gives Tenant written notice of each item of which the Airport Manager reasonably disapproves. The Airport Manager may disapprove any plans which are not in harmony or not compatible with other existing or proposed improvements on or in the vicinity of the Leased Premises, or consistent with the City Master Plan for Airport property in the general area in which the Leased Premises is located, the sole discretion as to such adequacy remaining with the Airport Manager. Notwithstanding the foregoing, Tenant may, in accordance with this Lease, repair, replace, alter or reconstruct any improvement on the Leased Premises for which plans were previously approved by the Airport Manager as provided above, but only if such repair, replacement, alteration or reconstruction is substantially identical to the improvement previously approved.

Concerning utility installations, Tenant, at Tenant's cost, including any connection fees, assessments or changes, shall be responsible for (a) the cost of extending an/or connecting for use at the Leased Premises water and sewer services made available by Landlord to the Airport, and (b) the cost of constructing, extending and connecting electric and communications services required by Tenant for its use of the Leased Premises, excluding the cost of any easement for extending such utilities, which easement shall be provided by Landlord at no additional cost to Tenant.

The Airport Manager shall not be liable for any damages in connection with approval or disapproval of any plans or specifications, any Tenant construction or performance by Tenant on the Leased Premises in connection with the erection of such improvements, any Tenant mistake in judgment, negligence or omissions in exercising Tenant's rights and responsibilities hereunder, or the enforcement or failure to enforce any provisions contained in the Lease. The Airport Manager's approval of plans and specifications shall not constitute the assumption of any responsibility by the City or its representatives for the accuracy, efficacy or sufficiency thereof, and Tenant shall be solely responsible thereof.

Notwithstanding any other provision of this Section 1 of Exhibit "C", if an improvement involves a modification to an aircraft hangar or hangar unit that is of such a minor nature that the City department responsible for issuing building permits (the "Building Department") does not require the submittal of plans and specifications prepared by a licensed or registered architect or engineer, or the improvement does not require a permit from the Building Department, then Tenant shall submit to the Airport Manager: (i) such information concerning the improvement as may be reasonably required by the Building Department, along with a written confirmation from the Building Department that plans and specifications prepared by a licensed or registered architect or engineer are not required and that a building permit is not required; and (ii) such additional information as the Airport Manager may reasonably require in order to determine whether the improvement will be in harmony and compatible with other existing or proposed improvements on or in the vicinity of the Leased Premises, or with the City's Master Plan for the Airport property in the general area in which the Leased Premises is located.

2. CERTIFICATES OF COMPLIANCE.

Tenant shall obtain all necessary permits and shall send copies of the same to the Airport Manager, as well as copies of Certificates of Completion/Occupancy associated with such permits and pay the cost thereof. Prior to commencement of any such work of improvements, Tenant shall supply to the Airport Manager a certificate from a licensed civil engineer or land surveyor verifying that the proposed improvements will be located on the correct parcel and in accordance with plans previously approved by the Airport Manager. The Airport Manager may waive such requirement if the City has already surveyed the proposed premises. Upon final completion of any such improvements, Tenant shall supply to the City a further certification by Tenant's architect (including the landscape architect in the case of improvements consisting of landscaping) that the improvements have been completed in accordance with the plans previously approved by the City. Final landscaping as approved by the City shall be completed within ninety (90) days after completion of the structure. Tenant shall also supply to the City one (1) set of "as-built" grading plans showing all underground installations within sixty (60) days following final completion of any of the improvement within the Leased Premises. Tenant shall also furnish the City with a complete set of "as-built" building plans not later than sixty (60) days after completion.

3. DILIGENT COMPLETION AND COMPLIANCE.

After commencement of construction, Tenant shall diligently complete the construction so that the improvements will not remain in a partly finished condition any longer than is reasonably necessary. Tenant shall comply with all applicable governmental laws, ordinances and other requirements, conditions and restrictions that may affect the leased premises, including, without limitation, the Americans With Disabilities Act, and shall make such corrections, alterations or other improvements as may be necessary to remedy any non-complying condition (subject to the reasonable approval of the City), all at the cost and expense of Tenant.

