

**SECOND ADDENDUM TO THE AIRPORT LEASE AGREEMENT
(Fixed Base Operator – COVID-19 Rent Abatement)**

This Second Addendum is entered into this _____ day of May, 2020 by and between the CITY OF FLAGSTAFF, a municipal corporation organized and existing under the laws of the State of Arizona (the “City”) and Wiseman Aviation, Inc., an Arizona corporation (“Lessee”), to the Airport Lease Agreement dated July 16, 1997, as amended by the First Addendum dated September 21, 2009, and as extended on April 1, 2017 through July 15, 2022 (hereafter “the Lease”).

RECITALS:

WHEREAS, on January 31, 2020 U.S. Secretary of Health and Human Services declared a public health emergency as a result of the COVID-19 flu pandemic; on March 11, 2020 Arizona Government Douglas Ducey declared a state public health emergency, and on March 15, 2020 Flagstaff Mayor Coral Evans declared a local public health emergency;

WHEREAS, since April 2020 airline passenger traffic through the Flagstaff Pulliam Airport has practically ceased due to the COVID-19 flu pandemic, causing an associated decline in flight revenues; and

WHEREAS, on April 4, 2020 the Federal Aviation Administration (“FAA”) issued “Information for airport sponsors considering COVID-19 restrictions or accommodations” which states that “a decision to abate rent...is a local decision” and provides guidance for any abatement; and

WHEREAS, Lessee has requested and City desires to provide financial relief to the Lessee to help preserve continued airport related operations to the extent feasible at the Flagstaff Pulliam Airport;

NOW, THEREFORE, for valid consideration, the receipt of which is hereby acknowledged, the parties agree that the Lease is hereby amended as follows.

Article V RENTAL AND FEES is amended by adding the following text (additions are shown as capitalized, underlined text, deletions are shown as stricken):

5.0 TEMPORARY RENT ABATEMENT

5.0.1 ABATEMENT.

DUE TO THE COVID-19 FLU PANDEMIC, BASE RENTAL, ADDITIONAL RENTAL, FUEL FLOWAGE FEES, TIE DOWN FEES, AND MINIMUM PAYMENT (ALL AS DEFINED IN SECTION 5.1) SHALL BE ABATED COMMENCING APRIL 1, 2020 AND CONTINUING THROUGH SEPTEMBER 30, 2020 AND ANY APPROVED EXTENSION PERIOD (“ABATEMENT PERIOD”), AND NO BASE RENTAL, ADDITIONAL RENTAL, FUEL FLOWAGE FEES, TIE DOWN FEES, MINIMUM PAYMENT, NOR LATE PENALTY OR INTEREST, SHALL BE OWED OR PAYABLE FOR THIS PERIOD; PROVIDED, HOWEVER:

- (a) IN THE EVENT LESSEE RECEIVES OTHER GOVERNMENTAL RELIEF OR INSURANCE RECOVERY RELATED TO THE COVID-19 PANDEMIC, LESSEE SHALL PROMPTLY NOTIFY CITY.
- (b) IN THE EVENT LESSEE BECOMES INSOLVENT, OR IS NAMED AS THE DEBTOR IN A VOLUNTARY OR INVOLUNTARY BANKRUPTCY PROCEEDING, THIS SECTION 5.0 OF ARTICLE V IS VOID AND ALL PAYMENT OBLIGATIONS WILL RESUME UNDER ARTICLE V ON THE FIRST DAY OF THE FOLLOWING MONTH.
- (c) LESSEE SHALL CONTINUE TO OFFER FIXED BASE OPERATOR SERVICES AT THE FLAGSTAFF PULLIAM AIRPORT DURING THE ABATEMENT PERIOD.
- (d) FUEL FLOWAGE FEES SHALL NOT BE ABATED UNLESS THE CITY COUNCIL, IN ITS SOLE DISCRETION, AMENDS THE CITY CODE TO ALLOW SUCH ABATEMENT.

