

AGENDA
SHAWNEE AIRPORT AUTHORITY
November 5, 2018 AT 6:00 P.M.
COMMISSION CHAMBERS AT CITY HALL
SHAWNEE, OKLAHOMA

CALL TO ORDER

DECLARATION OF A QUORUM

1. Consider approval of Consent Agenda:
 - a. Minutes from the October 15, 2018 regular meeting.
 - b. Approval of an amendment to the current Land Lease Agreement with Delta Wing Equipment, LLC, a subsidiary of Pacific Air Holdings, LLC.
 - c. Approval of an amendment to the current Fixed Base Operator Lease with Red Cloud Aviation, LLC.
 - d. Approval of a Lease Extension Agreement to the current Lease Agreement with EAN Holdings, LLC (Enterprise Rental Car).
2. New Business

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

Respectfully submitted

Lisa Lasyone, CMC, City Clerk

Shawnee Airport Authority

1.a.

Meeting Date: 11/05/2018

SAA Minutes 10/15/2018

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Explanation

Minutes from the October 15, 2018 regular meeting.

Staff Recommendation

Fiscal Impact

Attachments

SAA Minutes 10-15-2018

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, OCTOBER 15, 2018, DURING THE BOARD OF CITY COMMISSIONERS MEETING AT 6:00 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: Bolt, Gillham, Harrod, Finley, Rutherford, Sehorn, Salter

ABSENT: None

Call to Order

Declaration of a Quorum

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

a. Minutes from the October 1, 2018 regular meeting.

A motion was made by Trustee Harrod, seconded by Trustee Bolt, to approve Consent Agenda Item No. 1(a). Motion carried 7-0.

AYE: Harrod, Bolt, Gillham, Finley, Rutherford, Sehorn, Salter

NAY: None

AGENDA ITEM NO. 2: 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. 3: Adjournment

There being no further business to be considered, the meeting was adjourned by power of the Chair. (6:19 p.m.)

RICHARD FINLEY
CHAIRMAN

ATTEST:

LISA LASYONE, SECRETARY

Shawnee Airport Authority

1.b.

Meeting Date: 11/05/2018

Delta Wing Lease Amendment

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Explanation

Approval of an amendment to the current Land Lease Agreement with Delta Wing Equipment, LLC, a subsidiary of Pacific Air Holdings, LLC.

Staff Recommendation

Fiscal Impact

Attachments

Delta Wing Equipment



Date: October 18, 2018

To: Shawnee Airport Authority

The Honorable Richard Finley, Mayor

James Harrod, Vice Mayor

Ed Bolt, Commissioner

Ron Gillham, Commissioner

Darren Rutherford, Commissioner

Ben Salter, Commissioner

Mark Sehorn, Commissioner

A handwritten signature in blue ink, appearing to read "Bonnie A. Wilson", is written over the list of commissioners.

From: Bonnie A. Wilson, CM Airport Manager

Subject: Land Lease Amendment - Delta Wing Equipment, LLC a Subsidiary of Pacific Air Holdings, LLC

Nature of Request:

Staff is seeking authorization to execute an amendment to the current lease agreement with Delta Wing Equipment, LLC, a subsidiary of Pacific Air Holdings, LLC (Delta Wing) to add 37,006 square feet of space, increasing the total square footage to 57,006 square feet, to allow for the construction of a public parking facility adjacent to the East side of the hangar; two sloped ramps adjacent to the North and South hangar entrances respectively; and relocation of an existing manual vehicle gate and associated fence materials generally along the North West corner and West perimeter of the hangar. An amended Exhibit A depicting the proposed expanded lease line is provided as Attachment 1 to this memorandum for reference.

Staff Analysis and Considerations:

The additional square footage requested is required to provide access for both aircraft and ground vehicles.

Per the terms and conditions of the existing lease, Delta Wing will be responsible for: constructing the ramps and parking lot in concurrence with City of Shawnee building standards, and providing for the total cost of the construction.

Upon the completion of construction, 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 Delta Wing.

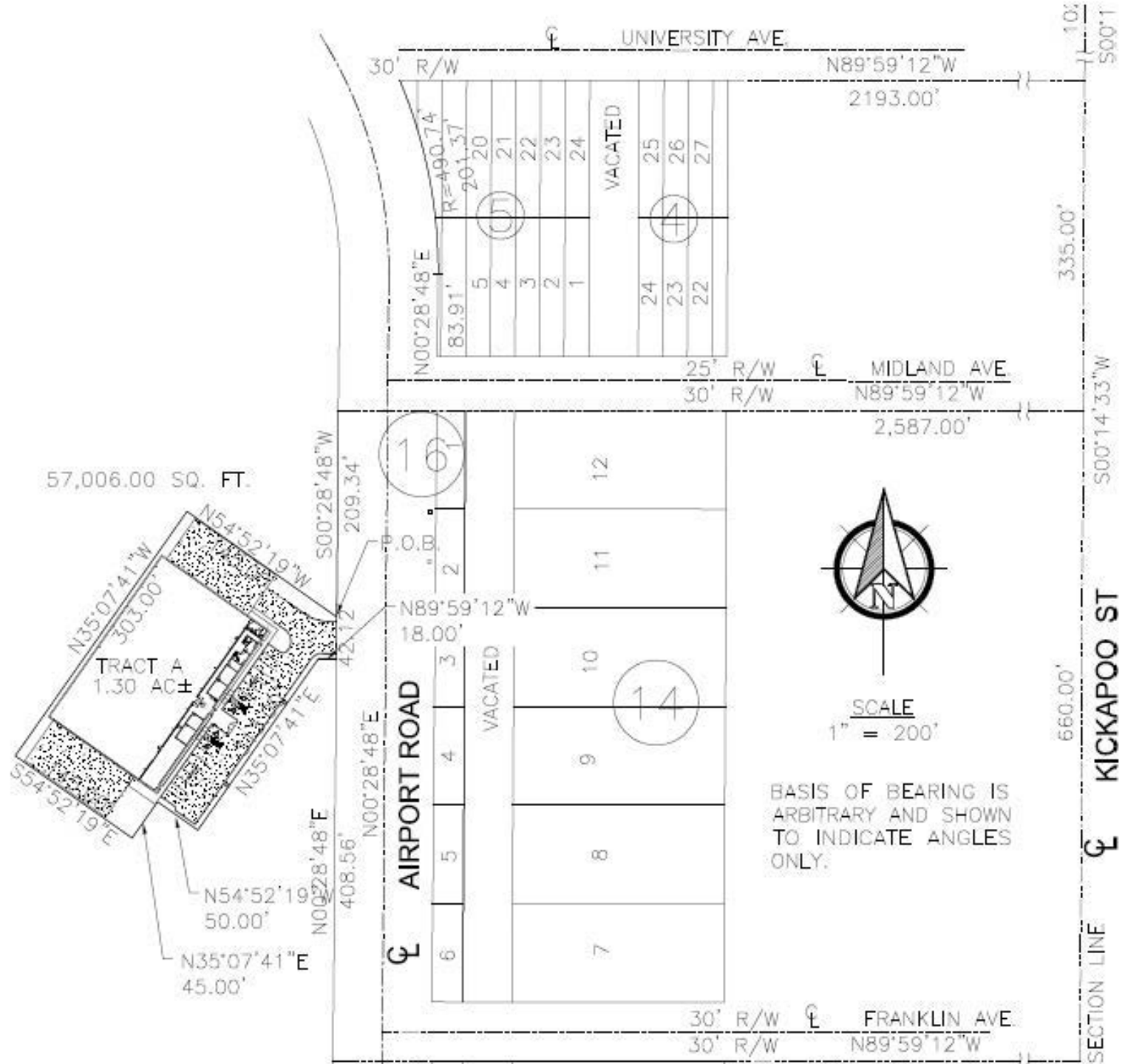
Recommendation:

The Airport Advisory Board and airport staff are recommending the Shawnee Airport Authority authorize execution of an amendment to the lease agreement between the Shawnee Airport Authority and Delta Wing. A copy of the proposed lease amendment is provided as Attachment 2 to this memorandum.

Budget Consideration:

The additional rental income associated with the expanded lease hold equates to \$5,550.00 per year for a new total of \$8,550.90, through September 30, 2019, at which point the rental rate is subject to increase based on the inflation rate established by consumer housing price index and/or any appraisals done on the Airport's behalf.

DELTA WING LAND LEASE AMENDMENT ATTACHMENT 1



**AMENDMENT TO
SHAWNEE REGIONAL AIRPORT
LAND LEASE**

This Amendment ("Amendment") to that certain Land Lease Agreement dated October 1, 2015 (the "Lease"), is entered into as of this 1st day of November, 2018 by and between the Shawnee Airport Authority ("Lessor"), and Delta Wing Equipment, LLC, a subsidiary of Pacific Air Holdings, LLC, a Nevada limited liability company ("Lessee").

WHEREAS, Lessor and Lessee are parties to the Lease; and

WHEREAS, Lessor and Lessee desire to amend ARTICLE 2 - LEASE PREMISES, numerical paragraph 2.1 of the Lease to increase the total square footage of property leased from twenty-thousand square feet (20,000 sq. ft.) to fifty-seven-thousand and six square feet (57,006 sq. ft.) and; replace the current Exhibit A to the Lease with a revised Exhibit A depicting the square footage described herein.

WHEREAS, Lessor and Lessee desire to amend the Lease and associated Exhibit to reflect such agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Lease is hereby amended, effective as of the date hereof, as follows:

1. Section II of the Lease is hereby amended and restated as follows:

"Property located on the Shawnee Regional Airport consisting fifty-seven-thousand and six square feet (57,006 sq. ft.) as shown on Amended Exhibit A attached hereto is part hereof, together with all rights, privileges, easements, appurtenances, and amenities belonging to or in any way pertaining to the premises and together with the building and other improvements situated or to be situated upon said premises referred to as the "Premises".

2. All other terms and conditions of the Lease shall remain in full force and effect except as amended herein.

[Signature page immediately follows]

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

LESSOR:
THE CITY OF SHAWNEE
OKLAHOMA
A Municipal Corporation

By: _____
S. ERIC BENSON
CITY MANAGER

ATTEST:

LISA LASYONE
CITY CLERK

LESSEE:
PACIFIC AIR HOLDINGS, LLC

By: _____

FRANK FORD
CHAIRMAN AND CEO
PACIFIC AIR HOLDINGS, LLC

ATTEST:

Subscribed and sworn to before me, a Notary Public in and for the State of _____

This _____ day of _____, 2018.

My Commission expires _____, 20____.

DELTA WINGS EQUIPMENT, LLC
LAND LEASE 2015

This Agreement of Lease made and entered into this 1st day of October 2015 by and between the Shawnee Airport Authority of Shawnee, Oklahoma (City), hereinafter referred to as "Lessor", and Delta Wings Equipment, LLC a subsidiary (Pacific Air Holdings, LLC) hereinafter referred to as "Lessee".

WITNESSETH THAT:

WHEREAS, the City is the owner of the premises known as Shawnee Regional Airport (the "Airport"); and

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 the Airport 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 term of this lease shall be for a 30 year period commencing on **October 1st, 2015** and terminating on **September 30th, 2045**
- 1.2 Lease may be **renewed for one (1) period of ten (10) years** commencing upon the expiration of the original term or any renewal term hereof at the option of the Lessee. Lessee must provide Lessor with written notice of intent to renew at lease ninety (90) days prior to the expiration of lease.

ARTICLE 2 - LEASE PREMISES

- 2.1 Property located on the Shawnee Regional Airport consisting of **20,000 square feet** as shown on Exhibit A attached hereto as part hereof, together with all rights, privileges, easements, appurtenances, and amenities belonging to or in any way pertaining to the premises and together with the building and other improvements situated or to be situated upon said premises, referred to as the "Premises".

ARTICLE 3 - USE OF LEASED PREMISES

- 3.1 Lessee agrees to provide at reasonable rates and without discrimination, the

following services to the general public:

Construction of a 10,000 sq. ft. hangar with office space. As a part of the consideration for this lease, and in accordance with the Minimum Standards of Commercial Aviation Activities, the hangar will be used to provide at reasonable rates and without discrimination, the following services to the general public:

Aircraft leasing, management, selling of aircraft parts, and a repair station.

- 3.2 The premises shall be used solely for purposes consistent with the operation of the Shawnee Regional Airport or its successor(s) and the property leased hereunder shall be used continuously during the term of this agreement, for the uses described in Section 3.1, and for those things directly attendant to LESSEE'S business operation of storage of aircraft and for no other purpose, except such as shall be from time to time permitted by LESSOR. The parties hereto shall comply with all the terms and conditions or prior resolutions of the LESSOR, concerning the operation of the Shawnee Regional Airport or its successor(s), with the ordinances, rules and regulations of the City of Shawnee, Oklahoma, and the parties hereto shall comply with, and this agreement shall be subject to, all other agreements with the Federal Aviation Administration, being an agreement between the LESSOR, and the United States of America acting through the Federal Aviation Administration relative to the operation and maintenance of the Shawnee Regional Airport or its successor(s), which agreements are made a part hereof by reference as though the same appeared herein, together with any agreements with the Oklahoma Aeronautics Commission.

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 **\$3,000 per year**.
Lease rate will be then **adjusted every five (5) years** based on the inflation rate established by consumer housing price index and/or any appraisals done on the Airport's behalf.
- 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 – HANGAR CONSTRUCTION

- 5.1 The building must be located as shown on Exhibit "A" hereto, and such building must be approved by the City of Shawnee Planning Department after the approval of the plans and specifications by Lessor. Lessee shall meet Lessor's Hangar Construction Standards. Lessee's contractor shall maintain the construction site in an orderly condition and shall not permit any construction material or trash to blow from the site. .
- 5.2 Lessee agrees not to finance the cost of constructing the hangar or any other capital improvements made on the leased premises without the Lessor's consent. Lessee will commit the full funds of the cost of construction before construction commences. Furthermore, Notwithstanding anything to the contrary contained in this Lease, the interest of the Lessor, whether real or personal, in and to the leased premises, the property, or the project shall not be subject to or chargeable with any liens for labor performed or material supplied in connection with any work or improvements performed by the Lessee.
- 5.3 Notice of Proposed Construction: Lessee shall file FAA form 7460-1 (Notice of Proposed Construction or Alteration) With the Federal Aviation Administration at least 30 days prior to the date of proposed construction.
- 5.4 Private Hangar Construction Specifications. Any new building or structure or new portion thereof, constructed by LESSEE on the Premises after the effective date hereof, and all alterations, improvements, changes or additions made in or to such Premises after the effective date hereof **shall be the property of LESSEE who expressly agrees to comply with the specifications for Hangar Construction Standards as attached as Exhibit B. The hangar shall become LESSOR'S property on expiration or termination of this lease.** All plans, certificates, designs, and permits shall be given to LESSOR at the LESSOR's request and shall be consistent with those requested in the tenant's "Application for hangar development" packet.
- 5.5 Construction of a new building, that is not replacement of an existing building, **shall commence within six (6) months** from the effective date hereof. Said hangar construction shall be completed within 90 days thereafter. This lease cannot be assigned or transferred unless the hangar is complete and Certificate of Occupancy is issued by the City of Shawnee. Failure to comply with this provision is a material event of default.
- 5.6 All improvements, alterations and additions, including the plans and specifications therefor, shall conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of the Federal Aviation Administration, the United States, State of Oklahoma, and Pottawatomie County, as such may be amended from time to time, and such other authority as may have jurisdiction over any improvements, alterations or additions. Lessor's approval of such improvements shall not constitute a representation or warranty as to such conformity, which shall remain the responsibility of Lessee.

