

MUNICIPAL PROPERTY USE AND LAND LEASE AGREEMENT

THIS PROPERTY USE AND LEASE AGREEMENT (the "Lease"), is made and entered into as of the date of the last signature below, by and between the City of Roswell, a New Mexico municipal corporation existing under the laws of the State of New Mexico (together with its successors and assigns) ("City"), and New Mexico Historical Air Museum, Inc., a nonprofit corporation organized and existing under and by virtue of the laws of the State of New Mexico ("Lessee"). The City and Lessee are collectively referred to herein as "The Parties."

WHEREAS, City and Lessee are party to that certain New Mexico Historical Air Museum Agreement, dated February 1, 2025, which includes as Exhibit A the "Agreement for Airport Access" (the "New Mexico Historical Air Museum Agreement"), pursuant to which Lessee may construct a roadway and gate at the Roswell Air Center (the "Airport") to transport aircraft at the Airport for museum purposes, and not for regular operation, to and from its property, located adjacent to the Airport, through an Airport-controlled access gate;

WHEREAS, City has agreed to lease to Lessee the real property described below, together with the improvements thereon, in the City of Roswell in Chaves County, New Mexico, for the purpose of constructing and operating a roadway as further described in the New Mexico Historical Air Museum Agreement and Lessee has agreed to lease said real property and improvements from City.

WHEREAS, the Parties desire to enter into this Lease to set out the terms and conditions for such lease and use of the Leased Premises.

NOW THEREFORE, for and in consideration of the mutual obligations, covenants and agreements hereinafter set forth, City and Lessee agree as follows, to wit:

ARTICLE 1 – GRANTING CLAUSE AND LEASED PREMISES.

For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, City hereby leases to Lessee, and Lessee does hereby accept and lease from City in its current condition, as more specifically described on Exhibit "A" attached hereto and made a part hereof ("Leased Premises"), including the surface only to the following real property, together with and other ancillary improvements located thereon:

AOA Land Parcel consisting of 166,037 square feet, more or less, located at the Roswell Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit "A" (Premises).

As set forth in Article 5, the Leased Premises are being leased "AS IS," including the environmental condition of the land, and City has made no representations or warranties of any

kind or nature with regard to the existing or ongoing condition of the Leased Premises or its fitness or suitability for any particular use.

The rights granted herein are subject to all valid and existing rights in the Leased Premises.

ARTICLE 2 – TERM

2.01 Lessee shall lease the Leased Premises for three (3) years with the option to extend for successive periods of three (3) years on the same terms and conditions upon the expiration of the then-current term, which is known as the “Lease Period,” unless terminated, relinquished or canceled earlier as herein provided. City hereby approves, and shall not contest, relinquishment of this Lease by Lessee at any time, provided that Lessee surrenders the Leased Premises in compliance with this Lease.

ARTICLE 3 – RENT

3.01 Lessee agrees to pay to City as rent \$0.10 per square foot of Leased Premise annually, for a total sum of \$16,603.70 for the first year of the Lease Period. Thereafter, the rent will be adjusted annually by the lesser of CPI or 3%. Time is of the essence with regard to the payment of rent.

3.02 If Lessee fails to pay all rent and other fees due within 30 days of receipt of an undisputed invoice, Lessee shall pay to City an additional 2% finance charge, as a penalty, until the full amount of that year’s rent is paid. This penalty shall be immediately payable without limiting City in the exercise of any other right or remedy to which it may be entitled by reason of Lessee's failure to pay rent when due. All rent shall be paid to City without abatement, reduction or setoff of any kind except as herein specifically provided.

ARTICLE 4 – SECURITY DEPOSIT OR BOND

4.01 SECURITY DEPOSIT. Lessee has paid the amount of \$8,301.85 as a security deposit as security for Lessee's full and faithful performance of all terms of this Lease. This amount shall be used by City at the termination or relinquishment of this Lease toward (a.) payment for rent or penalties due City, (b.) reimbursement of the costs of cleaning and repairing damages (beyond normal wear and tear) to the Leased Premises, and (c.) the cost of removal of any hazardous material not properly disposed of by Lessee. City shall be the reasonable judge of all cleaning and repairs required for the Leased Premises and the amounts needed for these purposes. Upon termination, relinquishment or expiration of this Lease, the security deposit shall first be applied to necessary cleaning and removal, repairs, and the remaining balance, if any, may then be applied to rentals and penalties then owing to City. Any refund of the security deposit due Lessee will be delivered or mailed within 60 days after the termination, relinquishment or expiration of this Lease.

ARTICLE 5 – CONDITION OF LEASED PREMISES

Lessee has inspected the Leased Premises and accepts Leased Premises in its present condition

"as is". Lessee acknowledges that any requirements for accessibility and/or public accommodation(s) are Lessee's responsibility. Lessee agrees that the Leased Premises are in good repair and condition except as noted herein. Lessee agrees that, at the expiration of the term hereof, it shall deliver the Leased Premises to City in as good repair and condition, broom clean, as when received, except for loss resulting from ordinary use and wear.

