

AGENDA
SHAWNEE AIRPORT AUTHORITY
July 17, 2017 AT 6:30 P.M.
COMMISSION CHAMBERS AT CITY HALL
SHAWNEE, OKLAHOMA

CALL TO ORDER

DECLARATION OF A QUORUM

All motions will be made in the affirmative. The fact that a commissioner makes or offers a second to a motion does not mean that the commissioner must vote in favor of passage.

1. Consider approval of Consent Agenda:
 - a. Minutes from the June 19, 2017 regular meeting.
 - b. Acknowledge Airport Advisory Minutes from the May 10, 2017 meeting.
 - c. Approval of a Memorandum of Understanding with Gordon Cooper Technology Center for the transfer of a Fuel Truck.
2. Discussion and consideration of approving a new lease between the Shawnee Airport Authority and Johnny Kneisel dba Brown Derby Drive-In.
3. New Business

(Any matter not known about or which
could not have been reasonably foreseen
prior to the posting of the agenda)
4. Adjournment

Respectfully submitted

Phyllis Loftis, CMC, City Clerk

Shawnee Airport Authority

1.a.

Meeting Date: 07/17/2017

SAA Minutes

Submitted By: Kacie Bachhofer, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Minutes from the June 19, 2017 regular meeting.

Fiscal Impact

Attachments

SAA Minutes

THE TRUSTEES OF THE SHAWNEE AIRPORT AUTHORITY OF THE CITY OF SHAWNEE, COUNTY OF POTTAWATOMIE, STATE OF OKLAHOMA, MET IN REGULAR SCHEDULED SESSION IN THE COMMISSION CHAMBERS AT CITY HALL, 9TH AND BROADWAY, SHAWNEE, OKLAHOMA, MONDAY, JUNE 19, 2017, DURING THE BOARD OF CITY COMMISSIONERS MEETING AT 6:30 P.M., PURSUANT TO NOTICE DULY POSTED AS PRESCRIBED BY LAW. UPON ROLL CALL, A QUORUM WAS DECLARED WITH THE FOLLOWING MEMBERS IN ATTENDANCE:

PRESENT: Bushong, Gillham, Harrod, Finley, Rutherford, Salter

ABSENT: Shaw

Call to Order

Declaration of a Quorum

AGENDA ITEM NO. 1: Consider approval of Consent Agenda:

- a. Minutes from the May 31, 2017 special call meeting and June 5, 2017 regular meeting.

A motion was made by Trustee Rutherford, seconded by Trustee Harrod, to approve Consent Agenda Item No. 1(a). Motion carried 6-0.

AYE: Rutherford, Harrod, Finley, Salter, Bushong, Gillham

NAY: None

AGENDA ITEM NO. 2: Consideration of approval of the Shawnee Airport Authority budget for Fiscal Year 2017-2018.

A motion was made by Trustee Harrod, seconded by Trustee Bushong, to approve the Shawnee Airport Authority budget for Fiscal Year 2017-2018. Motion carried 6-0.

AYE: Harrod, Bushong, Gillham, Finley, Rutherford, Salter

NAY: None

AGENDA ITEM NO. 3:

Consideration of a resolution adopting the budget for the Shawnee Airport Authority for the period of July 1, 2017 through June 30, 2018 finding all things requisite and necessary have been done in preparation and presentation of budget.

Resolution No. SAA-2017-2 was introduced.

A RESOLUTION APPROVING AND ADOPTING THE BUDGET FOR SHAWNEE AIRPORT AUTHORITY, OKLAHOMA FOR THE PERIOD JULY 1, 2017 THROUGH JUNE 30, 2018 FINDING ALL THINGS REQUISITE AND NECESSARY HAVE BEEN DONE IN PREPARATION AND PRESENTATION OF SAID BUDGET.

A motion was made by Trustee Harrod, seconded by Trustee Gillham, to approve a resolution adopting the budget for the Shawnee Airport Authority for the period of July 1, 2017 through June 30, 2018 finding all things requisite and necessary have been done in preparation and presentation of budget. Motion carried 6-0.

AYE: Harrod, Gillham, Finley, Rutherford, Salter, Bushong
NAY: None

AGENDA ITEM NO. 4:

New Business (Any matter not known about or which could not have been reasonably foreseen prior to the posting of the agenda)

There was no New Business.

AGENDA ITEM NO. 5:

Adjournment

There being no further business to be considered, the meeting was adjourned by power of the Chair. (7:38 p.m.)

RICHARD FINLEY
CHAIRMAN

ATTEST:

PHYLLIS LOFTIS, SECRETARY

Shawnee Airport Authority

1.b.

Meeting Date: 07/17/2017

AAB Minutes

Submitted By: Kacie Bachhofer, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Acknowledge Airport Advisory Minutes from the May 10, 2017 meeting.

Fiscal Impact

Attachments

AAB Minutes



7/10/17

MINUTES
AIRPORT ADVISORY BOARD SPECIAL CALL MEETING MAY 10 2017, 5:30 P.M.
TERMINAL BUILDING
2202 AIRPORT DRIVE

CALL TO ORDER

Present – Smith, Klaser, Fogerty, Huddleston, Humphreys, Smallwood
Absent - Freeman

DECLARATION OF A QUORUM

ITEM ONE: Consideration and approval of the consent agenda.

1. Minutes from the April 19, 2017 meeting

Humphreys motioned to approve the consent agenda. Fogerty seconded. Board approved motion unanimously.

ITEM TWO: Citizen Comments

No citizen comments.

ITEM THREE: Discussion and consideration of a contract for services between the Shawnee Airport Authority and H.W. Lochner; FAA AIP Project No. 3-40-0088-017-2017.

Klaser motioned to approve the contract with Lochner. Fogerty seconded the motion. Board unanimously approved the motion.