Plans and specifications for Lessee's improvements shall be filed with and approved by Lessor before construction commences. Plans and specifications for construction on the Leased Premises shall be submitted to Lessor within thirty (30) days of execution of this Lease Agreement. Lessor's approval or disapproval of Lessee's plans and specifications shall be provided to Lessee within (30) days after submission of such plans and specifications to Lessor by Lessee. Any disapproval shall state specifically the reasons for the disapproval. Lessee shall have the right to re-submit plans and specifications after any disapproval by Lessor. In the event of any disapproval by Lessor, either Lessor or Lessee shall have the right to terminate this Lease Agreement by providing written notice of termination to the other party within sixty (60) days of the date of Lessor's disapproval, in which case neither party shall have any further obligations to the other, provided, however, Lessee shall be entitled to a proportional refund of prepaid annual rent paid to Lessor.

ARTICLE 6 - CONSTRUCTION, ACCEPTANCE, CARE MAINTENANCE,
IMPROVEMENTS AND REPAIR

- 6.1 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.
- 6.2 Lessee shall throughout the term of this Agreement assume the entire responsibility, cost and expense, for all construction, 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:
- 6.3 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.
- 6.4 Provide and maintain on the Leased Premises all obstruction lights and similar devices, and safety equipment required by law.

- 6.5 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.
- 6.6 Take measures to prevent erosion, including but not limited to, the planting and replanting of grasses with respect to all portions of the Leased Premises not paved or built upon, and in particular shall plant, maintain and replant any landscaped areas.
- 6.7 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.
- 6.8 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, and in addition to any other remedies which may be available to it, enter the premises involved, without such entering causing or constituting a cancellation of this Agreement or any interference with the possession of the Leased Premises, and 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 or other tenants at the Airport, 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 thereof except for claims for damages arising from the City's sole negligence. The foregoing shall in no way affect or alter the primary obligations of the Lessee as set forth in this Agreement, and shall not impose or be construed to impose upon the City any obligations to maintain the Leased Premises, unless specifically stated otherwise herein.
- 6.9 Plans and specifications for all major repairs, constructions, alterations, modifications, additions or replacements (hereinafter referred to as "improvements"), including, without limitation the new facility to be constructed by the Lessee pursuant to Section 6.10 below, 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.

- 6.10 If Lessee makes any improvements without City approval, then, upon notice to do so, Lessee shall 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. Lessee expressly agrees in the making of all improvements that, except with the written consent of City, it 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.
- 6.11 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 7 - ADDITIONAL OBLIGATIONS OF LESSEE

- 7.1 Lessee shall conduct its operations hereunder in an orderly and proper manner.
- 7.2 Further, Lessee shall take all reasonable measures:
- 7.2.1 Not to produce on the Airport any disturbance that interferes with the operation by the City or the Federal Aviation Administration of air navigational, communication or flight equipment on the Airport.
- 7.2.3 Lessee shall control the conduct and demeanor of its officers, agents, employees, invitees and, upon objection from City concerning the conduct, demeanor of any such person, Lessee shall immediately take all lawful steps necessary to remove the cause of the objection.
- 7.2.4 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 and the improvements thereon and its operations at the Airport hereunder.

7.2.5 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. The manner of handling and disposing of trash, garbage and other refuse and the frequency of removal thereof from the Airport premises shall at all times be subject to the rules, regulations and approval of City.

7.2.6 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.

7.2.7 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.

7.2.8 Lessee shall take measures to insure security in compliance with Federal Air Regulations and the Airport Security Plan.

7.2.9 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.

7.2.10 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.

7.2.11 Except for services permitted under Article 3 hereof to be performed by Lessee or Lessee's subcontractors, Lessee shall provide prompt written notice to the City of any person, firm or corporation performing aircraft maintenance work, flight instruction of any sort, air taxi, aircraft charter or aircraft leasing of any sort on the Leased Premises for commercial purposes without a valid permit from the City.

ARTICLE 8 - INGRESS AND EGRESS

- 8.1 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, except when the Airport is closed to the public.
- 8.2 The use of any such roadway shall be subject to the Rules and Regulations of the Airport which are now in effect or which may hereafter be promulgated. City may,

at any time, temporarily or permanently, close or consent to or request the closing of, any such roadway and any other way at, in or near the Leased Premises presently or hereafter used as such, so long as a reasonable means of ingress and egress as provided above remains available to the Lessee. The Lessee hereby releases and discharges the City, its officers, employees and agents; and all municipalities and other governmental authorities and their respective successors and assigns, of and from any and all claims, demands, or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any street, roadway or other area, provided that a reasonable means of access to the Leased Premises remains available to the Lessee whether within the Leased Premises or outside the Leased Premises at the Airport unless otherwise mandated by safety considerations or lawful exercise of the police power. The Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Leased Premises or in any streets or roadways near the Leased Premises.

ARTICLE 9 - LIABILITIES AND INDEMNITIES

- 9.1 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 the Airport, or as a result of any operations works, acts or omissions performed on the Leased Premises, or the Airport, by Lessee, its sub lessees or tenants, or their guest or invitees.
- 9.2 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.
- 9.3 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. In this connection, Lessee agrees to require its contractors doing work on the Airport, and Lessee's tenants and sub lessees, to carry adequate insurance coverage, and if Lessee so desires, it may accomplish same by an endorsement to Lessee's policies to include such persons or parties as additional named insured.

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.

9.4 The Lessee represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under or in anywise connected with this Agreement. The Lessee agrees to save and hold the City, its officers, employees, agents and representatives free and harmless of and from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright or arising from any alleged or actual unfair competition or other similar claim arising out of the operations of the Lessee under or in anywise connected with this Agreement.

9.5 The Lessee represents and warrants that no broker has been concerned on its behalf in the negotiation of this Agreement and that there is no such broker who is or may be entitled to be paid a commission in connection therewith. The Lessee shall indemnify and save harmless the City of and from any claim for commission or brokerage made by any such broker when such claim is based in whole or in part upon any act or omission of the Lessee.

ARTICLE 10 - RULES AND REGULATIONS

10.1 From time to time City may adopt and enforce rules and regulations with respect to the occupancy and use of the Airport. Lessee agrees to observe and obey any and all rules and regulations and all other Federal, State and municipal rules, regulations and laws and to require its officers, agents, employees, contractors, and suppliers, to observe and obey the same. City reserves the right to deny access to the Airport and its facilities to any person, firm or corporation that fails or refuses to obey and comply with such rules, regulations or laws. Lessee hereby acknowledges receipt of a current copy of such City rules and regulations.

ARTICLE 11 - SIGNS

11.1 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 in accordance with the written approval of the City.

No sign will be approved that may be confusing to aircraft pilots or automobile drivers or their traffic or which fails to conform to the architectural scheme of the Airport or meet the requirements of the City.

ARTICLE 12 - ASSIGNMENT AND SUBLEASE

- 12.1 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.
- 12.2 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.
- 12.3 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.
- 12.4 Subject to all of the terms and provisions hereof, Lessee may, with the prior written consent of the City, sublet a portion or portions of the Leased Premises to a person, partnership, firm or corporation engaged in a business that is in the opinion of the City compatible with Lessee's authorized Airport business, but in no event shall the Lessee sublet all or any portion of the Leased Premises to a fixed base operator.
- 12.5 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.
- 12.6 No consent to subleasing by the Lessee to a person, corporation or partnership conducting any business for profit derived from activities at the Airport shall be granted by the City without a duly executed permit agreement between the City and the sub lessee.
- 12.7 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 13 - NON-DISCRIMINATION

- 13.1 The Lessee, for it, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Leased Premises for a purpose for which a United States Government program or activity is extended, 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.
- 13.2 The Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of 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.
- 13.3 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. This provision is to be considered as a covenant on the part of the Lessee, a breach of which, continuing after notice by City to cease and desist, will constitute a material breach of this Agreement and will entitle the City, at its option, to exercise its right of termination as provided for herein, or take any action that it deems necessary to enforce compliance herewith.
- 13.4 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.
- 13.5 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 14 - GOVERNMENTAL REQUIREMENTS

- 14.1 The Lessee shall at its own cost and expense, obtain 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.
- 14.2 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.
- 14.3 Lessee shall have the right, at its cost and expense, to undertake appropriate action to exempt all or any part of the Leased Premises from real estate taxes imposed upon the Leased Premises, or to secure a reduction in real estate taxes as assessed. Any such real estate taxes shall be apportioned as of the dates of commencement and termination of the lease. If any real estate taxes as may be assessed against the Leased Premises are reduced or eliminated, Lessee shall be entitled to full benefit thereof, including any refund payable to Lessee resulting there from.

ARTICLE 15 - RIGHTS OF ENTRY RESERVED

- 15.1 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.
- 15.2 Without limiting the generality of the foregoing, the City, by its officers, employees, agents, representatives, contractors and furnishers of utilities and other services, 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. It is specifically understood and agreed that the reservation of the aforesaid right by the City shall not impose or be construed to impose upon the City any obligation to repair, replace or alter any utility service lines now or hereafter located on the Leased Premises for the purpose of providing utility services only to the Leased Premises.

- 15.3 In the event that any personal property of Lessee shall obstruct the access of the City, its officers, employees, agents or contractors, or the utility company furnishing utility service to any of the existing utility, mechanical, electrical and other systems, and thus shall interfere with the inspection, maintenance or repair of any such system, 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 therefrom, except for claims for damages arising from the City's sole negligence.
- 15.4 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.
- 15.5 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 16 - ADDITIONAL RENTS AND CHARGES

- 16.1 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 or other tenants of the Airport, 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.

- 16.2 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 17 - DEFAULT

- 17.1 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 ten (10) 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 ten (10) 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 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 18 - TERMINATION BY LESSEE

- 18.1 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:

17.1.1 Issuance by a court of competent jurisdiction of an injunction which in any way substantially prevents or restrains the use of the Leased Premises, or any part thereof necessary to Lessee's business operations on the Airport, 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

17.1.2 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 Airport business for a continuous period of at least ninety (90) days.

ARTICLE 19 - SURRENDER AND RIGHT OF RE-ENTRY

- 19.1 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 the term hereof, 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 20 - SERVICES TO LESSEE

- 20.1 City covenants and agrees that during the term of this Agreement it will operate the Airport as such for the use and benefit of the public provided, however, that the City may prohibit or limit any given type, kind, or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public. The City further agrees to use its best efforts to maintain the runways and taxiways in good repair. 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.
- 20.2 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.

- 20.3 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 21 - SURVIVAL OF THE OBLIGATIONS OF THE LESSEE

- 21.1 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.

- 21.2 The amount of damages for the period of time subsequent to termination (or re-entry, regaining or resumption of possession) on account of the Lessee's rental obligations shall be the sum of the following:

20.2.1 the amount of the total of all installments thereof payable prior to the effective date of termination except that the credit to be allowed for the installment payable on the first (1st) day of the month in which the termination is effective shall be prorated for the part of the month the Agreement remains in effect on the basis of the total days in the month;

20.2.2 An amount equal to all expenses incurred by City in connection with regaining possession, restoring the Leased Premises, acquiring a new lease for the Leased Premises, legal expenses (including but not limited to attorney's fees), putting the Leased Premises in order, maintenance and brokerage fees.

ARTICLE 22 - USE SUBSEQUENT TO CANCELLATION OR TERMINATION

- 22.1 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.

- 22.2 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.
- 22.3 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 23 - LIMITATION OF RIGHTS AND PRIVILEGES GRANTED

- 23.1 Except the exclusive right of Lessee to possession of the Leased Premises, no exclusive rights at the Airport are granted by this Agreement and no greater rights or privileges with respect to the use of the Leased Premises or any part thereof are granted or intended to be granted to the Lessee by this Agreement, or by any provision thereof, than the rights and privileges expressly and specifically granted hereby.

ARTICLE 24 - NOTICES

- 24.1 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:

Airport Manager

P.O. Box 1448
Shawnee, Oklahoma 74802-1448

AND

To Lessee:

c/o Darrin Lofton
12729 SE 54th St.
Choctaw, OK 73020

- 24.2 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 25 - HOLDING OVER

- 25.1 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.
- 25.2 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.
- 25.3 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 26 - INVALID PROVISIONS

- 26.1 The invalidity of any provisions, articles, paragraphs, portions, or clauses of this Agreement shall have no effect upon the validity of any other part or portion hereof, so long as the remainder shall constitute an enforceable Agreement.

ARTICLE 27 - MISCELLANEOUS PROVISIONS

Remedies to be Nonexclusive.

- 27.1 All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other, or of any other remedy available to the City, or Lessee, at law or in equity, and the exercise of any remedy, or the existence

herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

Non-Waiver of Rights.

- 27.2 The failure by either party to exercise any right, or rights accruing to it by virtue of the breach of any covenant, condition or agreement herein by the other party shall not operate as a waiver of the exercise of such right or rights in the event of any subsequent breach by such other party, nor shall other party be relieved thereby from its obligations under the terms hereof.

Force Majeure.

- 27.3 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.

- 27.4 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.

- 27.5 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.

- 27.6 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.
- 27.7 This Agreement shall be performable and enforceable in Shawnee, Oklahoma and shall be construed in accordance with the laws of the State of Oklahoma.

- 27.8 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.
- 27.9 In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.
- 27.10 All covenants, stipulations and agreements in this Agreement shall extend to and bind each party hereto, its legal representatives, successors and assigns.
- 27.11 The titles of the several articles of this Agreement are inserted herein for convenience only, and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.
- 27.12 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 28 - SUBORDINATION CLAUSES

- 28.1 This Agreement is subject and subordinate to the following:
- 28.1.1 City reserves the right to develop and improve the Airport as it sees fit, regardless of the desires or view of Lessee, and without interference or hindrance by or on behalf of Lessee, provided, Lessee is not deprived of the use of or access to the Leased Premises.
- 28.1.2 City reserves the right to take any action it considers necessary to protect the aerial approaches to the Airport against obstruction, together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure on the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.
- 28.1.3 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.
- 28.1.4 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.

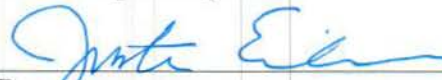
28.1.5 Except to the extent required for the performance of any obligations of Lessee hereunder, nothing contained in this Agreement shall grant to the Lessee any rights whatsoever in the airspace above the Leased Premises other than those rights where subject to Federal Aviation Administration rules, regulations and orders currently or subsequently effective.

