

**SECOND AMENDMENT TO THE AIRPORT LEASE AGREEMENT  
(Hangar, Offices, Fuel Supply Farm – COVID-19 Rent Abatement)**

This Second Amendment to the Airport Lease Agreement dated November 14<sup>th</sup>, 2000 (“Lease”), as amended by the First Amendment dated November 19, 2019 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”), as successor in interest to Peabody Western Coal Company.

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 IV is amended by adding the following text (additions are shown as capitalized, underlined text)**

4.0 TEMPORARY RENT ABATEMENT

4.0.1 ABATEMENT.

DUE TO THE COVID-19 FLU PANDEMIC, GROUND RENTAL, FUEL FLOWAGE FEES, (ALL AS DEFINED IN SECTION 4.1) SHALL BE ABATED COMMENCING APRIL 1, 2020 AND CONTINUING THROUGH SEPTEMBER 30, 2020 AND ANY APPROVED EXTENSION PERIOD (“ABATEMENT PERIOD”), AND NO GROUND RENTAL, FUEL FLOWAGE FEES, 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 4.0 OF ARTICLE IV IS VOID AND ALL PAYMENT OBLIGATIONS WILL RESUME UNDER ARTICLE IV ON THE FIRST DAY OF THE FOLLOWING MONTH.
- (c) LESSEE SHALL CONTINUE TO OFFER 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.

4.0.2 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 4.0.3 MUTUAL WARRANTIES.

4.0.3 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.

4.1 Rental and Fees.

The Lessees agrees to pay the City, for the use and enjoyment of the Premises, Public Airport Facilities, rights, licenses, service and privileges granted hereunder the following rentals, fees, and charges.

4.1.1 Ground Rental

Lessee shall pay to the City ground rental, plus any applicable transaction privilege taxes. Rent is due annually in advance. As of November 14, 2019 rent will be the sum of twenty-five thousand eleven dollars and 80 cents (\$25,011.80), or approximately \$ .291 per square foot. Rent will increase by 2% annually on the Lease anniversary date.

4.1.3 Fuel Flowage Fees.

The fuel flowage fees per gallon as of November 14, 2019 are:

1-100,000 gallons:	\$0.1345
100,001-150,000 gallons:	\$0.1207
150,001-200,000 gallons:	\$0.1072
200,001- above gallons:	\$0.0940

Lessee shall pay the following fuel flowage fees on a cumulative basis to the City during the City's fiscal year for each year Lessee conducts operations pursuant to this Lease based on the current rate at the time. Fuel flowage fees will not be combined with any other lease.

Lessee shall pay all fuel flowage fees within thirty (30) days following receipt of the City's monthly invoice respecting the same.

All rates agreed upon by the parties relative to fuel flowage fee shall be subject to escalation based upon the 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.

If the City Airport Commission approves a flat fuel flowage fee, the parties may amend this lease to reflect the flat fee.



Attest:

By: \_\_\_\_\_  
Stacy Saltzburg, City Clerk

Approved as to form:

By: \_\_\_\_\_  
City Attorney's Office

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