EXHIBIT "D"

SUMMARY OR LIST OF MAJOR BUILDINGS AND STRUCTURES INCLUDED AS PART OF THE IMPROVEMENTS.

Airpark taxilane
Hangars at SWC and NEC
Utilities

The construction of the perimeter fencing separating the Premises from the Airport and the designated access gate and gate control mechanism at the point of access is controlled by the Airport Access Agreement dated _____, by and between the City of Chandler, Chandler Airpark Business Center, LLC, and _____ Owner's Association.

EXHIBIT "E"

CITY'S CONSENT AND AGREEMENT
(For Financing Purposes)

Description of Ground Lease.

"City": City of Chandler, an Arizona municipal corporation

"Tenant": Chandler Airpark Business Center, LLC, an Arizona limited liability company

"Lease": Ground Lease dated _____

"Leasehold": Tenant's interest in the Lease and all Leasehold Improvements

"Lender": _____
_____
_____
_____

NOW, THEREFORE, City and Lender represent, warrant, covenant and agree as follows:

1. **Consents.** City hereby consents to the assignment of Tenant's interest in the Leasehold to Lender for security purposes under the Lender's Deed of Trust upon closing of the loan. Herein the term "Deed of Trust" shall mean the Lender's Deed of Trust as may be applicable and the "Lender" shall mean _____, as its/their interests appear in the Deed of Trust.

2. **Status of Lease.** A true and correct copy of the Lease, together with all amendments, supplements, and modifications thereto, is attached as Schedule A to this Agreement. The Lease is presently in full force and effect, is valid and enforceable according to its terms and has not been modified or amended in any way except as shown on the copy of the Lease attached hereto. The Lease includes a description of the land and improvements to which the Leasehold applies (herein, the "Leased Premises").

3. **Non-Default.** Tenant is not in default (a) in the payment of rent or any other amounts due and payable by Tenant to City under the Lease or (b) to the actual knowledge of City, in the observance or performance of any other covenant or condition to be observed or performed by Tenant under the Lease. To the actual knowledge of City, no event has occurred which now does or hereafter will authorize City to terminate the Lease.

4. **Right to Foreclose Deed of Trust.** Lender recognizes that any Deed of Trust taken by Lender affects and applies only to Tenant's interest in the Leasehold and that City will

not permit any security interest to be taken in any of its land or to encumber its fee interest in any of its land. In the event of default by Tenant under the terms of the Deed of Trust, Lender may enforce or foreclose the Deed of Trust including the acceptance of a Deed in Lieu of Foreclosure. City agrees that in connection with any such foreclosure, Lender may:

4.1. acquire Tenant's interest in the Leasehold either by Deed in Lieu of Foreclosure or by actual foreclosure (judicial or non-judicial) without further consent of City, subject to the requirements of paragraph 9 below.

4.2. rent the Leased Premises pending foreclosure of the Leasehold by Lender without further consent of City.

4.3. assign and sell the Leasehold in whole or in part to any person or entity, subject to the requirements set forth in paragraph 11 below.

In the event the successful purchaser at the foreclosure sale is a person or entity other than Lender, such purchaser shall not automatically succeed to Tenant's interest in the Leasehold, but must first qualify as an acceptable party as set forth in paragraph 11 below and Lender agrees to insert the following language in its Deed of Trust: "Trustee's and Beneficiary's right to sell/assign the Leasehold interest secured by this Deed of Trust upon foreclosure to any person other than Beneficiary, is limited to such person reasonably being approved by the City of Chandler pursuant to that certain 'City's Consent and Agreement' between the City of Chandler and Beneficiary."

5. **Surrender of the Leased Premises.** No surrender of the Leased Premises or any other act of Tenant shall be deemed to terminate the Lease and City will not terminate voluntarily the Lease by agreement with Tenant unless Lender has been previously notified in writing and has consented to the termination in writing.