ITEM FOUR: Board Comments

No board comments.

ITEM FIVE: New Business

No new business

ITEM SIX: Adjournment

Board adjourned at 5:48pm.

Shawnee Airport Authority

1.c.

Meeting Date: 07/17/2017

MOU w/GCTC

Submitted By: Kacie Bachhofer, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Approval of a Memorandum of Understanding with Gordon Cooper Technology Center for the transfer of a Fuel Truck.

Fiscal Impact

Attachments

MOU GCTC Memo

MOU GCTC



Date: July 17, 2017
To: Shawnee Airport Authority
From: Keenan English, Airport Manager
RE: **Approval of Memorandum of Understanding with Gordon Cooper Technology Center for the transfer of a Fuel Truck.**

Nature of Situation: The airport has leased an avgas fuel truck from Gordon Cooper Tech Center for several years. The agreement allows the airport to use the truck in exchange for supplying fuel for Gordon Cooper's fleet of aircraft they use to teach aircraft maintenance with. Historically, the airport gives them no more than a few hundred gallons a year.

GCT's fuel usage the past 3 years:

2017 – 408 gallons @ \$1,620

2016 – 348.5 gallons @ \$1,394

2015 – 208.8 gallons @ \$835.20

GTC is offering to surplus the truck and give it to the airport in exchange for free fuel for the next 8 years. This will be beneficial to the airport because the airport will own the truck and can do much needed repairs and modifications to it. The airport's plan is to keep the large fuel tank on the truck and transfer it to a newer model truck. Typically, the tank and pump are more costly than the truck itself, therefore, this will allow the airport to have a newer mobile fueling system for a very reasonable price. Newer truck and tank system combinations usually cost between \$65,000 - \$110,000.

Staff Analysis, Considerations: The MOU's main provisions are.

1979 Ford F600 avgas fueler, VIN# DGO804 including attached 1,200 gallon fuel tank.

MOU terms

Free fuel to GCT for 8 years.

Fuel given to GCT shall not exceed \$2,000 per year.

Truck and tank belongs to Airport as is free and clear of holds or liens.

Recommendation: On June 28, 2017, the Airport Advisory Board recommended approval of the Memorandum of Understanding. Staff also recommends approval.

Memorandum of Understanding – Transfer of surplus equipment

July 1, 2017

Shawnee Airport Authority
16 W. 9th St.
Shawnee OK, 74801

Gordon Cooper Technology Center
John C. Bruton Dr.
Shawnee, OK 74804

This Agreement, made and entered into the 1st day of July 2017 by and between the Shawnee Airport Authority (Recipient) and Gordon Cooper Technology Center (Provider), herby

1. DESCRIPTION OF PROPERTY

The following Equipment will be transferred by Gordon Cooper Tech. Center to the Shawnee Airport Authority:

Qty. 1 - 1979 Ford F600 avgas fueler, VIN# DGO804 including attached 1,200 gallon fuel tank.

2. TRANSFER OF PROPERTY

The Provider agrees to transfer full title and ownership of the property to the Recipient in exchange for the right to aviation fuel (100LL and Jet-A) from the Shawnee Regional Airport FBO at no cost. The Provider also agrees that the amount of fuel used shall not exceed the dollar amount of \$2,000 per year.

Under this agreement, the Provider shall be entitled to fuel at no cost for a eight (8) year period commencing on July 1, 2017 and terminating March 31, 2025 Recipient accepts the condition of the property "As is".

3. GENERAL TERMS

3.1 The Provider agrees to transfer property as defined in Section 1 of this Agreement to the Recipient free and clear of any liens, holds, or encumbrances

3.2 This MOU shall not be assignable or transferable by either party. This MOU shall not be construed to have been extended, changed, amended, modified, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of any such extension, change, amendment, modification, discharge or termination is sought.

3.3 All documents and agreements contemplated by this MOU shall be prepared and approved by, and all legal matters incidental hereto shall be acceptable to and approved by both party's legal counsel.

IN WITNESS WHEREOF, the undersigned party has executed this Memorandum of Understanding Agreement under seal as of the date first above written.

RECIPIENT

SHAWNEE AIRPORT AUTHORITY, an
enterprise authority of the City of Shawnee

JUSTIN ERICKSON
City Manager/Airport Manager
City of Shawnee

RICHARD FINLEY
Mayor
City of Shawnee

ATTEST:

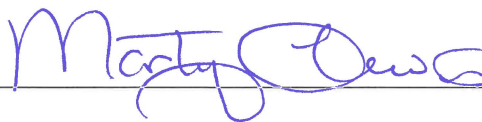
Phyllis Loftis
City Clerk

(SEAL)

PROVIDER:

GORDON COOPER TECHNOLOGY
CENTER

MARTY LEWIS
Superintendent/CEO



Approved as to form and legality on this _____ day of _____, 2017

JOSEPH VORNDRAN,
CITY ATTORNEY

Shawnee Airport Authority

2.

Meeting Date: 07/17/2017

Brown Derby Lease

Submitted By: Kacie Bachhofer, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion and consideration of approving a new lease between the Shawnee Airport Authority and Johnny Kneisel dba Brown Derby Drive-In.

Fiscal Impact

Attachments

Brown Derby Memo

Brown Derby Lease

Brown Derby Exhibit A



Date: July 17, 2017
To: Shawnee Airport Authority
From: Keenan English, Airport Manager
RE: Lease agreement with Brown Derby Drive-In

Nature of Situation: Brown Derby Drive-In has leased airport property for quite some time. The last agreement between them and the airport was in 1988. Since then, much of Kickapoo Street has changed and this new lease reflects new lease boundaries and rates. The airport has recently conducted new boundary surveys and land appraisals to this area.