ARTICLE 29 - ENTIRE AGREEMENT

- 29.1 The Agreement consists of Articles 1 to 29, inclusive, Schedule A, and Exhibit A.
- 29.2 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.

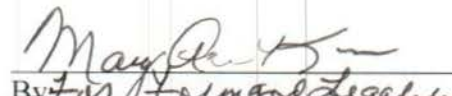
LESSOR:
THE CITY OF SHAWNEE
OKLAHOMA
A Municipal Corporation



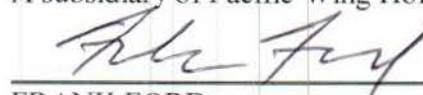
By:
JUSTIN ERICKSON,
CITY MANAGER
/ AIRPORT MANAGER



ATTEST:


PHYLLIS LOFTIS, CMC, CITY CLERK
By: *For Holman & Legally*
MARY ANN KARNS
CITY ATTORNEY

LESSEE:
DELTA WINGS EQUIPMENT, LLC
A subsidiary of Pacific Wing Holdings, LLC


FRANK FORD
CEO

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:

- The Lessee's insurance carrier shall provide the City with a Certificate of Insurance indicating proof of the foregoing coverage. The Certificate shall name the City of Shawnee as additionally insured. 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 of 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 herein.

Insurance policies for each type of service provided:

A. AIRCRAFT RENTAL

1. Aircraft Liability
Combined Single Limit Injury and Property Damage
\$ 1,000,000 each occurrence
\$ 100,000 per passenger/per seat bodily injury
2. Comprehensive General Liability and Property Damage
Combined Single Limit Bodily Injury & Property Damage
\$ 1,000,000 each occurrence
3. Student and Renter's Liability
\$ 500,000 each occurrence
\$ 50,000 per passenger/ per seat bodily injury

D. AIRCRAFT ENGINE AND AIRFRAME MAINTENANCE & REPAIR

1. Aircraft Liability
Combined Single Limit Injury and Property Damage

\$ 1,000,000 each occurrence

2. Comprehensive General Liability and Property Damage
Combined Single Limit Bodily Injury & Property Damage
\$ 1,000,000 each occurrence
- 3 Hangar Keeper's Liability*
\$ 500,000 each occurrence
\$ 150,000 per aircraft

E. AIRCRAFT CHARTER AND TAXI SERVICE

1. Aircraft Liability
Combined Single Limit Injury and Property Damage
\$ 1,000,000 each occurrence
2. Comprehensive General Liability and Property Damage
Combined Single Limit Bodily Injury & Property Damage
\$ 1,000,000 each occurrence
- 3 Hangar Keeper's Liability*
\$ 150,000 each occurrence



20,000 sq. ft

10,000 sq. ft

N Airport Dr

Fred Reese Dr

Hangar Site

Leased Area

Shawnee Airport Authority

1.c.

Meeting Date: 11/05/2018

Red Cloud Aviation Lease Amendment

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Explanation

Approval of an amendment to the current Fixed Base Operator Lease with Red Cloud Aviation, LLC.

Staff Recommendation

Fiscal Impact

Attachments

Red Cloud Aviation



Date: October 18, 2018

To: Shawnee Airport Authority

The Honorable Richard Finley, Mayor

James Harrod, Vice Mayor

Ed Bolt, Commissioner

Ron Gillham, Commissioner

Darren Rutherford, Commissioner

Ben Salter, Commissioner

Mark Sehorn, Commissioner

From: Bonnie A. Wilson, CM Airport Manager

Subject: Proposed Lease Amendment: Red Cloud Aviation

Nature of Request:

Staff is seeking authorization to execute an amendment to the current lease agreement with Red Cloud Aviation (RCA) to add 1,740 square feet of recently vacated space in Hangar # 13, to allow for repair of aircraft components and associated parts and equipment.

RCA will invest up to \$57,000.00 in capital improvements to the leased area to include: structural repairs, insulation, HVAC, and plumbing.

RCA will complete the renovations within one-hundred eighty (180) business days of receiving approval for plans and specifications from the City of Shawnee and authorization to commence construction.

The cost of the repairs and renovations will be applied against a twenty cent per square foot (\$0.20/ sq. ft.), per month rental rate over a lease term of no less than ten (10) calendar years, commencing on the date of beneficial occupancy of the space, with two five-year extensions, contingent on both parties agreeing to any rate adjustments at the end of the initial term.

All improvements to the leasehold will revert to the Shawnee Regional Airport at the end of the initial term of the lease.

RCA will have the right of first refusal to lease any space within Hangar #13 that may become available during the course of the lease term, on the condition that RCA will surrender commensurate aircraft storage space at the Shawnee Regional Airport on the date of beneficial occupancy of the space within Hangar #13.

A copy of Red Cloud Aviation's proposal is provided as Attachment 1 to this memorandum.

Staff Analysis and Considerations:

The vacant storage space in Hangar # 13 has been subject to routine flooding due to the damaged hangar floor drain system, as a result the structural steel and siding is rusted through in many locations. Without significant capital investment in repairs, the integrity of the building will continue to deteriorate putting the main hangar and conditioned office space at risk.

RCA has applied for and expects to receive certification as a 14 CFR Part 145 Repair Station from the Federal Aviation Administration by the end of calendar year 2018. This certification will authorize RCA to offer additional aircraft component repair services. A clean, climate-controlled environment is necessary to undertake certain elements of the services proposed. The capital investment proposed would address the needs to repair and preserve the building and allow RCA to expand their business profile.

RCA's current leases include a bulk hangar, a T-Hangar, office space and space within the airport terminal for a flight simulator. RCA would like to consolidate their aircraft service operations into a single facility and therefore have requested the option to lease space in Hangar #13 as it becomes available. In order to preserve the opportunity for other aviation operations on the field, RCA would be required to surrender the leases governing existing aircraft storage space should they be granted the opportunity to lease additional space within Hangar #13 in the future.

RCA's proposal for expansion of their business operations and leasehold meets the criteria for commercial operations as established by the Minimum Standards and Requirements for Commercial Aeronautical Services and Activities Shawnee Oklahoma (December 18, 2000) and the Rules and Regulations for the Operation of Shawnee Regional Airport.

Recommendation:

The Airport Advisory Board and airport staff are recommending the Shawnee Airport Authority authorize execution of an amendment to the lease agreement between the Shawnee Airport Authority and Red Cloud Aviation. A copy of the proposed lease amendment is provided as Attachment 2 to this memorandum.

Budget Consideration:

The prior tenant leasing the storage area, Delta Wing Equipment, LLC, a subsidiary of Pacific Air Holdings, paid \$70.00 per month / \$840.00 per year for the unimproved space. The current annual rental revenue from all tenants leasing space within Hangar # 13 is \$19,330. This amount is insufficient to support capital repairs, or improvements by the Shawnee Regional Airport.

The potential rental revenue of \$4,176.00 per year is significantly offset by the value of improvements proposed, all of which will revert to the Shawnee Regional Airport at the end of the initial ten (10) calendar year lease term.



**Proposal for Lease of Commercial Aeronautical Use Space
Shawnee Regional Airport**

**Submitted for Consideration to The
Shawnee Regional Airport Advisory Board
For Review and Recommendation to The Shawnee Airport Authority**

October 17, 2018

This proposal for lease of commercial aeronautical space in Hangar # 13 at Shawnee Regional Airport is provided in accordance with the *Minimum Standards and Requirements for Commercial Aeronautical Services and Activities Shawnee Municipal Airport Shawnee, Oklahoma 2000 (Minimum Standards)*.

1. Legal Name and Business Address of Entity

RED CLOUD AVIATION, LLC (RCA)
OKLAHOMA FILING NUMBER: 3512422181

REGISTERED AGENT: SCOTT D. LEE
30581 PARKWOOD RD
MCLOUD OK 74851

2. Proposed Land Use, Facility and/or Activity Sought.

Expansion of current FBO Lease agreement to add 1,740 square feet of currently unimproved space for the storage and use of tools, equipment, parts, and materials used for aircraft maintenance and repair services supporting existing authorized activities under the FBO Lease Agreement between the Shawnee Airport Authority, City of Shawnee, and RCA (Flight Training, Aircraft Management, Major A&P Maintenance, Aircraft Storage) and other aviation business operations to include a Certified 14 CFR Part 145 Repair Station currently pending final approval with the Federal Aviation Administration.

3. Schedule of Operations/Service Hours.

RCA provides services on request from aircraft owners, as well as undertaking routine maintenance and repair of the 12 aircraft owned and operated by RCA.

RCA services are available daily through the calendar week, and also through scheduled appointments and call out response services.

4. Number of Personnel Employed.

RCA currently employs 5 full time and 2 of part time personnel.

Following certification as a 145 Repair Station, RCA will provide direct employment for 7 full time personnel and 2 part time personnel.

5. Names and Qualifications of Personnel Conducting the Activity.

Owner - Operator/Chief Pilot/Lead Mechanic - Scott D. Lee

Current Mechanic Certifications: Airframe/Powerplant, Avionics/Pitot Static Test Certified, 3M Microminature Circuit Repair Certified

Current Pilot Ratings: Airplane Single Engine Land; Airplane Multiengine Land

Operations Manager – Paul Shaver

Current Mechanic Certifications: Inspection Authorization, Airframe/Powerplant, Avionics/Pitot Static Test Certified, 3M Microminature Circuit Repair Certified.

Current Pilot Ratings: Airplane Single Engine Land.

Flight Instructor/Mechanical Advisor/IA – William J. Rowden

Current Mechanic Certifications: Airframe; Powerplant; Inspection Authorization

Current Pilot Ratings: Airline Transport Pilot; Airplane Single Engine Land; Airplane Multiengine Land; Glider

Current Flight Instructor Ratings: Airplane Single and Multiengine;
Instrument Airplane; Glider

Flight Instructor - Matthew Berggren

Current Pilot Ratings: Airline Transport Pilot; Airplane Single Engine
Land; Airplane Multiengine Land

Current Flight Instructor Ratings: Airplane Single and Multiengine;
Instrument Airplane

Flight Instructor - Josh Peck

Current Pilot Ratings: Airline Transport Pilot; Airplane Single Engine
Land; Airplane Multiengine Land

Current Flight Instructor Ratings: Airplane Single and Multiengine;
Instrument Airplane

Aircraft Technician (Student Intern) – Calvin Minesinger

6. Tools, equipment, services and inventory proposed to be utilized in connection with the activity.

Requested Space (Hangar #13 Storage Space)

Component Repair Shop/Warehouse 1490 sqft
Flight Simulation Room 250 sqft

Currently Leased Space

Aircraft Hangar Space 5,320 sqft Bulk Hangar 16
Admin Office in Main FBO 247 sqft
Simulator Area in Main FBO 116 sqft

Airframe, Powerplant, Avionics maintenance and repairs tools, equipment and materials required to support FAA 145 certified repair station services.

7. Requested Date of Commencement, Term and Rates.

RCA requests six calendar months following approval of construction plans by the City of Shawnee to complete the propose repairs and renovations, with

the first term of the lease commencing on the date of beneficial occupancy by RCA, though in no case later than six calendar months from the date of notice to proceed with construction.

RCA is proposing the first term of the agreement be for no less than 10 calendar years, and that the rental rate per square foot value be set at \$.20, with two 5 -year options to renew, at RCA and the Shawnee Airport Authorities mutual agreement, with the condition that RCA remains in good standing throughout the initial term.

RCA is also proposing the rental value for the first term of the lease of \$41,760 be offered as a tenant improvement allowance or rental abatement allowance to allow RCA to recover a portion of the costs of investment in improvements.

RCA is also proposing that at the end of the initial term of the agreement at 10 calendar years, the rate per square foot for any renewal terms be adjusted to the then current rental rate for conditioned space offered for commercial aeronautical use by the Shawnee Airport Authority.

RCA is also seeking the Right of First Refusal on any future options to lease space in Hangar #13 for the purposes of consolidation. Specifically, when additional space in Hangar # 13 becomes available for lease, RCA will be seeking the opportunity to terminate any current aircraft hangar space leases of equal square footage and relocate those operations to Hangar # 13.

8. Estimated Cost of Renovation. The total estimated cost of the repairs to the Hangar #13 storage area is \$56,327.31.
9. Types and Amounts of Insurance. RCA currently holds insurance at the levels and limits required by the Minimum Standards for the type of operations proposed. If approved the additional leased area will be included on the existing policies as an identified location of work.

Aircraft Liability for any owned and operated aircraft, combined single limit injury and property damage \$1,000,000 per occurrence; \$100,000 per passenger/per seat bodily injury.

Comprehensive General Liability and Property Damage combined single limit injury and property damage \$1,000,000 per occurrence.

Student and renter's liability \$500,000 each occurrence.

Hangar Keeper's liability \$500,000 per occurrence.

10. Financial capability to perform and provide the above services and facilities.

RCA has been a tenant of the Shawnee Regional Airport since February 2015, and has remained in good standing through that time.

RCA intends to address the direct costs of repairs and renovations with currently available capital funds, and seeks a return on that investment through a proposed rental fee abatement for the initial term of the lease.

11. History of management and personnel ability.

RCA has been successfully providing the services described above since its formation in September 2013, both as a private service entity to students, aircraft owners and operators and to the City of Seminole, Oklahoma as the airport manager under a competitive public service contract.

12. Certificates from the FAA.

RCA has completed the application process and been awarded an ID number for a Part 145 Certified Repair Station, as well as, completed the required facility and personnel records audit. An on-site facility inspection with the FAA is required to complete the process of certification. FAA representatives indicate the process will be complete and the clearance to perform rewarded no later than 31 December 2018.

13. All construction in accordance with the City of Shawnee Standards; Title to improvements to revert to the Shawnee Regional Airport.

RCA intends to use a licensed and bonded General Contractor to perform the repairs and renovations to ensure that all work is acceptable to the City of Shawnee.

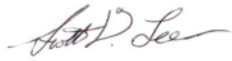
RCA acknowledges the requirement in the Minimum Standards and agrees to transfer title to the improvements to the Shawnee Airport Authority at the end of the initial term of the lease at 10 calendar years.

14. The rates or charges shall be reasonable and be equally and fairly applied to all users of the services.

In accordance with the Minimum Standards and FAA regulations, RCA provides services equally and fairly to all users at both current service locations.

Thank you for your consideration of our proposed plan for expansion of services, renovation and repair of the Hangar #13 storage and shop space.

Respectfully,



Scott D. Lee
Owner / Chief Pilot

Attachments: Oklahoma Secretary of State Certificate

OFFICE OF THE SECRETARY OF STATE



**CERTIFICATE
OF
LIMITED LIABILITY COMPANY**

WHEREAS, the Articles of Organization of

RED CLOUD AVIATION, LLC

an Oklahoma limited liability company has been filed in the office of the Secretary of State as provided by the laws of the State of Oklahoma.