6. **Notice of Default and Lender's Rights.**

6.1. **Notice of Default.** If Tenant defaults under the Lease or if any event occurs which would give City the right to terminate, modify, amend or shorten the term of the Lease, City shall take no steps to exercise any right it may have under the Lease without first giving Lender written notice of such default. A copy of each and every Notice of Default served or sent by City or its agent to or upon Tenant pursuant to the Lease shall be sent contemporaneously to Lender in accordance with paragraph 18 below. Such Notice of Default shall specify the event or events of default then outstanding and the time period at the end of which the indicated action would become effective.

6.2. **Termination for Monetary Default.** If the Notice of Default given by City to Lender relates to a monetary default and Tenant has not cured such monetary default within 15 days as provided in the Lease and Tenant's failure to cure results in City desiring to terminate the Lease, City may terminate the Lease if such monetary default is not cured by either Tenant or Lender within twenty (20) days of Lender's receipt of Notice, and kept current thereafter.

6.3. **Termination for Non-Monetary Default.** If the notice given by City to Lender relates to a non-monetary default and Tenant has not cured such non-monetary default within the 60-day period specified in the Lease, City shall take no action to terminate the Lease if:

6.3.1. within 20 days after City's notice to Lender of Tenant's failure to cure (or failure to diligently pursue a cure) Lender notifies City of its intent to realize upon its security interest and commences realization within 60 days thereafter, and diligently pursues realization; and

6.3.2. Lender notifies City that it will assume the Lease when Lender is legally entitled to the ownership and/or possession of Tenant's interest in the Leasehold; and

6.3.3. Lender pays City at time of notification all back rent or other monies or performances due that may be in default up to the date Lender notifies City of Lender's intent and further pays all rent that accrues during the period after Lender so notifies City and completes such other performances that may be required or come due under the Lease.

7. **Termination Due to Bankruptcy.** City shall not terminate the Lease because of Tenant's breach of any term(s) of the Lease relating to the solvency of Lessee or the institution of any bankruptcy, insolvency, receivership or related action by or against Lessee as long as Lender cures any default under the Lease by Tenant as provided in this Consent and Agreement.

8. **Failure to Cure Default.** If the non-monetary default is of a nature which requires immediate abatement as a result of which Lender would not normally pursue realization on the collateral, and Tenant has not taken steps to immediately cure the default, the Lender must take immediate steps to cure such default within thirty (30) days of receipt of notice or else the City may terminate the Lease.

9. **Release of Deed of Trust.** Upon termination of the Lease as provided herein, Lender shall release its Deed of Trust within thirty (30) days thereafter.

10. **Assumption of the Lease.** If Lender acquires the interest of Tenant at any time or takes possession of the collateral, then Lender shall formally assume the Lease within twenty (20) days thereafter. Failure to so assume the Lease shall give City the right to immediately terminate the Lease.

11. **Right to Assign.** Lender shall not have the right to assign its interest in the Leasehold nor, in the case of a foreclosure under the Deed of Trust, shall the Trustee under the Deed of Trust transfer the Leasehold to any person or entity (other than Lender) without first obtaining the written consent of City or such assignment or transfer, which consent will not be unreasonably withheld, conditioned, or delayed provided that Lender (i) has disclosed to City the identity of the proposed purchaser, assignee or transferee; (ii) shown to City that the purchaser's, assignee's or transferee's credit standing would reasonably be acceptable to a commercially prudent lender; and (iii) provided evidence to City that the use of the Leasehold by such purchaser, assignee or transferee will be consistent with the terms of the Lease or Lessee's prior

use of the Leasehold. Upon the purchaser's, assignee's or transferee's assumption and agreement to perform and to be bound by all of the terms of the Lease, Lender shall be relieved of further liability under the Lease. However, if Lender finances the purchaser, assignee or transferee, Lender shall again be subject to all the obligations set forth in this Agreement.