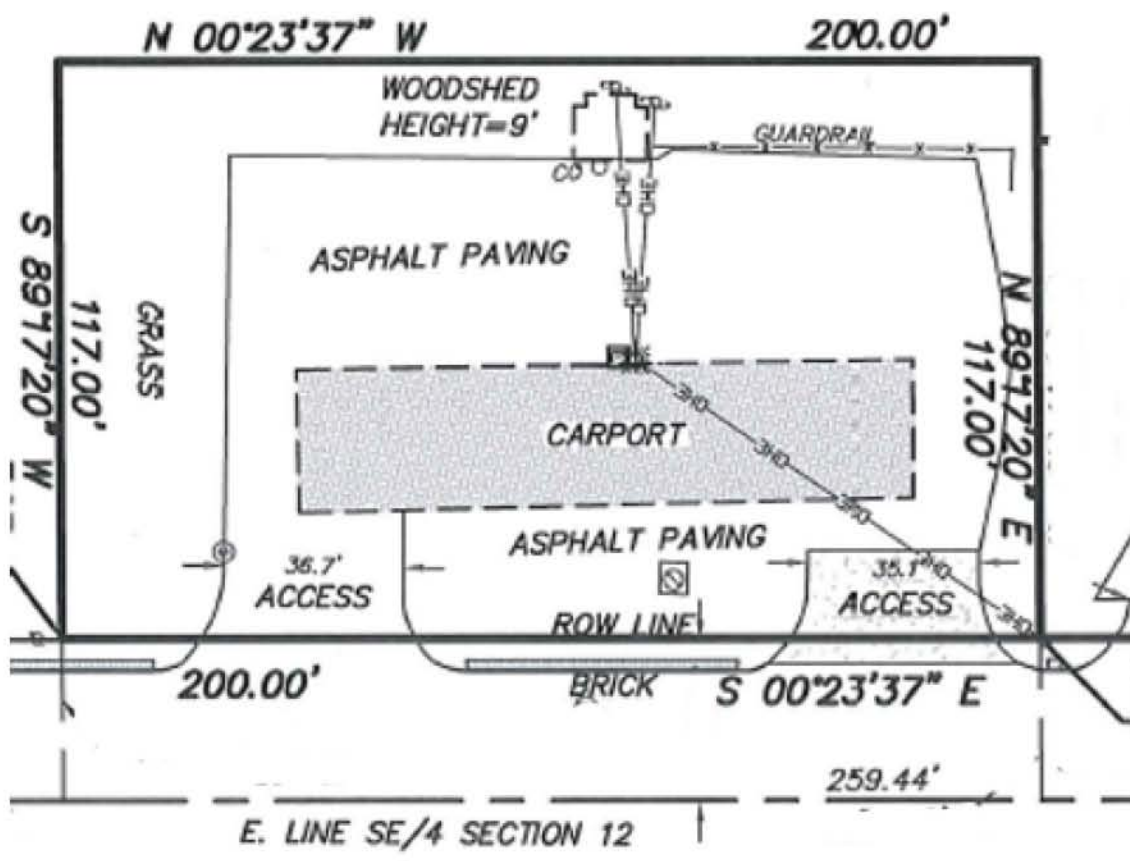
Staff Analysis, Considerations: The basic framework of the lease is not much different than the original 1988 lease with a few exceptions including the lease rate, leased premises, and modern legal clauses that protect the city from liability. The following are key aspects of the lease:

1. Leased area is 0.537 acres OR 23,400 sq ft. Land only. Located on SW corner of Kickapoo St. and Saratoga.
2. Lease rate - \$0.16/sq ft. \$3,792 per year OR \$316 per month.
3. Lease term is two periods of 5 years.
4. Lease rate is adjusted after first five years by updated land appraisal or consumer price index, whichever is higher.
5. Insurance required - \$100,000 property damage including premises, operations, and fire coverage. \$300,000 for any one accident and \$100,000 per person.

Recommendation: On June 28, 2017, the Airport Advisory Board recommended approval of the lease. Staff also recommends approval.

Budget Consideration:

The increase in rent will yield an additional \$1,200 per year for the airport. While land value has significantly increased, the leased premises for Brown Derby decreased due to new businesses moving in on Brown Derby's original 1988 lot.



COMMERCIAL LEASE AGREEMENT

This Agreement of Lease made and entered into this 1st day of July 2017 by and between the Shawnee Airport Authority (the City) hereinafter referred to as "Lessor," and, Johnny Kneisel dba Brown Derby Drive-In, hereinafter referred to as "Lessee."

WITNESSETH THAT:

WHEREAS, the City is the owner of the premises known as Shawnee Regional Airport (the "Airport"); The Lessor has the right to lease the following described real property situated at 1830 N. Kickapoo, Shawnee, OK.

A tract of land lying in and being a part of the Southeast Quarter SE/4 of Section Twelve (12), Township Ten (10) North, Range Three (3) East of the Indian Meridian, Pottawatomie County, Oklahoma, being more particularly described as follows: COMMENCING at a Mag Nail Found on the East line of said SE/4 for the Southeast corner of the NE/4 of the SE/4 of Section said 12; Thence N 00°23'37" W along said East line, a distance of 59.44 feet; Thence S 89°17'20" W, a distance of 33.00 feet to a point on the West line of the 33.00' Statutory right of way for the Southeast corner and POINT OF BEGINNING of the herein described Lease Area; Thence continuing S 89°17'20" W, a distance of 117.00 feet to a point for the Southwest corner, Thence N 00°23'37" W, a distance of 200.00 feet to a point for the Northwest corner; Thence N 89°17'20" E, a distance of 117.00 feet to a point on the Statutory right of way line for the Northeast corner; Thence S 00°23'37" E along said right of way line, a distance of 200.00 feet to the POINT OF BEGINNING, containing 23,400 square feet or 0.537 acres, more or less.