5.0.2 EXTENSIONS.

THE PARTIES MAY MUTUALLY AGREE IN WRITING TO EXTEND THIS ABATEMENT PERIOD FOR UP TO TWO (2) ADDITIONAL THREE (3) MONTH TERMS. THE CITY MANAGER MAY EXECUTE ANY SUCH EXTENSION ON BEHALF OF THE CITY OF FLAGSTAFF WITHOUT FURTHER COUNCIL APPROVAL, AFTER DUE CONSIDERATION OF THE FACTORS SET FORTH BELOW IN SUBSECTION 5.0.3 MUTUAL WARRANTIES.

5.0.3 MUTUAL WARRANTIES.

EACH PARTY WARRANTS, WITHOUT INVESTIGATION, TO THE OTHER PARTY:

- RENT RELIEF IS NECESSARY DUE TO CHANGED CIRCUMSTANCES CAUSED BY THE PUBLIC HEALTH EMERGENCY;
- IN THE EVENT RENT RELIEF WILL HAVE THE EFFECT OF SHIFTING COSTS BETWEEN AIRPORT TENANTS AND USERS, THE PARTIES WILL MEET TO DISCUSS THE EQUITIES, ENDEAVOR TO REACH A CONSENSUS BETWEEN ALL AIRPORT USERS AND ADJUST RENT OBLIGATIONS ACCORDINGLY;
- THERE IS A REASONABLE BASIS FOR RENT RELIEF BECAUSE UNDERLYING AIRLINE REVENUES THAT ARE A BASIS FOR THE CURRENT RENT HAVE SIGNIFICANTLY DECLINED.

EACH PARTY UNDERSTANDS THAT THE RENT RELIEF PROVIDED HEREIN MUST NOT HAVE THE EFFECT OF CAUSING ANY VIOLATION OF THE

GRANT ASSURANCES 22 AND 24 (AS WELL AS RELATED STATUTES) AND EACH PARTY AGREES THAT IF THE RENT RELIEF CONTEMPLATED IN THIS AGREEMENT DOES VIOLATE GRANT ASSURANCES 22 AND/OR 24, THAT THE PARTIES SHALL MEET TO DISCUSS HOW TO RESOLVE THE VIOLATION.

LESSEE WARRANTS TO CITY THAT LESSEE IS SEEKING RENT RELIEF FROM ALL LANDLORDS OF LESSEE AT AIRPORTS IN ARIZONA, IF ANY. UPON REQUEST OF CITY, LESSEE WILL PROVIDE CITY WITH INFORMATION AS TO RENT RELIEF BEING PROVIDED.

5.1 Rental and Fees. The Lessee agrees to pay the Lessor, for the use and enjoyment of the Premises, Public Airport Facilities, rights, licenses, services and privileges granted hereunder, the following rentals, fees, and charges.

5.1.1 Base Rental. The Lessee agrees to pay \$373.00 per month for the first twelve (12) months after the date Lessee commences any aviation related business on the Premises pursuant to the terms of this Agreement. The Lessee agrees to pay \$745.00 per month for the second twelve (12) month period and \$1,117.00 per month for the third twelve (12) month period and \$1,489.00 per month for the fourth twelve (12) month period and \$1,861.00 per month for the fifth (12) month period for the Property. Each monthly payment together with any additional rental as provided herein shall be payable in advance on the first day of each month, with the first month's rental to be pro-rated on a daily basis, if appropriate. If, during the remaining term of this Agreement, beginning at the commencement of the sixth (6) year and each succeeding year, the National Consumer Price Index, published by the United States Bureau of Labor Statistics, shows a rise in the cost of living index for , the Lessee shall pay to the Lessor, as additional base rental, such percentage of the rent as is proportional to the rise in such index from its level for each year remaining under this Agreement. In no event shall the base rental for year six through the duration of the Lease term be less than the rental amount established for the fifth year of this Agreement.

5.1.2 Additional Rental. In addition to the Base Rental, the Lessee shall pay to the Lessor, as additional rental, an amount representing Five Dollars (\$5.00) for each rental tie-down unit on the Premises payable within thirty (30) days after each calendar month of the term hereof; provided, however, that said additional rental amount shall be paid to the Lessor only if the tie-down is rented to a third party on a long term lease (defined as a term of one month or more) and the City tie-downs are not fully utilized.