NOW THEREFORE, I, the undersigned, Secretary of State of the State of Oklahoma, by virtue of the powers vested in me by law, do hereby issue this certificate evidencing such filing.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the Great Seal of the State of Oklahoma.



*Filed in the city of Oklahoma City this
26th day of September, 2013.*

Larry V. Parnell

Secretary of State

**AMENDMENT TO
SHAWNEE REGIONAL AIRPORT
FBO LEASE**

This Amendment ("Amendment") to that certain FBO Lease Agreement dated January 21, 2015 (the "Lease"), is entered into as of this 1st day of November, 2018 by and between the Shawnee Airport Authority ("Lessor"), and Red Cloud Aviation, LLC, an Oklahoma limited liability company ("Lessee").

WHEREAS, Lessor and Lessee are parties to the Lease; and

WHEREAS, Lessor and Lessee desire to amend ARTICLE 1 - TERM, by adding numerical paragraphs 1.3 and 1.4 to establish the term and renewal options for the lease of additional property; and

WHEREAS, Lessor and Lessee desire to amend ARTICLE 2 - LEASE PREMISES, by adding numerical paragraph 2.2 to include additional property and; replacing the current Exhibit A to the Lease with a revised Exhibit A depicting the square footage described herein; and

WHEREAS, Lessor and Lessee desire to amend ARTICLE 3 – USE OF LEASED PREMISES, by adding numerical paragraph 3.2 to include authorized uses of the additional leased space; and

WHEREAS, Lessor and Lessee desire to amend ARTICLE 4 – RENTAL, by adding numerical paragraphs 4.5 through 4.8 to provide for terms and conditions for certain capital improvements and rental fees rates; and

WHEREAS, Lessor and Lessee desire to amend the Lease and associated Exhibit A to reflect such agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Lease is hereby amended, effective as of the date hereof, as follows:

1. Article I of the Lease is hereby amended by the addition of numerical paragraph 1.3 as follows:
 - 1.3 The term of the lease for the Additional Leased Space ("Hangar #13 Storage Space") shall be for a ten-year (10) period commencing on the date of beneficial occupancy of the space, though under no circumstances later than June 1, 2019.
 - 1.4 Lease may be renewed for two (2) consecutive periods of five (5) years each commencing upon the expiration of the original term or any renewal term hereof contingent on the Lessor and Lessee agreeing to a per square foot rental value prior to the commencement of each renewal period. Lessee. Lessee must provide Lessor with written notice of intent to renew at lease ninety (90) days prior to the expiration of the initial term and each renewal term.
2. Article 2 of the Lease is hereby amended by the addition of numerical paragraph 2.1 as follows:
 - 2.2 Additional Leased Space includes 1,740 square feet of property known as the Hangar #13 Storage Space as depicted on Exhibit A.

3. Article 3 of the Lease is hereby amended by the addition of numerical paragraph 3.2 as follows:
 - 3.2 The Hangar #13 Storage Space may be used for the repair of aircraft components and storage of parts, equipment and supplies used to support Flight Training, Aircraft Management, Major A&P Maintenance, and Aircraft Storage.
4. Article 4 of the Lease is hereby amended by the addition of numerical paragraphs 4.5 through 4.8 as follows:
 - 4.5 Rental rate for the initial term of the lease for the Hangar #13 Storage Space will be twenty cents (\$0.20) per square foot per month for an annual total of Four-Thousand-One-Hundred-Seventy-Six dollars (\$4,176.00).
 - 4.6 Rental charges will be offset by certain capital improvements to the Hangar #13 Storage Space, undertaken and paid for solely by the Lessee, in an amount not to exceed Fifty-Seven-Thousand dollars (\$57,000.00), contingent on documentation of expenditures and acceptance of the work by the Shawnee Regional Airport manager.
 - 4.7 Rental rates for the two five-year renewal terms will be established by mutual agreement between the Lessor and Lessee no later than ninety (90) calendar days prior to the expiration of the initial term and any renewal terms.
 - 4.8 All improvements to the Hangar #13 Storage Space will revert to the Shawnee Regional Airport at the end of the initial term of the lease of ten calendar years from the date of beneficial occupancy.
5. All other terms and conditions of the Lease shall remain in full force and effect except as amended herein.

[Signature page immediately follows]

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

LESSOR:
THE CITY OF SHAWNEE
OKLAHOMA
A Municipal Corporation

By: _____
S. ERIC BENSON
CITY MANAGER

ATTEST:

LISA LASYONE
CITY CLERK

LESSEE:
RED CLOUD AVIATION, LLC

By: _____
SCOTT D. LEE
OWNER
RED CLOUD AVIATION, LLC

ATTEST:

Subscribed and sworn to before me, a Notary Public in and for the State of _____

This _____ day of _____, 2018.

My Commission expires _____, 20____.

FBO LEASE AGREEMENT

This Agreement of Lease made and entered into this 21st day of January, 2015 by and between the Shawnee Airport Authority, City of Shawnee, Oklahoma (City) hereinafter referred to as "Lessor", and Red Cloud Aviation hereinafter referred to as "Lessee".

WITNESSETH THAT:

WHEREAS, the City is the owner of the premises known as Shawnee Regional Airport (the "Airport")

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 the Airport 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 term of this lease shall be for a one (1) period commencing on January 21, 2015 and terminating on January 22, 2016.
- 1.2 Lease may be renewed for four (4) consecutive periods of one (1) year commencing upon the expiration of the original term or any renewal term hereof at the option of the Lessee. Lessee must provide Lessor with written notice of intent to renew at lease ninety (90) days prior to the expiration of lease.

ARTICLE 2 - LEASE PREMISES

- 2.1 Property located on the Shawnee Regional Airport known as the Bodard Hangar consisting of 5,320 square feet.

ARTICLE 3 - USE OF LEASED PREMISES

- 3.1 As a part of the consideration for this lease, and in accordance with the Minimum Standards of Commercial Aviation Activities, Lessee agrees to provide at reasonable rates and without discrimination, the following services to the general public during operational hours: **Flight Training, Aircraft Management, Major A&P Maintenance, and Aircraft Storage.**

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 \$7,500.00 per year.
- 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.
- 4.4 Fee and rent policies. Lease rates will be then adjusted annually based on the inflation rate established by the consumer price housing index and/or the Airport's obligation to charge Fair Market Value for leased premises. The City will use the CPI rate that is published two months prior to the rate adjustment date of the lease. Any rate adjustment will result in the overall percent change from the prior year or the percent change for the housing segment.

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. However, the City shall be obligated under this lease to ensure the proper workings of hangar doors, lights, and all other electrical components.
- 5.2 Lessee shall throughout the term of this Agreement assume the entire responsibility, cost and expense, for all repair and maintenance, unless stated in article 5.1, 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.

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 Provide and maintain on the Leased Premises all obstruction lights and similar devices, and safety equipment required by law.

5.2.3 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.

5.3 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, and in addition to any other remedies which may be available to it, enter the premises involved, without such entering causing or constituting a cancellation of this Agreement or any interference with the possession of the Leased Premises, and 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 or other tenants at the Airport, 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 thereof except for claims for damages arising from the City's sole negligence. The foregoing shall in no way affect or alter the primary obligations of the Lessee as set forth in this Agreement, and shall not impose or be construed to impose upon the City any obligations to maintain the Leased Premises, unless specifically stated otherwise herein.

5.4 Plans and specifications for all major repairs, constructions, alterations, modifications, additions or replacements (hereinafter referred to as "improvements"), including, without limitation the new facility to be constructed by the Lessee pursuant to Section 5.5 below, 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 shall 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. Lessee expressly agrees in the making of all improvements that, except with the written consent of City, it 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 Further, Lessee shall take all reasonable measures:
- 6.2.1 Not to produce on the Airport any disturbance that interferes with the operation by the City or the Federal Aviation Administration of air navigational, communication or flight equipment on the Airport.
- 6.2.3 Lessee shall control the conduct and demeanor of its officers, agents, employees, invitees and, upon objection from City concerning the conduct, demeanor of any such person, Lessee shall immediately take all lawful steps necessary to remove the cause of the objection.

6.2.4 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 and the improvements thereon and its operations at the Airport hereunder.

6.2.5 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. The manner of handling and disposing of trash, garbage and other refuse and the frequency of removal thereof from the Airport premises shall at all times be subject to the rules, regulations and approval of City.

6.2.6 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.

6.2.7 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.

6.2.8 Lessee shall take measures to insure security in compliance with Federal Air Regulations and the Airport Security Plan.

6.2.9 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.

6.2.10 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, except when the Airport is closed to the public.

7.2 The use of any such roadway shall be subject to the Rules and Regulations of the Airport which are now in effect or which may hereafter be promulgated. City may, at any time, temporarily or permanently, close or consent to or request the closing of, any such roadway and any other way at, in or near the Leased Premises presently or hereafter used as such, so long as a reasonable means of ingress and egress as provided above remains available to the Lessee. The Lessee hereby releases and discharges the City, its officers, employees and agents; and all municipalities and other governmental authorities and their respective successors and assigns, of and

from any and all claims, demands, or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any street, roadway or other area, provided that a reasonable means of access to the Leased Premises remains available to the Lessee whether within the Leased Premises or outside the Leased Premises at the Airport unless otherwise mandated by safety considerations or lawful exercise of the police power. The Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Leased Premises or in any streets or roadways near the Leased Premises.

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 the Airport, or as a result of any operations works, acts or omissions performed on the Leased Premises, or the Airport, by 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. In this connection, Lessee agrees to require its contractors doing work on the Airport, and Lessee's tenants and sub lessees, to carry adequate insurance coverage, and if Lessee so desires, it may accomplish same by an endorsement to Lessee's policies to include such persons or parties as additional named insured.

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.

8.4 The Lessee represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under or in anywise connected with this Agreement. The Lessee agrees to save and hold the City, its officers, employees, agents and representatives free and harmless of and from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright or arising from any alleged or actual unfair competition or other similar claim arising out of the operations of the Lessee under or in anywise connected with this Agreement.

8.5 The Lessee represents and warrants that no broker has been concerned on its behalf in the negotiation of this Agreement and that there is no such broker who is or may be entitled to be paid a commission in connection therewith. The Lessee shall indemnify and save harmless the City of and from any claim for commission or brokerage made by any such broker when such claim is based in whole or in part upon any act or omission of the Lessee.

ARTICLE 9 - RULES AND REGULATIONS

9.1 From time to time City may adopt and enforce rules and regulations with respect to the occupancy and use of the Airport. Lessee agrees to observe and obey any and all rules and regulations and all other Federal, State and municipal rules, regulations and laws and to require its officers, agents, employees, contractors, and suppliers, to observe and obey the same. City reserves the right to deny access to the Airport and its facilities to any person, firm or corporation that fails or refuses to obey and comply with such rules, regulations or laws. Lessee hereby acknowledges receipt of a current copy of such City rules and regulations.

ARTICLE 10 - SIGNS

10.1 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 in accordance with the written approval of the City. No sign will be approved that may be confusing to aircraft pilots or automobile drivers or their traffic or which fails to conform to the architectural scheme of the Airport or meet the requirements of the City.

ARTICLE 11 - ASSIGNMENT AND SUBLEASE

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 Subject to all of the terms and provisions hereof, Lessee may, sublet a portion or portions of the Leased Premises to a person, partnership, firm or corporation engaged in a business that is in the opinion of the City compatible with Lessee's authorized Airport business, but in no event shall the Lessee sublet all or any portion of the Leased Premises to a fixed base operator.
- 11.5 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.
- 11.6 Any sublease agreement made between the Lessee and the sub-tenant shall be on a month to month basis and must require consent by the City.

ARTICLE 12 - NON-DISCRIMINATION

- 12.1 The Lessee, for it, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Leased Premises for a purpose for which a United States Government program or activity is extended, 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.
- 12.2 The Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, color, or national

origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of 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.

- 12.3 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. This provision is to be considered as a covenant on the part of the Lessee, a breach of which, continuing after notice by City to cease and desist, will constitute a material breach of this Agreement and will entitle the City, at its option, to exercise its right of termination as provided for herein, or take any action that it deems necessary to enforce compliance herewith.
- 12.4 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.
- 12.5 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 13 - GOVERNMENTAL REQUIREMENTS

- 13.1 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.
- 13.2 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 therefrom, and shall make all applications, reports and returns required in connection therewith.
- 13.3 Lessee shall have the right, at its cost and expense, to undertake appropriate action to exempt all or any part of the Leased Premises from real estate taxes imposed upon

the Leased Premises, or to secure a reduction in real estate taxes as assessed. Any such real estate taxes shall be apportioned as of the dates of commencement and termination of the lease. If any real estate taxes as may be assessed against the Leased Premises are reduced or eliminated, Lessee shall be entitled to full benefit thereof, including any refund payable to Lessee resulting there from.

ARTICLE 14 - RIGHTS OF ENTRY RESERVED

- 14.1 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.
- 14.2 Without limiting the generality of the foregoing, the City, by its officers, employees, agents, representatives, contractors and furnishers of utilities and other services, 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. It is specifically understood and agreed that the reservation of the aforesaid right by the City shall not impose or be construed to impose upon the City any obligation to repair, replace or alter any utility service lines now or hereafter located on the Leased Premises for the purpose of providing utility services only to the Leased Premises.
- 14.3 In the event that any personal property of Lessee shall obstruct the access of the City, its officers, employees, agents or contractors, or the utility company furnishing utility service to any of the existing utility, mechanical, electrical and other systems, and thus shall interfere with the inspection, maintenance or repair of any such system, 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.
- 14.4 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.

- 14.5 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 15 - ADDITIONAL RENTS AND CHARGES

- 15.1 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 or other tenants of the Airport, 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.
- 15.2 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 16 - DEFAULT

- 16.1 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 ten (10) 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 ten (10) 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 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 17 - TERMINATION BY LESSEE

- 17.1 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:

17.1.1 Issuance by a court of competent jurisdiction of an injunction which in any way substantially prevents or restrains the use of the Leased Premises, or any part thereof necessary to Lessee's business operations on the Airport, 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

17.1.2 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 Airport business for a continuous period of at least ninety (90) days.

ARTICLE 18 - SURRENDER AND RIGHT OF RE-ENTRY

- 18.1 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 the term hereof, 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 19 - SERVICES TO LESSEE

- 19.1 City covenants and agrees that during the term of this Agreement it will operate the Airport as such for the use and benefit of the public provided, however, that the City may prohibit or limit any given type, kind, or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public. The City further agrees to use its best efforts to maintain the runways and taxiways in good repair. 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.
- 19.2 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.
- 19.3 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 20 - SURVIVAL OF THE OBLIGATIONS OF THE LESSEE

- 20.1 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.