WHEREAS, the City and Lessee are mutually desirous of entering into a Lease for the use and occupancy of certain areas at the Airport.

NOW, THEREFORE, in consideration of the premises and of the rents, covenants and conditions herein contained, the City does hereby grant to the Lessee the right to use and occupy the area of Airport property described in Article 2 hereof, during the term hereof, (hereinafter referred to as the "Leased Premises"), for the term and pursuant to the conditions hereinafter set forth.

ARTICLE 1 - TERM

- 1.1 The initial term of this lease shall be for a **five (5) year** period commencing on July 1, 2017 and terminating March 31, 2022. Lessee has the option after the initial term to renew the Lease for **one additional term of five (5) years**. Lessee must notify Lessor within 90 (ninety) days of expiration of lease of intent to renew.

ARTICLE 2 - LEASE PREMISES

- 2.1 The Leased Premises consist of:

2.1.1 Improved/unimproved land area consisting of approximately **0.537 acres or 23,400** square feet more or less. See Exhibit A.

2.1.2 Any real property improvement constructed or installed thereon during the term

hereof.

ARTICLE 3 - USE OF LEASED PREMISES

- 3.1 The Lessee shall occupy and use the Leased Premises for the following purposes and for no other purpose whatsoever:
- 3.1.1 Conducting a drive-in restaurant.

ARTICLE 4 - RENTAL

- 4.1 Lessee agrees to pay to the City as rental for use of the premises and the privileges herein granted the sum of **\$3,792 per year**. After the initial term of the lease, the City shall have the authority to review the lease rate and adjust it accordingly based on a land appraisal or the change in the CIP index, whichever is higher.
- 4.2 Lessee shall pay one-twelfth (1/12) of the annual rent in advance on or before the first day of each month during the term or any renewal of this lease. Provided, however, that if any monthly rental payment is not paid on or before the tenth day following the first day of each month, such payment shall bear interest at 10% per annum.
- 4.3 The monthly rent shall be payable at the office of the Airport Manager or such other locations as may from time to time be directed in writing by the City.

ARTICLE 5 - ACCEPTANCE, CARE MAINTENANCE, IMPROVEMENTS AND REPAIR

- 5.1 Lessee warrants that it has inspected the Leased Premises and accepts possession of the Leased Premises and the improvements thereon "as is" in its present condition, and subject to all limitations imposed upon the use thereof by the rules and regulations of the Federal Aviation Administration and by ordinances of the City, and admits its suitability and sufficiency for the uses permitted hereunder. Except as may otherwise be provided for herein, the City shall not be required to maintain nor to make any improvements, repairs or restorations upon or to the Leased Premises or to any of the improvements presently located thereon. City shall never have any obligation to repair, maintain or restore, during the term of this lease, any improvements placed upon the Leased Premises by Lessee, its successors and assigns.
- 5.2 Lessee shall throughout the term of this Agreement assume the entire responsibility, cost and expense, for all repair and maintenance whatsoever on the Leased Premises and all improvements thereon in a good workmanlike manner, whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. Additionally, Lessee, without limiting the generality hereof, shall:
- 5.2.1 Keep at all times, in a clean and orderly condition and appearance, the Leased Premises, all improvements thereon and all of the Lessee's fixtures, equipment and personal property which are located on any part of the Leased Premises.
- 5.2.2 Repair any damage caused by Lessee to paving or other surface of the Leased Premises

caused by any oil, gasoline, grease, lubricants or other flammable liquids and substances having a corrosive or detrimental effect thereon.

5.2.3 Be responsible for the maintenance and repair of all utility service lines placed on the Leased Premises and used by Lessee exclusively, including, but not limited to, water lines, gas lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers.

- 5.3 In the event Lessee fails: (a) to commence to maintain, clean, repair, replace, rebuild or repaint within a period of thirty (30) days after written notice from the City to do any maintenance or repair work required to be done under the provisions of this Agreement, other than preventive maintenance, (b) or within a period of ninety (90) days if the said notice specifies that the work to be accomplished by the Lessee involves preventative maintenance only; (c) or to diligently continue to completion any repairs, replacement, rebuilding, painting or repainting as required under the Agreement; then, the City may, at its option, repair, replace, rebuild or paint all or any part of the Leased Premises or the improvements thereon, and do all things reasonably necessary to accomplish the work required, and the cost and expense thereof shall be payable to the City by Lessee on demand. Provided, however, if in the opinion of the City, the Lessee's failure to perform any such maintenance endangers the safety of the public, the employees or property of the City, and the City so states same in its notice to Lessee, the City may, at its sole option, in addition to all other remedies which may be available to it, elect to perform such maintenance at any time after the giving of such notice, and Lessee agrees to pay to the City the cost and expense of such performance on demand. Furthermore, should the City, its officers, employees or agents undertake any work hereunder, Lessee hereby waives any claim for damages, consequential or otherwise, as a result there from except for claims for damages arising from the City's sole negligence.
- 5.4 Plans and specifications for all major repairs, constructions, alterations, modifications, additions or replacements (hereinafter referred to as "improvements") to the leased premises, undertaken by the Lessee shall be submitted to and receive the written approval of the City, and no such work shall be commenced until such written approvals are obtained from the City, which approval shall not be unreasonably withheld or delayed. City shall advise Lessee within thirty (30) days after receipt of the written request, together with copies of the plans and specifications for the proposed improvements in sufficient detail to make a proper review thereof, or its approval or disapproval of the proposed work, and in the event it disapproves, stating its reasons therefore.
- 5.5 If Lessee makes any improvements without City approval, then, upon notice to do so, Lessee has the option to remove the same or at the option of City, cause the same to be changes to the satisfaction of City. If Lessee fails to comply with such notice within thirty (30) days or to commence to comply and pursue diligently to completion, City may effect the removal or change and Lessee shall pay the cost thereof to the City. The Lessee will neither give nor grant, nor purport to give or grant any lien upon the Leased Premises or upon any improvements thereupon or which is in the process of construction or repair, nor allow any condition to exist or situation to develop whereby any party would be entitled, as a mater of law, to a lien against said Leased Premises and improvements thereon, and Lessee will discharge any such lien within thirty (30) days after notice of filing thereof. Notice is hereby given by City to all persons that no lien attaches to any such improvements.
- 5.6 Upon the completion of construction or installation, the complete and unencumbered title to all