12. **Disposition of Insurance and Condemnation Proceeds.** City shall be named as an additional insured under any of Tenant's casualty policies on the Leased Premises to the extent of the interests stated in this paragraph 12. Should the Leased Premises suffer any loss which is covered by casualty insurance, and the insurance proceeds are used to restore any improvements made by Tenant, City agrees that Tenant and Lender shall have the right to such proceeds so long as none of City's property, utilities or other services therein are damaged or such damages are repaired. In the event the Leased Premises are substantially damaged and Tenant's improvements have been repaired, City shall only participate in the insurance proceeds to the extent necessary to repair and restore the land and any of City's or Tenant's improvements (excluding buildings and personal property) on or in the ground to the same condition that the land was in at the commencement of the Lease, or in the same condition as at the time of the casualty. Under the Lease, City has the option of requiring Tenant to demolish the Improvements at the end of the lease term, or to have Tenant convey title to City of Tenant's interests in the Leasehold Improvements. In the event the Leased Premises and the Leasehold are so severely damaged that Tenant's and Lenders' decision is not to repair or restore the Leased Premises, City shall participate in the insurance proceeds to the extent necessary to remove the remainder of the damaged improvements and to restore the Leased Premises and any utilities or other such improvements (excluding rebuilding the improvements or restoring other personal property of Tenant) to the same condition the land was in at the commencement of the Lease, or in the same condition as at the time of the casualty. Other than as described herein, City shall have no claim to insurance proceeds or condemnation proceeds that are attributable to Tenant's interest in the Leasehold, nor shall Lender have any interest in City's condemnation proceeds, if any.

13. **Right to Participate in Litigation.** Lender shall have the right to participate in any litigation, arbitration or dispute directly affecting the Leased Premises or the interests of Tenant or Lender therein, including without limitation, any suit, action, arbitration proceeding, condemnation proceeding or insurance claim. City, upon instituting or receiving notice of any such litigation, arbitration or dispute will promptly notify Lender of the same.

14. **Incorporation of Mortgagee Protection Provisions.** To the extent not inconsistent with this Agreement, all provisions of the Lease that by their terms are for the benefit of any leasehold mortgagee, are hereby incorporated herein for the benefit of Lender.

15. **Right to Remove Collateral.** In the event Lender exercises its rights under its collateral and realizes upon the collateral, City agrees that Lender is entitled to remove Tenant's furniture, movable trade fixtures and equipment installed by Tenant from the Leased Premises at any reasonable time and that the collateral shall remain personal property even though the trade fixtures may be affixed to or placed upon the Leased Premises. "Trade fixtures" means the movable personal property of Tenant which is free standing or attached to floors, walls or ceiling, but does not include installed light fixtures, floor coverings, doors, windows, heating, plumbing or electrical systems or components thereof, including any roof-mounted HVAC

equipment and/or units thereof, or permanent walls or partitions installed by Tenant. In the event Lender so realizes on its collateral, City waives any right, title, claim, lien or interest in the above trade fixtures by reason of such fixtures being attached to or located on the Leased Premises. Lender shall use reasonable care in removing the trade fixtures from the premises and shall repair any damage that may result from such removal which shall be completed accordance with the terms of the Lease.

16. **Interpretation of Agreement.** This Agreement sets forth the complete understanding of Lender with respect to this transaction; may be amended only in writing signed by the parties; and, without limiting the generality of the foregoing shall not be deemed modified by any course of dealing. No provision in the Deed of Trust, or in any other document executed by or for the Lender or Tenant to which City is not a party, shall vary, modify or expand the covenants herein contained. In the event of any conflict between the terms of this Agreement and the Lease, this Agreement shall control.

17. **Fees & Costs.** In the event of litigation or arbitration between the parties to enforce or interpret this Agreement, the arbitrator, Board of Arbitration or Judge, as may be appropriate, may award the prevailing party in such arbitration or litigation a reasonable attorney's fee not to exceed 20 percent of the amount in controversy, plus costs and costs of collection.