- 20.2 The amount of damages for the period of time subsequent to termination (or re-entry, regaining or resumption of possession) on account of the Lessee's rental obligations shall be the sum of the following:

20.2.1 the amount of the total of all installments thereof payable prior to the effective date of termination except that the credit to be allowed for the installment payable on the first (1st) day of the month in which the termination is effective shall be prorated for the part of the month the Agreement remains in effect on the basis of the total days in the month;

20.2.2 An amount equal to all expenses incurred by City in connection with regaining possession, restoring the Leased Premises, acquiring a new lease for the Leased Premises, legal expenses (including but not limited to attorney's fees), putting the Leased Premises in order, maintenance and brokerage fees.

ARTICLE 21 - USE SUBSEQUENT TO CANCELLATION OR TERMINATION

- 21.1 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.
- 21.2 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.
- 21.3 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 22 - LIMITATION OF RIGHTS
AND PRIVILEGES GRANTED

- 22.1 Except the exclusive right of Lessee to possession of the Leased Premises, no exclusive rights at the Airport are granted by this Agreement and no greater rights or privileges with respect to the use of the Leased Premises or any part thereof are granted or intended to be granted to the Lessee by this Agreement, or by any provision thereof, than the rights and privileges expressly and specifically granted hereby.

ARTICLE 23 - NOTICES

- 23.1 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:	Airport Manager P.O. Box 1448 Shawnee, Oklahoma 74802-1448
----------	--

AND

To Lessee:	Red Cloud Aviation 2202 Airport Dr., Hangar 16 Shawnee, OK 74804
------------	--

- 23.2 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 24 - HOLDING OVER

- 24.1 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.

- 24.2 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.
- 24.3 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 25 - INVALID PROVISIONS

- 25.1 The invalidity of any provisions, articles, paragraphs, portions, or clauses of this Agreement shall have no effect upon the validity of any other part or portion hereof, so long as the remainder shall constitute an enforceable Agreement.

ARTICLE 26 - MISCELLANEOUS PROVISIONS

Remedies to be Nonexclusive.

- 26.1 All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other, or of any other remedy available to the City, or Lessee, at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

Non-Waiver of Rights.

- 26.2 The failure by either party to exercise any right, or rights accruing to it by virtue of the breach of any covenant, condition or agreement herein by the other party shall not operate as a waiver of the exercise of such right or rights in the event of any subsequent breach by such other party, nor shall other party be relieved thereby from its obligations under the terms hereof.

Force Majeure.

- 26.3 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.

- 26.4 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.

- 26.5 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.

- 26.6 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.
- 26.7 This Agreement shall be performable and enforceable in Shawnee, Oklahoma and shall be construed in accordance with the laws of the State of Oklahoma.
- 26.8 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.
- 26.9 In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.
- 26.10 All covenants, stipulations and agreements in this Agreement shall extend to and bind each party hereto, its legal representatives, successors and assigns.
- 26.11 The titles of the several articles of this Agreement are inserted herein for convenience only, and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.
- 26.12 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 27 - SUBORDINATION CLAUSES

27.1 This Agreement is subject and subordinate to the following:

27.1.1 City reserves the right to develop and improve the Airport as it sees fit, regardless of the desires or view of Lessee, and without interference or hindrance by or on behalf of Lessee, provided, Lessee is not deprived of the use of or access to the Leased Premises.

27.1.2 City reserves the right to take any action it considers necessary to protect the aerial approaches to the Airport against obstruction, together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure on the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

27.1.3 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.

27.1.4 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.

27.1.5 Except to the extent required for the performance of any obligations of Lessee hereunder, nothing contained in this Agreement shall grant to the Lessee any rights whatsoever in the airspace above the Leased Premises other than those rights where subject to Federal Aviation Administration rules, regulations and orders currently or subsequently effective.

ARTICLE 28 - ENTIRE AGREEMENT

28.1 The Agreement consists of Articles 1 to 28, inclusive, and Schedule A.

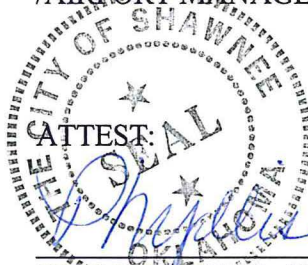
28.2 It constitutes the entire Agreement of the parties hereto and may not be changed, modified, discharged or extended except by written instrument duly executed by the City and the Lessee. The parties agree that no representations or warranties shall be binding upon the City or the Lessee unless expressed 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:
SHAWNEE AIRPORT AUTHORITY
CITY OF SHAWNEE
OKLAHOMA
A Municipal Corporation

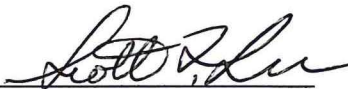


By: JUSTIN ERICKSON
INTERIM CITY MANAGER
/AIRPORT MANAGER

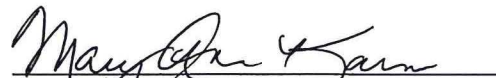


PHYLLIS LOFTIS, CMC, CITY CLERK

LESSEE:
Red Cloud Aviation, LLC
Scott Lee, Owner

By: 

APPROVED AS TO FORM AND LEGALITY
THIS 16 DAY OF Feb, 2015.


MARY ANN KARNS, CITY ATTORNEY

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:

- The Lessee's insurance carrier shall provide the City with a Certificate of Insurance indicating proof of the foregoing coverage. The Certificate shall name the City of Shawnee as additionally insured. 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 of 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 herein.
 1. Aircraft Liability for any owned and operated aircraft.
Combined Single Limit Injury and Property Damage
\$ 1,000,000 each occurrence
\$ 100,000 per passenger/per seat bodily injury
 2. Comprehensive General Liability and Property Damage
Combined Single Limit Bodily Injury & Property Damage
\$ 1,000,000 each occurrence
 3. Student and Renter's Liability
\$ 500,000 each occurrence
 4. Hangar Keeper's Liability
\$500,000 each occurrence

Shawnee Airport Authority

1.d.

Meeting Date: 11/05/2018

Enterprise Lease Extension

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Explanation

Approval of a Lease Extension Agreement to the current Lease Agreement with EAN Holdings, LLC (Enterprise Rental Car).

Staff Recommendation

Fiscal Impact

Attachments

Enterprise Rental Car



Date: October 18, 2018

To: Shawnee Airport Authority

The Honorable Richard Finley, Mayor
James Harrod, Vice Mayor
Ed Bolt, Commissioner
Ron Gillham, Commissioner
Darren Rutherford, Commissioner
Ben Salter, Commissioner
Mark Sehorn, Commissioner

From: Bonnie A. Wilson, CM Airport Manager

Subject: Lease Amendment – Enterprise Rental Car

Nature of Request:

Staff is seeking authorization to execute an amendment to the current lease agreement Enterprise Holdings, Inc., (EHI) to expand and improve the current leasehold at the Shawnee Regional Airport (SNL) to accommodate EHI customer parking and improve their service facility and equipment.

The expanded leasehold will include four (4) existing parking stalls, and an additional eight (8) newly constructed stalls in the public parking lot at SNL. The seventeen (17) parking stalls will be identified as Enterprise Rental Car Customer Parking locations. The cost of the improvements is estimated at \$20,000.00. A depiction of the proposed expansion is provided as Attachment 1 to this memorandum.

EHI will also reconstruct and enhance the current vehicle washing and service bay facility on the North Ramp of SNL. This plan includes construction of fixed facility, catchment basin, a plumbed connection to the City of Shawnee waste water system, including the installation of an approved oil water separator, and improvements to the base and surrounding ramp area. EHI will utilize Airport Drive to access this location ceasing their current practice of transiting the aircraft parking ramp. The estimated cost of the proposed construction is \$30,000.00.

EHI will make the investment and undertake the construction described in return for (i) a ten (10) year extension of their current lease; (ii) an amendment to the leased area to include the four (4) stalls currently adjacent to the leasehold, west of the proposed new construction; and (iii) a one-time increase in the rental rate of 10% (\$76.50/month) at the commencement of the sixth (6th) year of the extended term.

There is no rate escalation or recalculation element in the current lease. The current lease agreement is set to expire May 31, 2023. If approved the ten-year extended term will expire May 31, 2033.

Staff Analysis and Considerations:

EHI provides the majority of their services to non-airport users, though rental car services are a standard amenity sought by the business aviation community. The current public parking facility at SNL is inadequate to meet the needs of both airport and rental car customers.

SNL and the City of Shawnee do not have the financial resources to expand the existing parking facility to meet the current demand. Construction of certain public parking facilities may be supported by federal grants in aid, but would only qualify for assistance after all aviation/airfield needs have been met. As the only rental car service in the City of Shawnee, EHI provides an essential service to the business community and the local citizens.

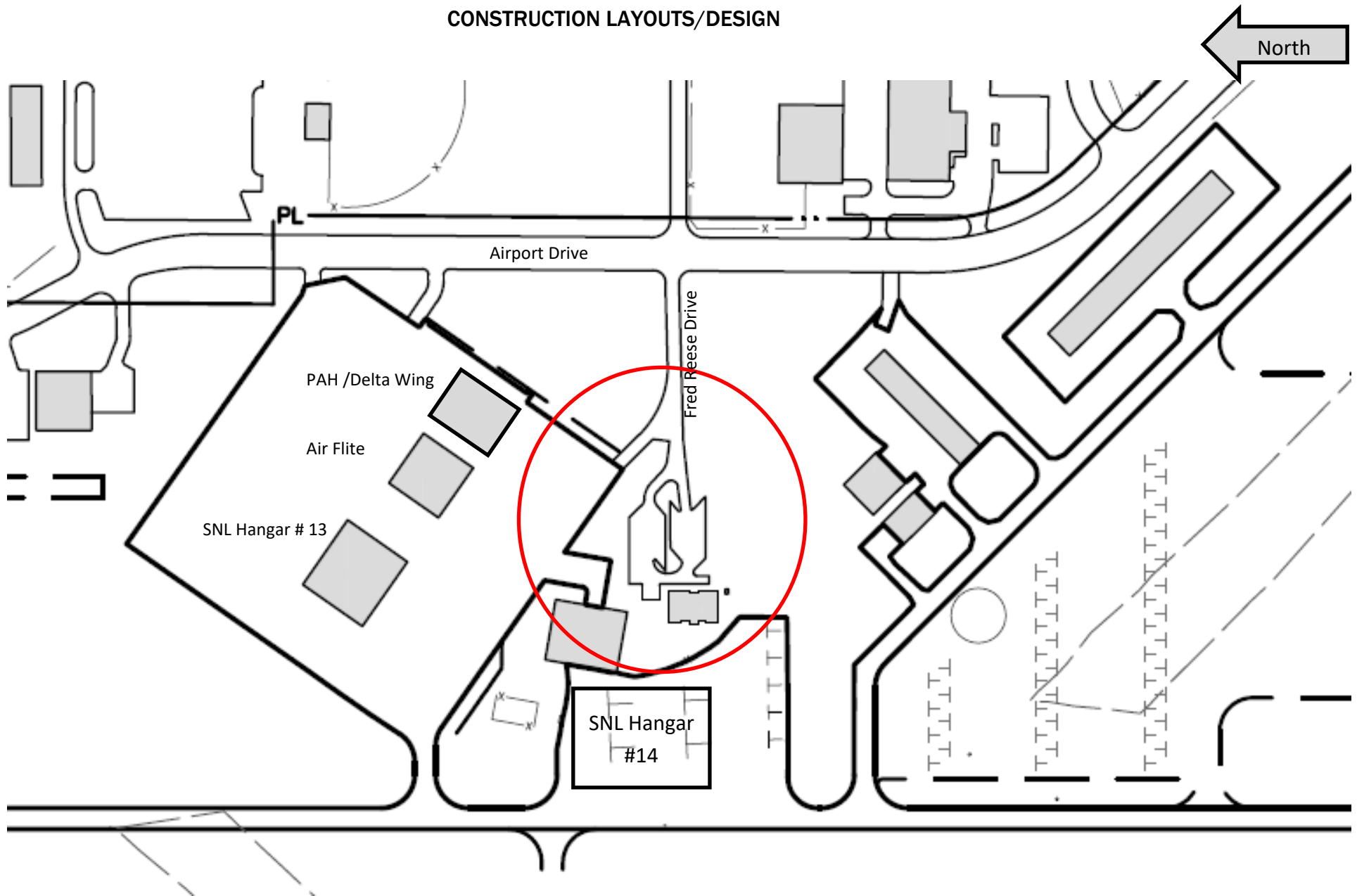
Recommendation:

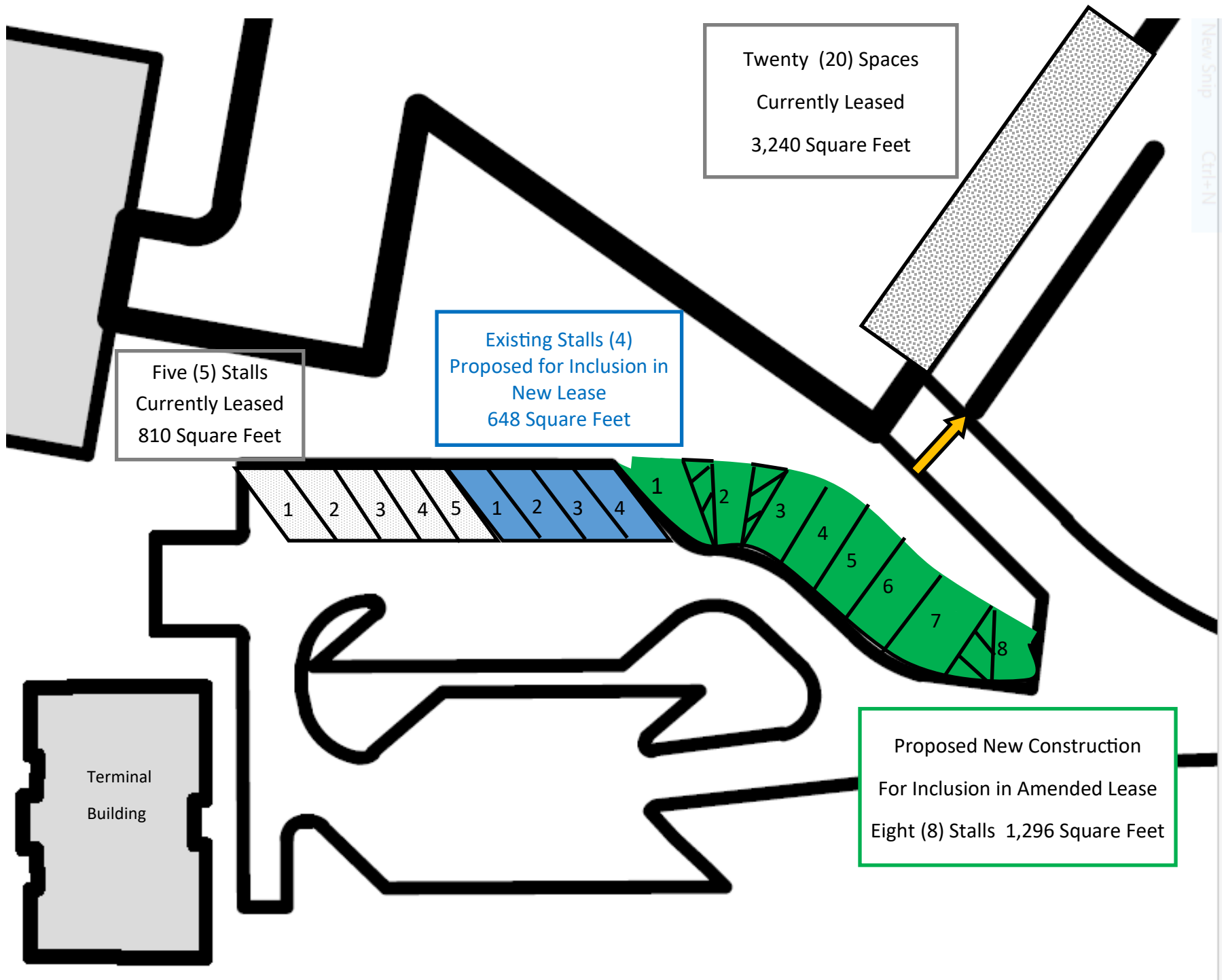
The Airport Advisory Board and airport staff are recommending execution of the lease contingent on: (i) completion of construction per requirements and standards as established and approved by the City of Shawnee, Oklahoma; and (ii) the expenditure of no less than the estimated \$50,000.00 in capital improvements as described above. A copy of the proposed lease amendment is provided as Attachment 2 to this memorandum.