improvements located on the Leased Premises shall immediately vest in City free and clear of all claims on the part of the Lessee on account of any repair or improvement work done or to be done under the terms hereof by Lessee. This vesting of title in the City at the time specified is a part of the consideration for this lease. The City shall not be liable to Lessee or Lessee's contractors or sub lessees for the value of any improvements constructed or located on the Leased Premises.

ARTICLE 6 - ADDITIONAL OBLIGATIONS OF LESSEE

- 6.1 Lessee shall conduct its operations hereunder in an orderly and proper manner
- 6.2 Lessee shall comply with all health and safety laws and requirements and any other federal, state or municipal laws, ordinances, rules, regulations and requirements, applicable to the Leased Premises.
- 6.3 Lessee shall comply with all written instructions of the City in disposing of its trash and refuse at Lessee's expense, and shall use a system of refuse disposal approved by the City.
- 6.4 Lessee shall not commit, nor permit to be done, anything which may result in the commission of a nuisance, waste or injury on the Leased Premises.
- 6.5 Lessee shall not do, nor permit to be done, anything which may interfere with the effectiveness or accessibility of the drainage system, sewerage system, fire protection system, sprinkler system, alarm system and fire hydrants and hoses, if any, installed or located on the Leased Premises.
- 6.6 Lessee shall not do, nor permit to be done, any act or thing upon the Leased Premises which may constitute a hazardous condition so as to increase the risks attendant upon the operations permitted by the Agreement.
- 6.7 Lessee shall use only a working supply of flammable liquids within any covered or enclosed portion of the Leased Premises. Any other supplies of such liquids shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories. The term "working supply" as used in this Section 6.10 shall mean the amount consumed by Lessee during any normal work day.

ARTICLE 7 - INGRESS AND EGRESS

- 7.1 The Lessee shall have the right of ingress and egress to and from the Leased Premises by means of roadways, to be used in common with others having rights of passage thereon.

ARTICLE 8 - LIABILITIES AND INDEMNITIES

- 8.1 City shall not in any way be liable for any cost, liability, damage or injury, including cost of suit and reasonable expenses of legal services, claimed or recovered by any person whomsoever, or occurring on the Leased Premises, or as a result of any operations works, acts or omissions performed on the Leased Premises, Lessee, its sub lessees or tenants, or their guest or invitees.

- 8.2 Lessee agrees to indemnify, save and hold harmless, the City, (its officers, agents, servants and employees) of and from any and all costs, liability, damage and expense (including costs of suit and reasonable expenses of legal services) claimed or recovered, justly or unjustly, false, fraudulent or frivolous, by any person, firm or corporation by reason of injury to, or death of, any person or persons, and damage to, destruction or loss of use of any and all property, including City personnel and City property, directly or indirectly arising from, or resulting from, any operations, works, acts or omissions of Lessee, its agents, servants, employees, contractors, sub lessees or tenants. Provided, however, that upon the filing with the City by anyone of a claim for damages arising out of incidents for which Lessee herein agrees to indemnify and hold the City harmless, the City shall notify Lessee of such claim and in the event that Lessee does not settle or compromise such claim, then Lessee shall undertake the legal defense of such claim both on behalf of Lessee and behalf of the City. It is specifically agreed, however, that the City at its own cost and expense, may participate in the legal defense of any such claim. Any final judgment rendered against the City for any cause for which Lessee is liable hereunder shall be conclusive against Lessee as to liability and amount upon the expiration of the time for appeal.
- 8.3 In addition to Lessee's undertaking, as stated in this Article, and as a means of further protecting the City, its officers, agents, servants and employees, Lessee shall at all times during the term of this Agreement obtain and maintain in effect Public Liability Insurance coverage as set forth in Schedule A attached hereto and made a part hereof.
- 8.3.1 The City reserves the right to increase the minimum liability insurance set forth in Schedule A when in the City's opinion the risks attendant to Lessee's operations hereunder have increased.

ARTICLE 9 - SIGNS

- 9.1 Lessee shall have the right to install and maintain one or more signs on the Leased Premises identifying it and its operations, provided, however, the subject matter, type, design, number, location and elevation of such signs, and whether lighted or unlighted, shall be subject to and meet the requirements of the City.

ARTICLE 10 - ASSIGNMENT AND SUBLEASE

- 10.1 Lessee covenants and agrees that it will not sell, convey, transfer, mortgage, pledge or assign this Agreement or any part thereof, or any rights created thereby, without the prior written consent of the City.
- 10.2 Any assignment or transfer of this Agreement, or any rights of Lessee hereunder, without the consent of the City, shall entitle the City at its option to forthwith cancel this Agreement.
- 10.3 Any assignment of this Agreement approved and ratified by the City shall be on the condition that the assignee accepts and agrees to all of the terms, conditions and provisions of this Agreement, and agrees to accept and discharge all of the covenants and obligations of Lessee hereunder, including but not limited to the payment of all sums due and to become due by Lessee under the terms hereof.
- 10.4 No consent by the City to subleasing by Lessee of portions of the Leased Premises shall in any

way relieve Lessee of any of its obligations to the City set forth or arising from this lease and a termination of Lessee's rights hereunder shall ipso facto terminate all subleases.