18. **Notices.** All notices, copies of notices, consents or other communications given hereunder shall be in writing and may be given in person, by registered or certified United States mail, by delivery service, or by telephone facsimile. Any notice given to a party shall be deemed effective upon the earliest of the following: (a) actual receipt by that party; (b) personal delivery to the designated address of that party, addressed to that party; (c) delivery by overnight courier; (d) telephone facsimile with receipt confirmed; or (e) if given by certified or registered United States mail, forty-eight (48) hours after deposit with the United States Postal Service, Postage Prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of the party shown below or such other address as that party, from time to time, may specify by written notice to the other party:

If to Lender: _____
_____
_____
_____

If to City: Airport Manager
Chandler Municipal Airport
2380 South Stinson Way
Chandler, Arizona 85249
Fax No.: (602) 782-3541

With copy to: City Attorney City of Chandler
Mail Stop 602, Post Office Box 4008
Chandler, Arizona 85244-4008
Fax No.: (602) 782-4652

IN WITNESS WHEREOF, the City has executed these presents this _____ day of _____, 20___.

CITY OF CHANDLER, an Arizona municipal corporation

By: _____

Its: _____

AGREED to this _____ day of _____, 20_____.

LENDER: _____

By: _____

Its: _____

SCHEDULE A

To City's Consent and Agreement (Exhibit ____)

<u>Copy of Lease</u>

EXHIBIT "F"

When recorded, return to:

MEMORANDUM OF LEASE

This Memorandum of Lease is made as of this ____ day of _____, 20____, by and between the City of Chandler, an Arizona municipal corporation, with an office at the Chandler Municipal Airport, 2380 South Stinson Way, Chandler, Arizona 85249 (hereinafter referred to as "Landlord") and Chandler Airpark Business Center, LLC, an Arizona limited liability company, (hereinafter referred to as "Tenant").

1. Landlord and Tenant have entered into a lease agreement identified as Airport Lease Contract No. ____ (the "Lease") on the ____ day of _____, 20___, pursuant to which Tenant is permitted to make use and take possession of certain undeveloped real property for specified aeronautical activities or commercial aviation activities, all as set forth in the Lease.

2. The term of the Lease is for forty (40) years commencing on _____ (the "Commencement Date") and terminating on the fortieth anniversary of the Commencement Date, with four (4) successive ten (10) year options to renew.

3. The real property leased to Tenant under the Lease is described in attached Exhibit "A" to this Memorandum of Lease.

4. This Memorandum of Lease may be executed in counterparts, which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date specified above.

LANDLORD: CITY OF CHANDLER, an Arizona municipal corporation

By: _____
Its: _____

TENANT: CHANDLER AIRPARK BUSINESS CENTER, LLC, an Arizona limited liability company

By: _____
Its: _____

APPROVED AS TO FORM:

_____
City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20___, by _____, who acknowledge himself/herself to be the _____ of the CITY OF CHANDLER, an Arizona municipal corporation.

_____
Notary Public

My Commission Expires:

_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20___, by _____, who acknowledge himself/herself to be the _____ of CHANDLER AIRPARK BUSINESS CENTER, LLC, an Arizona limited liability company .

_____
Notary Public

My Commission Expires:

_____

EXHIBIT "D" to Development Agreement

EXHIBIT D

THE AMOUNT OF THE REIMBURSEMENT TO BE MADE SHALL BE COMPUTED BY THE CITY ENGINEER BASED ON THE ACTUAL CONSTRUCTION COST OF THE CONNECTING TAXIWAY IMPROVEMENTS PLUS RELATED ENGINEERING AND CONSTRUCTION INSPECTION COSTS.

AN ITEMIZED LIST OF ALL SUCH COSTS, IN FORM ACCEPTABLE TO THE CITY ENGINEER, SHALL BE PROVIDED BY DEVELOPER WITHIN 30 DAYS FROM THE DATE OF COMPLETION AND ACCEPTANCE OF THE CONNECTING TAXIWAY.

REIMBURSEMENT SHALL BE MADE ON THE BASIS OF THE NUMBER OF LINEAR FEET OF THE AIRPORT TENANT'S LEASED PREMISES THAT ABUTS THE CONNECTING TAXIWAY AND AT RATES ESTABLISHED BY THE CITY ENGINEER TAKING INTO ACCOUNT THE ACTUAL CONSTRUCTION COST OF THE CONNECTING TAXIWAY IMPROVEMENTS.