Budget Consideration:

The unimproved area adjacent to the existing parking lot, and the four stalls proposed for inclusion in the EHI lease agreement generate no rental revenue for Shawnee Regional Airport. The \$50,000 in capital improvements to the parking facility will revert to the Shawnee Regional Airport upon completion of the lease term.

ATTACHMENT 1 - EHI HOLDINGS PROPOSED
CONSTRUCTION LAYOUTS/DESIGN





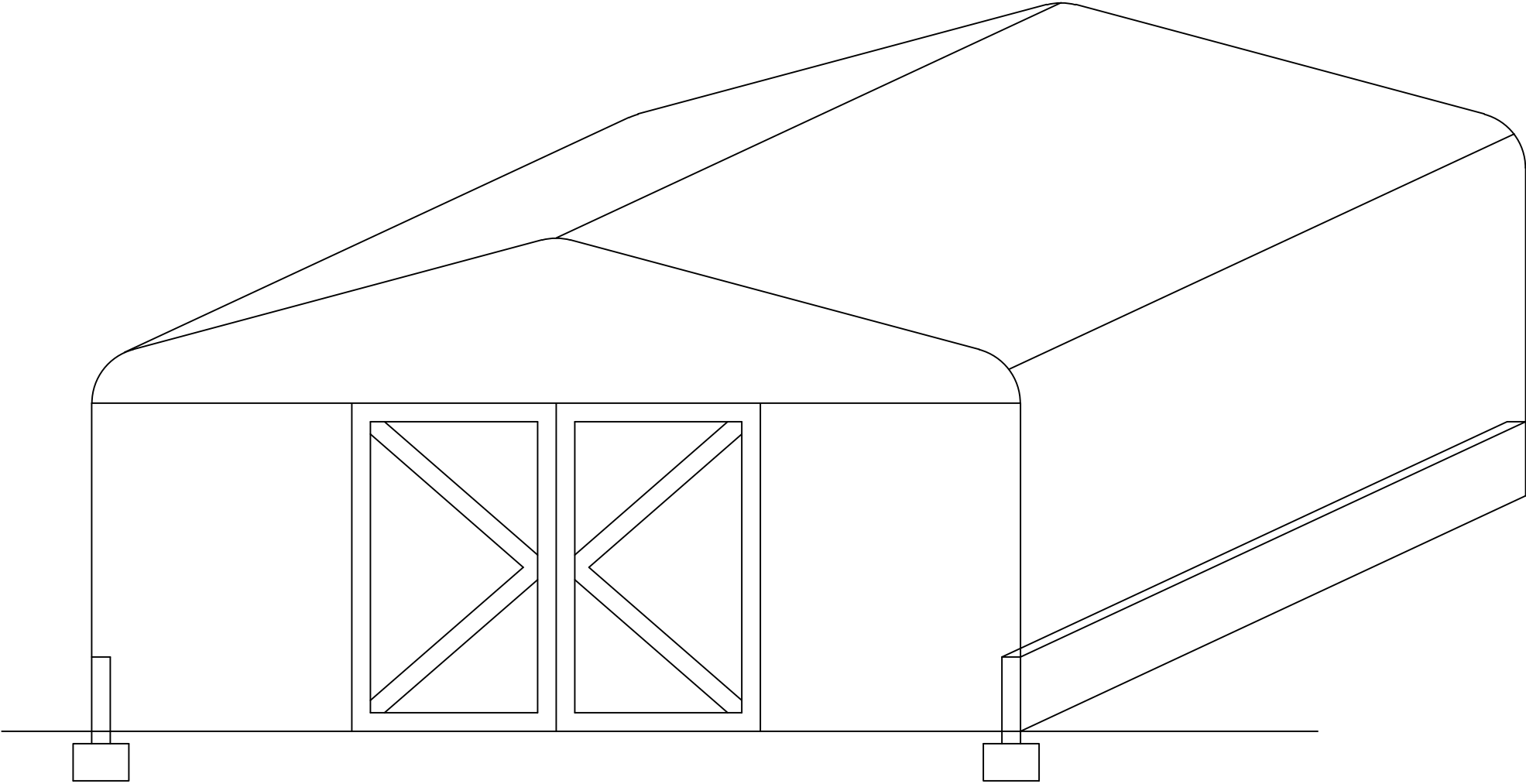
Twenty (20) Spaces
Currently Leased
3,240 Square Feet

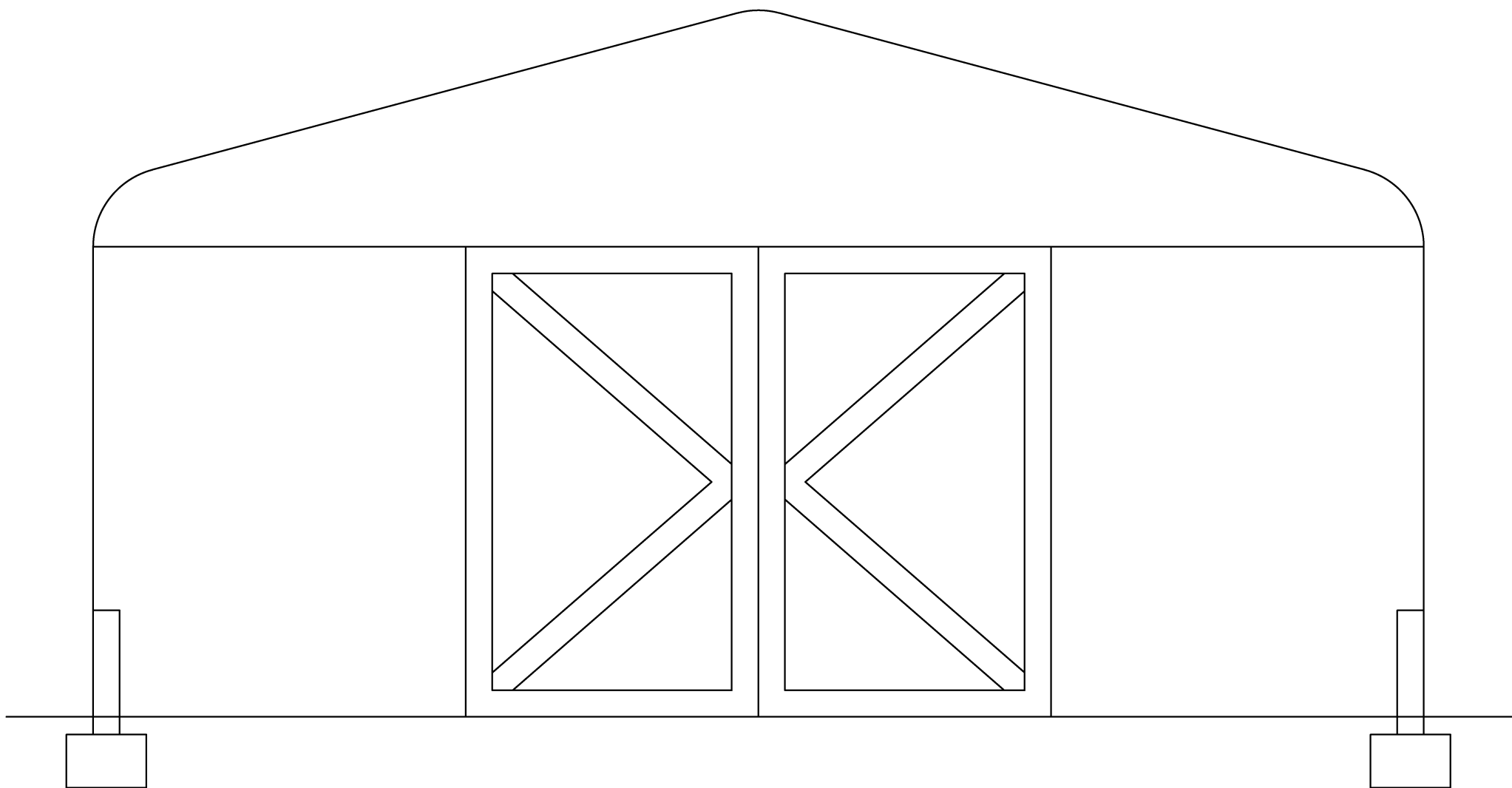
Five (5) Stalls
Currently Leased
810 Square Feet

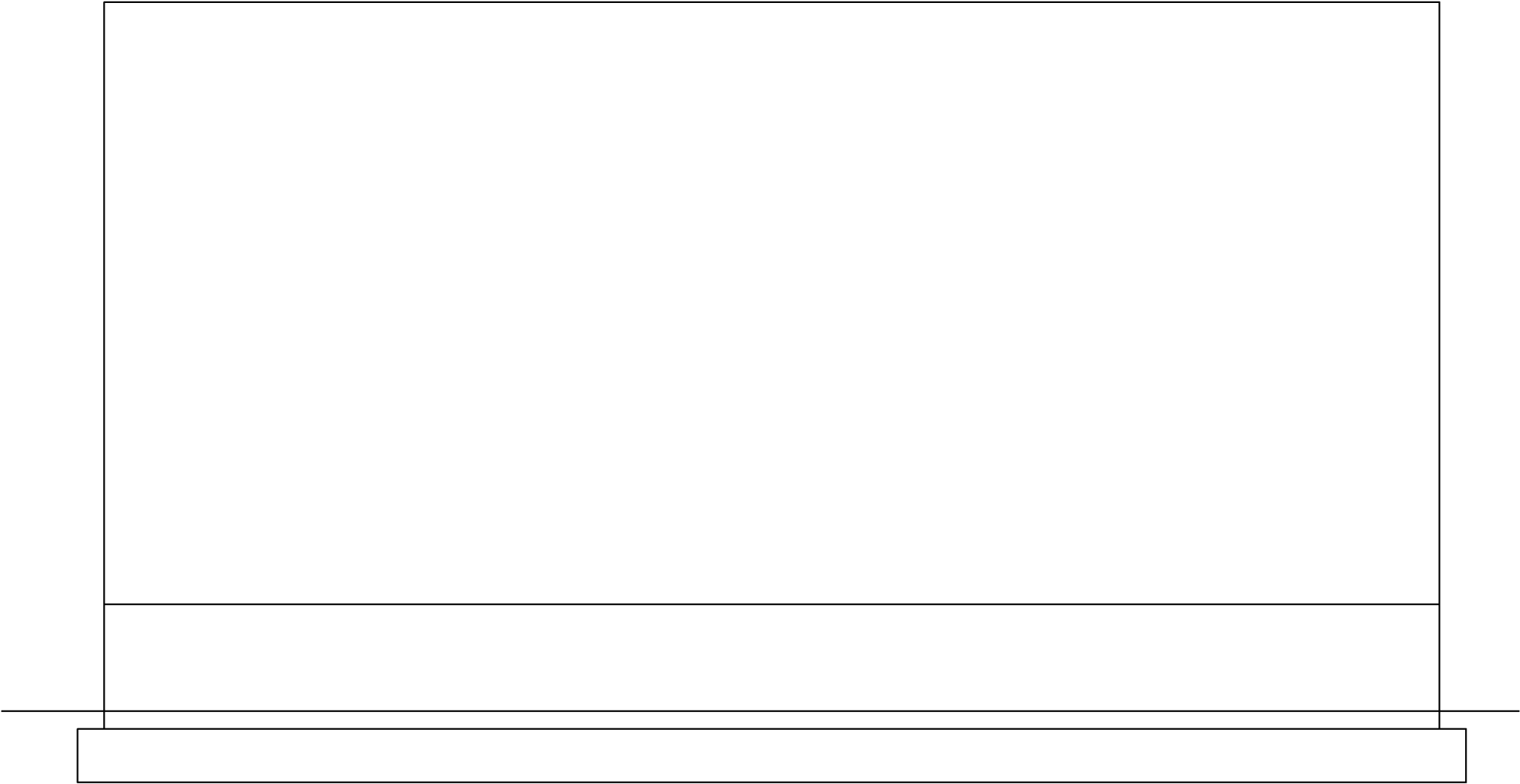
Existing Stalls (4)
Proposed for Inclusion in
New Lease
648 Square Feet

Proposed New Construction
For Inclusion in Amended Lease
Eight (8) Stalls 1,296 Square Feet

Vehicle Washing Facility Elevations







LEASE EXTENSION AGREEMENT

This Lease Extension Agreement is made and entered into as of this First day of November 2018, by and between City of Shawnee, an Oklahoma municipal corporation ("Landlord") and EAN Holdings, LLC, a Delaware limited liability company ("Tenant").

WITNESSETH:

WHEREAS, by Lease Agreement dated June 1, 2012, as amended by agreement(s) dated May 15, 2014 (hereinafter referred to as "said Lease"), Landlord did lease unto Tenant certain premises located at 2202 Airport Road, Shawnee, OK 74804, (the "Premises"); and

WHEREAS, Landlord and Tenant desire to extend said Lease as hereinafter set forth.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Landlord and Tenant, and in consideration of the covenants and agreements provided in said Lease, Landlord and Tenant agree as follows:

1. The term of said Lease, which was to expire on May 31, 2023 is hereby extended so as to expire on May 31, 2033 (the "Extended Term"). Rent during the first 5 years (60 months) (June 1st, 2023 through May 31st, 2028) of Extended Term shall remain at the rate of Seven Hundred Sixty-Five and 00/100 Dollars (\$765.00) per month. Rent during the second 5 years (60 months) (June 1st, 2028 through May 31st, 203) of the extended Term will be at a 10% increase or Eight Hundred forty-one and 50 cents (\$841.50/month). Tenant will have no further right to unilaterally renew or extend said Lease beyond the Extended Term.