- 10.5 No consent to subleasing by the Lessee to a person, corporation or partnership conducting any business for profit derived from activities on the Leased Premises shall be granted by the City without a duly executed permit agreement between the City and the sub lessee.
- 10.6 If the Lessee assigns, sells, conveys, transfers, mortgages, or pledges this agreement or sublets any portion of the Leased Premises in violation of the foregoing provisions of this Article, or if the Leased Premises are occupied by anyone other than the Lessee, City may collect from any assignee, sub lessee or anyone who claims a right to this Agreement or who occupies the Leased Premises any charges or fees payable by it and may apply the net amount collected to the rents herein reserved; and no such collection shall be deemed a waiver by City of the agreements contained in this Article nor of acceptance by City of any assignee, claimant or occupant, nor as a release of the Lessee by City from the further performance by the Lessee of the agreements contained herein.

ARTICLE 11 - NON-DISCRIMINATION

- 11.1 The Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, 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.
- 11.2 The Lessee does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, 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. In this connection, the City reserves the right to take whatever action it might be entitled by law to take in order to enforce this provision. .
- 11.3 The Lessee shall include the foregoing provisions in every agreement or concession pursuant to which any person or persons, other than the Lessee, operates any facility at the Leased Premises providing service to the public and shall include thereon a provision granting the City a right to take such action as the United States may direct to enforce such covenant.
- 11.4 The Lessee shall indemnify and hold harmless City from any claims and demands of third persons including the United States of America resulting from the Lessee's noncompliance with any of the provisions of this Section and the Lessee shall reimburse City for any loss or expense incurred by reason of such noncompliance.

ARTICLE 12 - GOVERNMENTAL REQUIREMENTS

- 12.1 The Lessee shall procure all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Lessee's operations at the Leased Premises which may be necessary for the Lessee's operations thereat.
- 12.2 The Lessee shall pay all taxes, licenses, certification, permit and examination fees and excise taxes which may be assessed, levied, exacted or imposed on the Leased Premises or operation hereunder or on the gross receipts or income to Lessee there from, and shall make all applications, reports and returns required in connection therewith.

ARTICLE 13 - RIGHTS OF ENTRY RESERVED

- 13.1 The City, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times to enter upon the Leased Premises for any and all purposes, provided, such action by the City, its officers, employees, agents, representatives and contractors does not unreasonably interfere with the Lessee's use, occupancy, or security requirements of the Leased Premises.
- 13.2 The City shall have the right, at its own cost and expense, whether for its own benefit, or for the benefit of others than the Lessee at the Airport, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Leased Premises at all reasonable times to make such repairs, replacements or alterations thereto, as may, in the opinion of the City, be deemed necessary or advisable, and from time to time to construct or install over, in or under the Leased Premises such systems or parts thereof and in connection with such maintenance use the Leased Premises for access to other parts of the Airport otherwise not conveniently accessible, provided, however, that in the exercise of such right of access, repair alteration or new construction, the City, shall not unreasonably interfere with the actual use and occupancy of the Leased Premises by the Lessee.
- 13.3 In the event that any personal property of Lessee shall obstruct the access of the City, Lessee shall move such property, as directed by the City or said utility company, in order that access may be had to the system or part thereof for inspection, maintenance or repair. If Lessee shall fail to so move such property after direction from City or said utility company to do so, the City or the utility company may move it, and the Lessee hereby agrees to pay the cost of such moving upon demand, and further Lessee hereby waives any claim for damages as a result there from, except for claims for damages arising from the City's sole negligence.
- 13.4 At any reasonable time, and from time to time during the ordinary business hours, the City, by its officers, agents and employees, whether or not accompanied by a prospective lessee, occupier or user of the Leased Premises, shall have the right to enter thereon for the purpose of exhibiting and viewing all parts of the same, subject to Lessee's reasonable security requirements.
- 13.5 Exercise of any or all of the foregoing rights, by the City, or others under right of the City, shall not be, nor be construed to be, an eviction of Lessee, nor be made the grounds for any abatement of rental nor any claim or demand for damages, consequential or otherwise.

ARTICLE 14 - ADDITIONAL RENTS AND CHARGES

- 14.1 Except as provided in Section 5.3 (b), in the event Lessee fails within thirty (30) days after receipt of written notice from City to perform or commence to perform any obligation required herein to be performed by Lessee, City may enter the Leased Premises (without such entering causing or constituting a cancellation of this Agreement or an interference with the possession of such Leased Premises by Lessee) and do all things reasonably necessary to perform such obligation, charging to Lessee the cost and expense thereof, and Lessee agrees to pay to the City upon demand such charge in addition to other amounts payable by Lessee hereunder. Provided, however, that if Lessee's failure to perform any such obligation endangers the safety of the public or employees or property of the City, and City so states in its notice to Lessee, the City may perform such obligation of Lessee at any time after the giving of such notice, and charge to the Lessee the reasonable cost and expense thereof which Lessee shall pay upon demand.
- 14.2 If the City elects to pay any sum or sums or incur any obligation or expense by reason of the failure, neglect or refusal of Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement, or as the result of any act or omission of Lessee contrary to said conditions, covenants or agreements, Lessee hereby agrees to pay the sum or sums so paid or expense so incurred by the City as a result of such failure neglect or refusal of Lessee, including interest, not to exceed ten percent (10%) per annum, together with all costs, damages and penalties. In such event, the total of such amounts may be added to any installment of rent thereafter due hereunder, and each and every part of the same shall be and become additional rent recoverable by the City in the same manner and with like remedies as if it were originally a part of the rent provided for in this Agreement.