5.1.3 Business Permits. The Lessee agrees to pay the Lessor an Annual Airport Business Permit fee of One Hundred and Twenty Dollars (\$120.00) and each Sublease Tenant shall pay an Annual Airport Business Permit fee of Three Hundred Dollars (\$300.00) payable on or before the fifteenth day of January for each year the Lessee and any sublease tenants conduct business operations on the Premises.

5.1.4 Fuel Supply Farm. The Lessee may construct, maintain, and operate a fuel supply farm on the Premises. In the alternative, Lessee may lease tankage space from the City at a rate to be agreed upon by the companies.

5.1.5 Fuel Flowage Fees. The following fuel flowage fees shall be paid on a cumulative basis to Lessor during Lessor's fiscal year for each year Lessee conducts operations pursuant to this Agreement based on the Lessee's bid:

1. 0 - 100,000 gallons \$.10
2. 100,001 - 150,000 gallons \$.09
3. 150,001 - 200,000 gallons \$.08
4. 200,001 gallons and above \$.07

All fuel flowage fees shall be paid within thirty (30) days following receipt of Lessor's monthly invoice respecting same.

All rates agreed upon by the parties relative to fuel flowage fees shall be subject to an annual rise in the cost of living for Flagstaff Arizona based on the National Consumer Price Index, published by the United States Bureau of Labor Statistics commencing after the fifth year of Lessee's operations.

5.1.6 Tie Down Fees. The Lessee agrees to pay Lessor one-half (1/2) of all tie down fees received in connection with the tie down of aircraft for any period of time under three consecutive months. Lessee acknowledges that the owners/operators of aircraft that utilize any portion of the Public Airport Facilities for tie down services in excess of three (3) consecutive months shall be considered a permanent user of the Airport and, as such, become the sole customer of the Lessor. Lessor is entitled to receive all tie down fees in connection with tie down services provided to permanent users. Lessee shall report all tie down fees received on a monthly basis to Lessor and shall remit 50% of said tie down fees to Lessor within 30 days after each calendar month of the term of this Agreement.

5.1.7 Minimum Payment Required. In recognition of the Lessee's financial constraints and desire to continue providing services at Flagstaff Pulliam Airport, the Lessor agrees to allow Lessee to make minimum monthly payments on its outstanding balance in the amount of \$3,780.00 beginning September 20, 2009 and due on or before the 20th of each subsequent month. Said payments shall continue for a period of 18 months or until such time as the outstanding balance is paid in full. Further, Lessee agrees to submit timely payments for current monthly rent and fuel flowage fees due on or before the 20th of each month. The Lessee shall make the following payments to the Lessor on or before the 20th of each month:

Arrearage Payment.	3780.00	
Base Rental.....	2161.40	(to be adjusted yearly per the CPI formula set forth in Section 5.1.1 of the Lease Agreement)

Fuel Flowage Fees TBD

(based on rates set forth in Section 5 .1.5 of the Lease Agreement)

The Lessee acknowledges and agrees that Lessee’s failure to make timely payments to the Lessor, as provided herein, shall constitute a material breach of the Lease Agreement and shall entitle the Lessor to seek the rights and remedies set forth in Article XV, TERMINATION BY LESSOR, of the Lease Agreement.

All other terms and conditions of the Lease remain unchanged.

LESSEE: Wiseman Aviation, Inc.

By: _____

Title: _____

Its authorized representative

ACKNOWLEDGMENT. On this ____ day of _____, 2020, before me, a Notary Public, personally appeared _____, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of Peabody Western Coal Company, for the purposes therein contained.

Notary Public

My Commission Expires:

[Lessor signature page follows]

LESSOR: CITY OF FLAGSTAFF

By: _____
Coral Evans, Mayor

STATE OF ARIZONA }
 } ss.
County of Coconino }

ACKNOWLEDGMENT. On this ____ day of _____, 2020, before me, a Notary Public, personally appeared Coral Evans, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same on behalf of the City of Flagstaff, for the purposes therein contained.

Notary Public

My Commission Expires:

Attest:

By: _____
Stacy Saltzburg, City Clerk

Approved as to form:

By: _____
City Attorney's Office