Except as expressly modified hereby, all other terms and conditions of said Lease shall remain unmodified and in full force and effect.

IN WITNESS HEREOF, the parties hereto have executed this Lease Extension Agreement as of the date first set forth above.

"LANDLORD"

City of Shawnee,
an Oklahoma municipal corporation

"TENANT"

EAN Holdings, LLC,
a Delaware limited liability company

By: S. Eric Benson
Its: Interim City Manager

By: Jake Whitmore
Its: Regional Vice President

LEASE

Between

City of Shawnee (Landlord)

And

**EAN HOLDINGS, LLC – Southwest Division,
a Delaware Limited Liability Company (Tenant)**

Group# 51 Branch# 3E

THIS LEASE (the "Lease") is made as of the 1st day of June, 2012 (the "Lease Date") between the City of Shawnee, an Oklahoma municipal corporation ("Landlord") and EAN Holdings, LLC – Southwest Division, a Delaware limited liability company ("Tenant").

In consideration of the rent to be paid and the promises and obligations of the Landlord and Tenant under this Lease, it is agreed as follows:

Article 1. LEASE OF PREMISES

Landlord leases to Tenant and Tenant leases from Landlord a portion of a multi-tenant property commonly known as Shawnee Regional Airport and located at 2202 Airport Road in Shawnee, Oklahoma (the "Property"). The Property is shown on the site plan that is attached as Exhibit "A" to this Lease. The portion of the Property leased to Tenant is Room/Space No. 017 & 018, having frontage of approximately 18 feet and containing approximately 240 square feet of floor area ("Office Space") and the exterior area marked in red as on Exhibit "A" consisting of 24 parking spaces for a total of 4,050 square feet (Parking Space and, collectively, the "Premises").

Article 2. TERM

Section 2.1 Term and Commencement Date

The term of the Lease (the "Term") will begin on the Commencement Date (as defined below), and will end on the last day of the twenty-fourth (24th) full calendar month thereafter.

The "Commencement Date" will begin immediately once the (i) Tenant has received all necessary approvals of its plans for preparing the Premises for its occupancy, (ii) Tenant has received all necessary permits, licenses and approvals to allow Tenant's construction and operation at the Premises, (iii) the entrances and exits, parking areas, lighting, utilities and other parts of the Property necessary for the safe and efficient operation of Tenant's business are complete and operational, and (iv) Landlord has completed any work that it has agreed to perform at the Premises and delivered exclusive possession of the Premises to the Tenant. Notwithstanding the above, if Tenant opens for business at the Premises before the above conditions have been met, the Commencement Date will be the date on which the Tenant opens for business.

Section 2.2. Holding Over

If Tenant holds possession of the Premises or any portion thereof after the end of the Term, Tenant will be deemed a tenant from month to month at the Rent and

otherwise upon the terms of this Lease. Such tenancy may be terminated by either party upon not less than 30 days prior written notice to the other.

Section 2.3. Grant of Approvals

If any permit, license or approval necessary for Tenant's construction, signage or operation at the Premises is not issued or granted to Tenant within a reasonable time following the Lease Date, or if any such permit, license or approval is withdrawn, qualified or conditioned in a manner unacceptable to Tenant, then Tenant may terminate this Lease by written notice to Landlord. Landlord agrees to cooperate with Tenant and the state, county or municipal authorities in obtaining such permits, licenses, and approvals and will execute any documents reasonably required for that purpose.

Section 2.4. Entry Prior to Term

Prior to the Commencement Date, Tenant may enter the Property and the Premises in order to inspect Landlord's construction, measure the Premises, construct leasehold improvements and install furniture, fixtures and equipment, without obligation to pay rent or any other charges.

Article 3. RENEWAL OPTIONS

The initial Term provided for in Section 2.1 above is sometimes referred to as the "Initial Term" to distinguish it from the Renewal Terms provided for in this Article 3.

Tenant will have three (3) separate options (each a "Renewal Option") to extend the Term for additional period of thirty-six (36) months (each a "renewal Term"). The first Renewal Term will commence upon the expiration of the Initial Term. Each successive Renewal Term will commence upon the Expiration of the previously exercised Renewal Term.

The first Renewal Option may be exercised by written notice from Tenant to Landlord given not later than 3 months prior to the expiration of the Initial Term. Subsequent Renewal Options may be exercised by written notice from Tenant to Landlord given not later than 3 months prior to the expiration of the previously exercised Renewal Term. No Renewal Option will lapse until Landlord notifies Tenant in writing that Tenant has failed to timely exercise such Renewal Option and Tenant fails to Exercise such Renewal Option for 10 days following receipt of Landlord's notice.

Each Renewal Term will be upon the same terms and conditions as during the Initial Term, except as otherwise provided.

As used in this Lease, "Term" means both the Initial Term and, to the extent Renewal Options have been exercised, the Renewal Terms, unless the context clearly requires otherwise.

Article 4. RENT

Tenant agrees to pay Landlord, as Rent for the Premises, as follows:

Office Space: 240 square feet at \$1.50 per month

Parking Space: 4,050 square feet at \$.10 per month for a total of \$765 per month.

	INITIAL TERM	
<i>Years</i>	<i>Monthly</i>	<i>Annually</i>
1-2	\$765	\$9180.00

Article 5. TAXES

Section 5.1. Personal Property Taxes

Tenant will pay, without contribution from Landlord, all taxes on Tenant's personal property and trade fixtures that are assessed and payable during the Term.

Section 5.2. Real Estate Taxes

Landlord will pay, without contribution from Tenant, all real estate taxes, special assessments, impact fees and other governmental impositions upon or against the Property of every kind and nature that are assessed or payable during the Term.

Article 6. UTILITIES AND CAR WASH

Section 6.1. Office Space

For Office Space, Tenant will pay all charges for water, sewer, and electricity (collectively, "utilities") based upon Tenant's Proportionate Share. Proportionate Share will be determined by multiplying the cost of such utilities by a fraction, the numerator of which will be the number of square feet of floor area in the Office Space and the denominator of which will be the total number of square feet of leasable area in the Property. For purposes of this Lease, the term "leasable area" is defined as the terminal or area where RACs or Airlines may occupy space.

Section 6.2. Non-Office Use Car Wash

Tenant shall pay all water usage for the car wash area and a separate meter shall be installed.

Article 7. REPAIRS TO PREMISES

Section 7.1. Landlord's Repairs

Landlord will maintain and make all repairs: (i) to the exterior, roof, roof drains, gutters and foundations; (ii) to all systems, including electrical, mechanical, plumbing, water and sewer, up to the point of entry into or hook-up with the Premises, (iii) to the compressor and other mechanical parts of the HVAC systems; and (iv) required because of the act or omission of Landlord, or Landlord's employees, agents, or contractors.

Section 7.2 Tenant's Repairs

Except for reasonable wear and tear and repairs required of Landlord pursuant to this Article, Tenant will repair and maintain the Premises in good order and condition. Tenant will maintain and make all repairs to (i) the interior of the Premises, including wall coverings, flooring and Tenant's personal property and equipment; (ii) Tenant's exterior signage, canopies, and other tradedress; and (iii) damage to items listed in Section 7.1 if damage is caused by act(s) or omission of the Tenant, its agents, servants, employees, contractors or customers.

Article 8. ALTERATIONS

Tenant may redecorate the interior of the Premises and make such alterations, changes, and/or installations as Tenant may from time to time think are necessary or desirable; provided, however, that such alterations, changes, and/or installations may not impair the electrical or mechanical systems serving the Premises or the structural soundness of the Premises or the Property.

Landlord acknowledges that the Premises must be and remain connected to Tenant's corporate terrestrial broadband data communications network (the "Network") for Tenant to conduct its business at the Premises. Landlord authorizes Tenant to perform such work as may be necessary, within or outside the Premises, to permit Tenant to properly connect the Premises to the Network and thereafter maintain such connection, all at Tenant's expense and in accordance with plans prepared by Tenant and approved by Landlord, which approval may not be unreasonably withheld, conditioned or delayed. Landlord agrees to cooperate fully with Tenant to secure the permits and approvals necessary to the performance of such work and to facilitate completion of such work. If, for any reason other than the act or omission of Tenant, including the inadequacy of facilities or services provided by a Local Exchange Carrier or other provider, the connection of the Premises to the Network cannot be accomplished within a time or at a cost acceptable to Tenant, or the connection is

broken or becomes inadequate for Tenant's purposes, then Tenant may terminate this Lease by written notice to Landlord.

Tenant may install a satellite dish antenna and other communication equipment at the Property, after first receiving Landlord's written approval, which approval may not be unreasonably withheld, conditioned or delayed. No equipment shall be placed on the roof of the building.

Article 9. USE OF PREMISES

Section 9.1 Permitted Use

The Premises may be used and occupied for the rental, leasing and/or sale of motor vehicles, for office, administrative and other uses incidental or related thereto and for such other uses to which Landlord gives its written consent, which consent will not be unreasonably withheld, conditioned or delayed.

Section 9.2 Tenant's Compliance With Laws

Tenant will use and occupy the Premises so as to comply with all applicable laws and regulations pertaining to its use.

Section 9.3 Landlord's Compliance with Laws

Landlord's ownership and control of the Property will be in compliance with all laws and regulations now in force or which may hereafter be applied to ownership or control of real property, including, without limitation, laws and regulations related to mechanical, electrical, structural, seismic, life safety, fire safety, accessibility and environmental conditions.

Article 10. INSURANCE AND INDEMNITY

Section 10.1 Tenant's Insurance

Tenant will maintain in full force and effect during the Term a commercial general liability insurance, insuring Landlord and Tenant as their interests may appear against any and all claims and demands for damage to property or injury to persons or loss of life arising out of or related to the use of or resulting from any accident occurring in, upon or about the Premises, with a combined single limit coverage of not less than \$2,000,000. All such insurance will name Landlord as an additional insured. Tenant will also maintain in full force and effect during the Term any legally required workers' compensation insurance covering all of Tenant's employees working on the Premises.

Section 10.2 Quality of Policies and Certificates

All policies of insurance will be issued by an insurer with an A.M. Best's rating of A- or better. The parties will deliver to each other, on request, copies of certificates of insurance showing that policies in compliance with this Article 10 are in effect. All policies of insurance will require the insurer to notify Landlord and Tenant at least 30 days prior to cancellation, amendment, or revision of coverage.

Section 10.3 Blanket Policy

Any policy of insurance may be maintained under a so-called "blanket policy" insuring other parties and other locations so long as the minimum insurance policy requirements and limits set forth above are maintained.

Section 10.4 Tenant's Indemnification

Except for damage or injury caused by the willful or negligent act or omission of Landlord, its agents or employees, Tenant will indemnify, defend or hold Landlord, its agents and employees harmless from any and all liability for injury to or death of any person, or loss of or damage to the property of any person, and all actions, claims, demands, costs (including, without limitation, reasonable attorneys' fees), damages or expenses of any kind arising therefrom which may be brought or made against Landlord or which Landlord may pay or incur by reason of the use, occupancy and enjoyment of the Premises by Tenant, its agents or employees.

Section 10.5 Landlord's Insurance

Landlord may choose to self-insure the Premises and for liability, or to purchase a policy with limits as set under Oklahoma law.

Section 10.6 Landlord's Indemnification

Landlord, as an Oklahoma political subdivision, is not liable for any damages arising out of a claim of indemnification.

Article 11. ASSIGNMENT AND SUBLETTING

Tenant will have the right to assign its interest in this Lease or sublet all or any portion of the Premises to any entity wholly owned or controlled by Tenant or its parent corporation, or to a successor by merger or consolidation, or to any entity that acquires all or substantially all of Tenant's assets or stock. The use of the Premises by such assignee or sub lessee will be in accordance with the provisions of Section 9.1. Tenant will remain liable for the performance of the obligations of Tenant pursuant to this Lease. Any other assignment or subletting will require Landlord's consent, which consent will not be unreasonably withheld, conditioned, or delayed.

Article 12. FIXTURES

All equipment and other personal property of Tenant will remain the property of Tenant and Tenant may remove all or any portion of such property from the Premises or the Property at any time. No signs, awning, canopy, or other item included in or displaying any element of Tenant's traddress will become Landlord's property or be deemed part of the real estate regardless of the location or means of attachment of such item, and all such items may be removed from the Premises or the Property by Tenant at any time. No item shall be attached to the exterior of the terminal or placed upon any other exterior portion of premises without written permission from the Landlord.

Article 13. SIGNS

Tenant has the right, at its expense and in conformity with applicable laws and ordinances, to erect and thereafter maintain, remove and/or replace (i) exterior signs on the front of the Premises (and on the sides and back of the Premises if such surfaces are exposed), (ii) exterior and interior signs, banners, posters and other professionally prepared promotional materials consistent with the operation of Tenant's business, (iii) signs, logos, fixtures and other items that are a part of Tenant's national or regional traddress program, and (iv) signs or sign panels on any monument sign advertising the Property installed by the property owner, such signs or panels to be no smaller than the sign or panel of any other tenant of the Property, with the exception of the City of Shawnee and Shawnee Airport Authority. Signage affixed to the building ("attached signs") shall be limited to two sides and shall not exceed 150 total square feet.

Article 14. CASUALTY

If the premises or the building or other improvements that are part of the Property are damaged or destroyed by fire or other casualty, Landlord will have the choice whether to rebuild or repair them, or to abandon the use. During such period of repair or rebuilding Tenant's Rent and other charges will abate in proportion to the effect of the damage on Tenant's ability to conduct its business, as reasonably determined by Tenant. If Landlord does not complete such repairs or rebuilding within 6 months of the date of such damage or destruction, then Tenant may at any time thereafter terminate this Lease. If such damage or destruction includes the Premises and occurs during the last 18 months of the Term, and the cost of repair or restoration of the Premises is 50% or more of the replacement cost of the Premises, this Lease may be terminated at the election of either Landlord or Tenant, provided that notice of such election is given within 30 days after the occurrence of such damage or destruction. If, at the time of such damage or destruction, Tenant has the option to extend the Term as provided in Article 3 above, Tenant may elect to exercise such option within 10 days after receiving

notice of termination from landlord pursuant to this Article. If Tenant exercises such option, Landlord's notice of termination will be void and of no effect and Landlord will repair or rebuild the Premises and the Property as required above.

Article 15. CONDEMNATION

Section 15.1. Total Taking.

If the entire Premises is taken under the power of eminent domain by any public or private authority, or conveyed by Landlord to said authority in lieu of such taking, this Lease will terminate as of the date possession of the Premises is required by such authority.

Section 15.2. Partial Taking.

If a portion of the Property or the Premises is taken under the power of eminent domain by any public or private authority, or conveyed by Landlord to said authority in lieu of such taking, and such taking will, in Tenant's judgment, adversely affect Tenant's ability to conduct its business, then Tenant may terminate this Lease by written notice to Landlord given within 30 days after Tenant receives actual notice of the taking. Such termination will be effective on the date when possession of the portion of the Property or the Premises shall be required by the taking authority.