ARTICLE 15 - DEFAULT

- 15.1 In the event Lessee breaches any term or provision of this Lease, including the obligation to pay rent as and when due, the City shall have the right to terminate this lease upon giving Lessee thirty (30) days notice to cure such default (except as otherwise provided in Section 5.3 above). If Lessee shall not have cured its default within said thirty (30) day period to the satisfaction of the City, then the City may declare this Lease and Lessee's right of occupancy to be terminated, and Lessee shall at once quit the Premises, taking only such personality or fixtures as the City may authorize to be removed. The Lessee may request additional time to correct the infraction at the discretion of the Governing Board of the Airport. The foregoing rights and remedies given to City are and shall be deemed to be cumulative and shall be deemed to be given to City in addition to any other and further rights granted to City herein or by law. The failure by the City at any time to exercise any right or remedy hereby given to it shall not be deemed to operate as a waiver by it of its right to exercise such rights or remedies at any other or future time.

ARTICLE 16 - TERMINATION BY LESSEE

- 16.1 In addition to any other right of cancellation herein given to Lessee, or any other rights to which it may be entitled by law, equity or otherwise, as long as Lessee is not in default in payment to City of any amounts due City under this Agreement, Lessee may cancel this Agreement and thereby terminate all of its rights and unaccrued obligations hereunder, by giving City thirty (30) days' advance written notice upon or after the happening of the following events:

- 16.1.1 issuance by a court of competent jurisdiction of an injunction which in any way substantially prevents or restrains the use of the Leased Premises, and which injunction remains in force for a period of at least thirty (30) days after the party against whom the injunction has been issued has exhausted or abandoned all appeals or one hundred twenty (120) days whichever is shorter, if such injunction is not necessitated by or issued as a result of an act or omission of Lessee; or
- 16.1.2 The assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport and its facilities, or any substantial part thereof, in such a manner as substantially to restrict Lessee from operating its authorized business for a continuous period of at least ninety (90) days.

ARTICLE 17 - SURRENDER AND RIGHT OF RE-ENTRY

- 17.1 Upon the cancellation or termination of this Agreement pursuant to any terms hereof, Lessee agrees peaceably to surrender up the Leased Premises to the City in the same condition as they are at the time of the commencement of this agreement, and as they may hereafter be repaired and improved by Lessee; save and except, (a) such normal wear and tear thereof as could not have been prevented by ordinary and usual repairs and maintenance, (b) obsolescence in spite of repair, and (c) damage to or destruction of the leasehold improvements for which insurance proceeds are received by the City. Upon such cancellation or termination, the City may re-enter and repossess the Leased Premises together with all improvements and additions thereto, or pursue any remedy permitted by law for the enforcement of any of the provisions of this Agreement, at City's election. Furthermore, upon such cancellation or termination, and for a reasonable time thereafter (not exceeding thirty (30) days after such cancellation or termination, and for which period Lessee will pay to the City current lease rentals), or during the term of this Agreement, if Lessee is not in default in rentals or any other charges or obligations due the City, Lessee shall have the right to remove its personal property, fixtures and trade equipment which it may have on the Leased Premises, provided the removal thereof does not impair, limit or destroy the utility of said Leased Premises or building for the purpose for which they were constructed or improved, and provided, further, that Lessee repairs all damages that might be occasioned by such removal, and restores the building and site to the condition above required.

ARTICLE 18 - SERVICES TO LESSEE

- 18.1 City agrees to keep in good repair hard-surfaced public roads for access to the Leased Premises. City also agrees to maintain its water and sanitary sewer facilities in areas designated for utilities or easements adjacent to the Leased Premises for access thereto by Lessee in accordance with City Ordinances governing same.
- 18.2 Lessee will contract with and obtain all required permits from the appropriate City Departments for any utility services provided by City, paying any required connection fees, including those to be paid by owners, and all such services will be provided at rates and on terms and conditions established by the City for similar users in the City.
- 18.3 Lessee will also contract with the furnishers of all other utilities for the furnishing of such services to the Leased Premises and shall pay for all water, gas, electricity, sanitary sewer

service, telephone, and burglary and fire protection services furnished to the Leased Premises.

ARTICLE 19 - SURVIVAL OF THE OBLIGATIONS OF THE LESSEE

- 19.1 In the event that the Agreement shall have been terminated in accordance with a notice of termination as provided in Article 16 hereof, all the obligations of the Lessee under this Agreement shall survive such termination, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of this Agreement, and the amount or amounts of damages or deficiency shall become due and payable to City to the same extent, at the same time or times, and in the same manner as if no termination, re-entry, regaining or resumption of possession had taken place. City may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency less the proper discount, for the entire unexpired term of the Agreement.

ARTICLE 20 - USE SUBSEQUENT TO CANCELLATION OR TERMINATION

- 20.1 The City, upon termination or cancellation pursuant to Article 16 hereof, may occupy the Leased Premises or may enter into an agreement with another lessee and shall have the right to permit any person, firm or corporation to enter upon the Leased Premises and use the same. Such use may be of part only of the Leased Premises or of the entire Leased Premises, together with other premises, and for a period of time the same as or different from the balance of the term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement.
- 20.2 City shall also, upon said termination or cancellation, or upon re-entry, regaining or resumption of possession, have the right to repair and to make structural or other changes in the Leased Premises, including changes which alter its character and the suitability thereof for the purposes of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder, provided, that any structural changes shall not be at Lessee's expense.
- 20.3 In the event either of use by others or of any actual use and occupancy by City, there shall be credited to the account of the Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier in connection with the use of the said Leased Premises or portion thereof during the balance of the term of use and occupancy as the same if originally stated in this Agreement, or from the market value of the occupancy of such portion of the Leased Premises as City may itself during such period actually use and occupy, all expenses, costs and disbursements incurred or paid by City in connection therewith. No such use and occupancy shall be or be construed to be an acceptance of a surrender of the Leased Premises, nor shall such use and occupancy constitute a waiver of any rights of City hereunder. City will use its best efforts to minimize damages to Lessee under this Article.

ARTICLE 21 - NOTICES

- 21.1 All notices, consents and approvals required or desired to be given by the parties hereto shall be sent in writing, and shall be deemed sufficiently given when same is deposited in the United

States Mail, sufficient postage prepaid, registered or certified mail, return receipt requested, addressed to the recipient at the address set forth below:

To City: City Manager
P.O. Box 1448
Shawnee, Oklahoma 74802-1448

AND

To Lessee: Brown Derby Drive-In
1830 N. Kickapoo
Shawnee, OK 74801

- 21.2 Such addresses shall be subject to change from time to time to such other addresses as may have been specified in written notice given by the intended recipient to sender.

ARTICLE 22 - HOLDING OVER

- 22.1 No holding over by Lessee after the termination of this lease shall operate to extend or renew this lease for any further term whatsoever; but Lessee will by such holding over become the tenant at will of City and after written notice by City to vacate such premises, continued occupancy thereof by Lessee shall constitute Lessee a trespasser.
- 22.2 Any holding over by Lessee beyond the thirty (30) day period permitted for removal of fixtures without the written consent of the City shall make the Lessee liable to the City for damages equal to double the rentals provided for herein and which were in effect at the termination of the lease.
- 22.3 All insurance coverage that Lessee is required under the provisions hereof to maintain in effect shall continue in effect for so long as Lessee, or any of Lessee's sub lessees or tenants occupy the Leased Premises or any part thereof.

ARTICLE 23 - MISCELLANEOUS PROVISIONS

Force Majeure.

- 23.1 Neither party shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of labor disputes, acts of God, acts of the public enemy, acts of superior governmental authority or other circumstances for which it is not responsible or which is not in its control provided, however, that this section shall not excuse Lessee from paying the rentals herein specified.

Non-Liability of Individuals.

- 23.2 No director, officer, agent or employee of either party hereto shall be charged personally or held

contractually liable by or to the other party under any term or provision of this Agreement or of an supplement, modification or amendment to this Agreement because of any breach thereof, or because of his or their execution or attempted execution of the same.

Quiet Enjoyment.

- 23.3 The City covenants that as long as Lessee is not in default of any provision of this Agreement, Lessee shall and may peaceably and quietly have, hold and enjoy the Leased Premises exclusively to it during the term hereof unless sooner canceled as provided in this Agreement.

General Provisions.

- 23.4 Lessee shall not use, or permit the use of, the Leased Premises, or any part thereof, for any purpose or use other than those authorized by this Agreement.
- 23.5 This Agreement shall be performable and enforceable in Shawnee, Oklahoma and shall be construed in accordance with the laws of the State of Oklahoma.
- 23.6 This Agreement is made for the sole and exclusive benefit of the City and Lessee, their successors and assigns, and is not made for the benefit of any third party.
- 23.7 All covenants, stipulations and agreements in this Agreement shall extend to and bind each party hereto, its legal representatives, successors and assigns.
- 23.8 Nothing herein contained shall create or be construed to creating a co-partnership between the City and the Lessee or to constitute the Lessee an agent of the City. The City and the Lessee each expressly disclaim the existence of such a relationship between them.

ARTICLE 24 - SUBORDINATION CLAUSES

24.1 This Agreement is and shall be subordinate to the provisions of existing and future agreements between City and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the obtaining or expenditure of Federal funds for the benefit of the Airport.

24.2 During the time of war or national emergency, City shall have the right to lease all or any part of the landing area or of the Airport to the United States for military or naval use, and if any such lease is executed, the provisions of this Agreement insofar as they may be inconsistent with the provisions of such lease to the Government, shall be suspended, but such suspension shall not extend the term of this Agreement. Abatement of rentals shall be determined by the City in proportion to the degree of interference with Lessee's use of the Leased Premises.

ARTICLE 25 - ENTIRE AGREEMENT

- 25.1 The Agreement consists of Articles 1 to 28, inclusive, and Schedule A.
- 25.2 It constitutes the entire Agreement of the parties hereto and may not be changed, modified, discharged or extended except by written instrument duly executed by the City and the Lessee. The parties agree that no representations or warranties shall be binding upon the City or the Lessee unless expressed in writing in this Agreement of Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written above.

LESSOR:
THE CITY OF SHAWNEE
OKLAHOMA
A Municipal Corporation

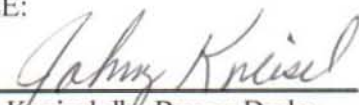
By: _____
JUSTIN ERICKSON
CITY MANAGER

By: _____
JOSEPH VORNDRAN
CITY ATTORNEY

ATTEST:

PHYLLIS LOFTIS, CITY CLERK

LESSEE:

By: 
Johnny Kneisel dba Brown Derby
Drive-In

ATTEST:

SCHEDULE "A"

INSURANCE COVERAGE

The Lessee, at Lessee's expense, shall obtain and maintain in continuous effect during the term of this Lease Agreement, insurance policies issued by an insurance carrier licensed to do business in the State of Oklahoma, providing for:

1. Comprehensive General Liability - having a minimum of \$100,000.00 per person, 300,000.00 for any one accident, and \$100,000.00 property damage with the following coverage:

A. broad form contractual liability

B. premises and operations

2. Fire coverage

The Lessee shall provide the City with a Certificate of Insurance indicating proof of the foregoing coverage. Such certificate shall provide that the carrier issuing the certificate shall notify the City within ten (10) days in advance of any cancellation or significant change in the terms or coverage of such insurance policies.

The failure of the Lessee to obtain and maintain such insurance coverage shall not relieve the Lessee from any liability arising from this Lease Agreement nor shall any such liability be limited to the liability insurance coverage provided for herein.

Exhibit A