Section 15.3. Restoration.

If this Lease is not terminated as a result of a taking described in Article 15, it will continue in full force and effect and Landlord will promptly restore the remaining portions of the Property, and the Premises to an architectural whole in substantially the same condition as prior to the taking. Rent and any other charges payable by Tenant under this Lease will be abated until the completion of the restoration and thereafter in proportion to the effect of the taking on Tenant's ability to conduct its business, as determined by Tenant.

Section 15.4. The Award.

All compensation awarded for the taking of the Property or any portion thereof will be the sole property of Landlord to the extent such compensation is awarded for diminution in the value of or loss of the fee; but Landlord will not be entitled to and Tenant will have the sole right to any portion of any award for (i) Tenant's loss of business, (ii) damage to, depreciation of or cost of removal of leasehold improvements, fixtures and personal property installed by or at the expense of Tenant, or (iii) relocation expenses. Tenant will also have the sole right to the entirety of any separate award made directly to Tenant.

Article 16. DEFAULT BY TENANT

Section 16.1. Events of Default.

The occurrence of any of the following will be an event of default on the part of Tenant:

- (a) Nonpayment. Failure to pay any amount payable by Tenant to Landlord when due, such failure continuing for a period of 10 days following Tenant's receipt of written notice of such failure;
- (b) Other Obligations. Failure to perform any obligation of Tenant under this Lease other than those matters specified in subsection (a) hereof, such failure continuing for 30 days following Tenant's receipt of written notice of such failure, or, if it is not reasonably possible to cure such failure to perform within 30 days, for such additional time as may be reasonably necessary, provided Tenant commences the cure within the 30 day period and thereafter proceeds diligently to complete the cure.
- (c) Interruption of its business. Failure to provide rental cars for a period of fifteen consecutive days, or for less than twenty days in any thirty day period.

Section 16.2. Remedies Upon Default

- (a) Upon the occurrence of any event of default described in Section 15.1 hereon, Landlord, in addition to and without prejudice to any other rights or remedies it may have, will have the immediate right to re-enter and repossess the Premises or any part thereof, removing all persons and property, which property may be stored in a public warehouse or elsewhere at the cost and risk of Tenant. In addition to or in lieu of such re-entry, and without prejudice to any other rights or remedies it may have, Landlord will have the right to either (i) terminate this Lease and recover from Tenant all damages incurred by Landlord as a result of Tenant's default, or (ii) continue this Lease in effect and recover Rent and other charges and amounts as they become due.
- (b) Even if Tenant is in default, this Lease will continue in effect for so long as Landlord does not terminate this Lease as provided below and Landlord may enforce all of its rights and remedies under this Lease, including the right to:
 - (i) Bring suit for the collection of the Rent or other amounts for which Tenant may be in default, or for the performance of any other obligation of Tenant hereunder, all without entering into possession or terminating this Lease;

- (ii) Re-enter the Premises, without thereby terminating this Lease, and relet the Premises, applying the Rent it receives first to the payment of the reasonable expense of such re-entry and reletting, then to the payment of the monthly Rent accruing hereunder, and the balance, if any, will be held for the benefit of Tenant to be used to pay for any subsequent amounts due from Tenant. Whether or not the Premises are relet, Tenant will remain liable for any deficiency in Rent. Landlord will use good faith efforts to relet the Premises and mitigate damages; and
- (iii) Terminate this Lease effective on the date that is 10 days following receipt by Tenant of Landlord's notice of such termination, whereupon Tenant will be wholly discharged from this Lease.

Article 17. DEFAULT BY LANDLORD

If Landlord fails to perform any covenant, condition, or agreement on its part to be performed under this Lease within 30 days after receipt of written notice from Tenant specifying such failure (or if such failure cannot reasonably be cured within 30 days, if Landlord does not commence to cure the failure within that 30 day period or does not diligently pursue such cure to completion), then such failure will constitute a default hereunder and Landlord will be liable to Tenant for damages sustained by Tenant to the extent they are a result of Landlord's default. If, after notice to Landlord (except in an emergency when no notice will be required), Landlord fails to properly cure its failure to perform and that failure could cause injury to persons, damage to the Premises, then Tenant will have ether right, but not the obligation, to cure Landlord's failure to perform for the account and at the expense of Landlord. Landlord agrees to promptly reimburse Tenant for the reasonable cost of such cure following receipt from Tenant of an itemized statement of such cost. Any amounts not reimbursed by Landlord within 15 days following receipt of Tenant's statement shall accrue interest at the rate of 12% per annum and may be applied by Tenant as a credit against Tenant's next payment(s) of Rent and other charges until fully recovered.

Article 18. QUIET ENJOYMENT.

Landlord agrees that, so long as Tenant is paying the Rent and performing its other obligations under this Lease, Tenant will peaceably and quietly have, hold and enjoy the Premises throughout the Term.

Article 19. HAZARDOUS MATERIALS.

Section 19.1. Definition "Hazardous Materials"

The term "Hazardous Materials" means any hazardous, toxic, or dangerous substance, waste, contaminant, pollutant, gas or material, including, without limitation, gasoline, waste oil and other petroleum products and constituents thereof, which are now or may become regulated under any federal, state, or local statute, regulation, ordinance or other law now or hereafter (a) designated as a "hazardous substance" under the Federal Water Pollution Control Act and/or the Comprehensive Environmental Response, Compensation, and Liability Act, (b) designated as a hazardous waste or regulated substance pursuant to the Resource Conservation and Recovery Act, (c) designated or listed as a hazardous material under the Hazardous Material Transportation Act, or (d) is in any way regulated as a hazardous material or toxic substance under the laws of the state wherein the Premises is located.

Section 19.2. Indemnification.

In addition to the specific provisions of this Lease concerning indemnification and without prejudice to any rights and remedies of the parties thereunder, the parties further grant to each other the following Hazardous Materials indemnification.

- (a) Landlord to the extent allowed by law and its successors, assigns, trustees, beneficiaries and legal representatives will protect, indemnify, defend and hold harmless Tenant, its officers, directors, shareholders, representatives, losses, costs, judgments, orders, obligations, damages, expenses or claims (whether by third parties or governmental authorities) arising out of or in any way relating to the existence of any Hazardous Materials placed on, in or under the Property by any person or entity other than Tenant or any person or entity acting for, by or through Tenant or with Tenant's permission or acquiescence. This indemnity includes, but is not limited to, remedial, removal, response, abatement, cleanup, legal, investigative and monitoring costs, penalties, fines and disbursements (including, without limitation, attorneys', consultants' and experts' fees) of any kind whatsoever, which may at any time be imposed upon or incurred by any indemnities arising, directly or indirectly, (i) from requirements of any federal, state or local environmental law; (ii) in connection with claims by government authorities or third parties related to the condition of the Property; and/or (iii) from the presence or existence of Hazardous Materials on, in or near the Property, including all consequential damages.
- (b) Tenant and its successors, assigns, trustees, beneficiaries and legal representatives shall protect, indemnify, defend and hold harmless Landlord, its officers, directors, shareholders, representatives, and their respective successors and assigns from and against all judgments, suits, proceedings, liabilities, losses, costs, orders, obligations, damages, expenses or claims

(whether by third parties or governmental authorities) arising out of or in any way relating to the existence of any Hazardous Materials placed on, in or under the Property by Tenant or any party acting for, by or through Tenant or with Tenant's permission or acquiescence. This indemnity includes, but is not limited to, remedial, removal, response, abatement, cleanup, legal investigative, and monitoring costs, penalties, fines and disbursements (including, without limitation, attorneys', consultants', and experts' fees) of any kind whatsoever, which may at any time be imposed upon or incurred by any indemnitee arising, directly or indirectly, (i) from requirements of any federal, state, or local environmental law; (ii) in connection with claims by government authorities or third parties related to the condition of the Property; and/or (iii) from the presence or existence of Hazardous Materials on, in or near the Property, including all consequential damages.

- (c) In any event that any investigation, monitoring, containment, cleanup, removal, remediation, restoration or other work of any kind or nature ("Remedial Work") is required, reasonably necessary or desirable under any applicable federal, state or local law or regulation, any judicial order, or any government or non-governmental entity or person because of, or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Material in or into the air, soil, groundwater, surface water or soil vapor at, in, about, under or within the Property (or any written demand for performance thereof by the indemnitee (or within a shorter period of time as may be required under any applicable law, regulation, order or agreement), commence to perform, or cause to be commenced, and thereafter diligently prosecute to completion, all such Remedial Work. All Remedial Work will be performed by one or more contracts, approved in advance in writing by the indemnitee, and under the supervision of a consulting engineer approved in advance in writing by the indemnitee. All costs and expenses of such Remedial Work will be paid by the indemnitor, including without limitation, the charges of such contractor(s) and/or the consulting engineer, and the attorneys' fees and any costs incurred by the indemnitee in connection with the monitoring or review of such Remedial Work. In the event the indemnitor fails to timely commence or cause to be commenced, or fails to diligently prosecute.

Article 20.

COMMON AREAS

Section 20.1.

Common Areas Defined

The parking areas, access roads and facilities furnished, made available or maintained by Landlord in or near the Property, including employee parking areas, truck

ways, driveways, loading docks and areas, delivery areas, package pickup stations, elevators, escalators, pedestrian sidewalks, malls, courts and ramps, landscaped areas, retaining walls, stairways, bus stops, first-aid and comfort stations, lighting facilities, sanitary systems, utility lines, water filtration and treatment facilities and other areas and improvements provided by Landlord for the general use in common of tenants in the Property and their customers are referred to in this Lease as the "Common Areas."

Section 20.2 Grant of Easement

Landlord hereby grants to Tenant and Tenant's employees, customers, agents, subtenants and invitees the non-exclusive right and easement, in common with Landlord and all others to whom Landlord grants similar rights, to use the Common Areas.

Landlord further grants to Tenant the exclusive right and easement to the use the portion of the Property shown on Exhibit "A" for the parking, storage, cleaning and preparation of motor vehicles. Landlord represents that it has not granted, nor will it grant exclusive or non-exclusive rights in those areas to any other person or entity.

Section 20.3 Operating and Maintaining the Common Areas

Landlord will operate, manage, maintain and repair the Common Areas for the use and benefit of the tenants of the Property.

Article 21 **MISCELLANEOUS**

Section 21.1 Notices

All notices, demands and communications called for in this Lease will be given by registered or certified United States mail or available express mail carrier (Federal Express, Emery, Airborne, etc.), return receipt requested, AND by electronic mail, read receipt requested, to the following address or to such other address as Landlord or Tenant may designate by written notice to the other pursuant to this Section 21.1:

Landlord: City Manager
 City of Shawnee
 16 West 9th Street
 PO Box 1448
 Shawnee, OK 74802
 Tel: 405/878-1601
 Fax: 405/878-1571
 Email: bmcdougal@shawneeok.org

Tenant: EAN Holdings, LLC – Southwest Division
Attn: Vice President/General Manager
433 E. Memorial Rd
Oklahoma City, OK 73114

With copy to: Enterprise Holdings, Inc.
Attn: Real Estate Department
600 Corporate Park Drive
St. Louis, MO 63105

Such notice or other communication will be deemed given when received by the addressee, or on the date that the addressee refused delivery.

Section 21.2 Force Majeure

If either Landlord or Tenant is delayed or hindered in or prevent from performing any act or obligation called for by this Lease by reason of strikes, lockouts, unavailability of materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, war or other reason beyond its control, then performance of such act or obligation will be excused for the period of the delay and the period for the performance of such act or obligation will be extended for a period equivalent to the period of the delay. The failure to make payments required under this Lease due to lack of funds will not, however, be considered a cause beyond the control of the party failing to pay.

Section 21.3 Early Termination

Tenant may terminate this Lease at any time upon not less than 3 months in advance written notice to Landlord. If Tenant elects to terminate this Lease, Tenant shall pay Landlord an amount equal to 3 monthly installments of the then current Rent as consideration for the early termination. Such payment will be made on or before the effective date of the termination.

Section 21.4 Waiver of Landlord's Lien

Tenant may terminate this Lease at any time upon not less than 3 months advance written notice to Landlord. If Tenant elects to terminate this Lease, Tenant shall pay Landlord an amount equal to 3 monthly installments of the then current Rent as consideration for the early termination. Such payment will be made on or before the effective date of the termination.

Section 21.5 Surrender

Tenant will peacefully and quietly surrender possession of the Premises to Landlord at the end of the Term. Tenant will have the right to remove all of its equipment, trade fixtures, decorations, inventory and other personal property from the

Premises and will repair any damage done in the course of that removal. Any personal property remaining on the Premises 30 days following the expiration of the Term will be deemed abandoned and will become the property of the Landlord, with the exception of the Tenant's motor vehicles, which will at all times continue to be the property of Tenant. If vehicles remain on the Premises ten days following the expiration of the Term or upon other cessation of occupancy, Landlord may cause them to be impounded and removed from the Premises at no cost to Landlord. In the alternative, Landlord may impound the vehicles on the Premises and charge Tenant or its successors in interest a fee of \$10 per vehicle per day until they are claimed.

Section 21.6 Entire Agreement

This written Lease, together with the exhibits thereto, contains all the representations and the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Lease and the exhibits hereto. This Lease may be modified only by an agreement in writing signed by each of the parties.

Section 21.7 Governing Law

This Lease will be construed and interpreted in accordance with and be governed by the laws of the State of Oklahoma.

Section 21.8 Successors and Assigns

The provisions of this Lease will be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

Section 21.9 Zoning, Good Title, and Environmental

Landlord represents and warrants to Tenant that all of the following as true as of the Lease Date and shall be true as of the Commencement Date;

- (a) Landlord is the fee owner of the Property and has full right and lawful authority to execute this Lease and perform the obligations of Landlord herein contained without the consent or joinder of any other party;\
- (b) The Premises is not subject to any easement, restriction, zoning ordinance or similar private or governmental regulation which would prevent or restrict its use as permitted herein, that no such action is threatened or pending, and the Premises is presently zoned for the permitted used; and,
- (c) No underground storage tanks or relating piping exist at the Property; the Property is in full compliance with all state and Federal environmental laws,

rules, and regulations; and Landlord has received no notice of Hazardous Materials originating on or outside of the Property which affect the Property.

- (d) There are no mortgages or deeds of trust now in place encumbering the Premises or Landlord's interest in Premises.

Article 21 MISCELLANEOUS

This Lease is subject to final approval by Tenant's parent company, Enterprise Holdings, Inc., which approval may be given or denied for no reason or for any reason whatsoever. Such approval shall be deemed given if Tenant fails to notify Landlord that such approval has been denied by the date that is 30 days following the Lease Date.

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first written above.

LANDLORD:
CITY OF SHAWNEE



LINDA PETERSON, MAYOR

Attest:



PHYLLIS LOFTIS, CITY CLERK

TENANT:
EAN HOLDINGS, LLC – SOUTHWEST
DIVISION, a Delaware limited liability
company

BY: 

MATT SANDERSON
VICE PRESIDENT