ARTICLE 6 – PURPOSE AND USE OF THE LEASED PREMISES

6.01 PERMITTED USE. Lessee shall use the Leased Premises for the sole and exclusive purpose of constructing and maintaining a roadway and gate to transport aircraft at the Airport to and from its property through an Airport-controlled access gate as further described in the New Mexico Historical Air Museum Agreement. No other uses shall be permitted unless agreed in writing by the Parties.

6.02. SPECIAL EVENTS. City may, at its discretion, conduct or host special activities or events near or about the Premises or elsewhere at or about Airport. The City shall not be liable to Lessee or any Sublessee for any actual or alleged cost or loss, including, but not limited to, any actual or alleged loss of revenue or good will, caused by, resulting from, arising out of, relating to or in connection or conjunction with such special events, except to the extent caused by the gross negligence or willful misconduct of the City. Such liability for the City shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978. §§ 414-1 et seq., as amended and the New Mexico Civil Rights Act, NMSA 1978 §41-4A-1 et seq.

6.03 MAINTENANCE.

- a. While this Lease is in effect, the Lessee agrees to maintain, at its sole cost and expense, in good condition and repair, all structural and mechanical components of any improvements maintained or constructed on the Leased Premises, including without limitation the foundation, roof, interior and exterior walls, any heating, ventilating and air conditioning systems, heating systems, any plumbing, electrical, and mechanical systems, ceilings, floors, wiring and any nonpublic utilities. Lessee will maintain the improvements in a condition of safe occupancy during the term of this Lease to a nonlesser standard than the current condition. City will not be under any obligation to operate or maintain the Leased Premises during the Lease Period.
- b. Further, the Lessee shall maintain throughout the term of this Lease in good condition and repair, all nonstructural components of any improvements placed on the Leased Premises, including without limitation, the exterior, windows, glass, landscaping, driveways, parking areas, fences, doors, signage, and lighting, ordinary wear and tear excepted, and all personal property of the Lessee situated in or on the Leased Premises. Lessee will keep the Leased Premises and any improvements thereon clean and free from debris.

- c. City shall be a reasonable judge of the quality of maintenance and, upon written notice by City to Lessee, Lessee shall be required to perform whatever maintenance City deems reasonably necessary, provided, however, such maintenance shall be consistent in quality with that required of other City Lessees in comparable facilities. If said maintenance is not undertaken by Lessee within ten (10) days after the date City gives Lessee written notice of corrections needed, City shall have the right to enter upon the Leased Premises and perform the necessary maintenance, the cost of which shall be the cost for parts and labor and borne by Lessee.
- d. Except to the extent stated otherwise in this Lease, Lessee shall not make any alterations to the Leased Premises or improvements placed thereon without prior written approval by City. City's approval to make alterations shall not be unreasonably withheld. City hereby preapproves any alterations or improvements necessary to ensure the safe occupancy of any structures placed on the Leased Premises.

6.03 HAZARDOUS MATERIALS. Lessee shall conduct all of its activities in compliance with all applicable environmental laws, rules, and regulations and any other applicable laws and regulations applicable to the Lessee's use of the Leased Premises.

- a. Without limiting the foregoing, if Lessee or its agents, employees, invitees, or contractors should in any manner, leak, discharge, spill or release hazardous materials, including but not limited to fuel, oil, petroleum products, cleaning solvents, degreasers, deicing chemicals, or other fluids upon the Leased Premises, Lessee and its agents, or contractors shall be strictly liable to City, jointly legally and financially responsible and will incur direct liability pursuant to all applicable environmental laws.
- b. In addition to all other indemnities provided in this Lease, Lessee agrees to defend, indemnify, and hold the City free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including reasonable and documented attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the generation, manufacture, processing, use, release or other spills or leaks of chemicals and products that are or may become hazardous materials, the existence or discovery of any hazardous materials in excess of the levels allowed by all applicable environmental laws or violations of applicable environmental laws on the Leased Premises, the subsurface or the migration of any hazardous material from the Leased Premises to other properties or into the surrounding environment, in each case caused by the Lessee or its operations whether: (a) made, commenced or incurred during the Lease Period; or (b) made, commenced or incurred after the expiration or termination of this Lease if arising out of events occurring during the Lease Period; provided, however, Lessee's obligation to indemnify the City pursuant to this

paragraph shall not apply with respect to either: (a) any hazardous material released by the City; or (b) any hazardous material (for which Lessee is not otherwise responsible) clearly demonstrated to have existed prior to this Lease or be migrating onto the Leased Premises from some other location through no fault of Lessee.

The liability of the City shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 et seq., as amended and the New Mexico Civil Rights Act, NMSA 1978 §41-4A-1 et seq.

c. If there is a violation of any environmental laws concerning the presence, use, generation, storage or other management of hazardous materials on the Leased Premises caused by the Lessee, Lessee shall at its cost promptly take such action as is necessary to mitigate and correct the violation.

d. The foregoing indemnity shall survive the expiration or earlier termination or relinquishment of this Lease and will not be affected in any way by the amount of or the absence in any case of covering insurance or the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Leased Premises. In addition, Lessee shall be responsible for any environmental cost associated with negligence or willful acts or omission by Lessee, and notifications to appropriate regulatory agencies arising therefrom.

ARTICLE 7 – UTILITY AND OTHER CHARGES

In addition to all rent payable by the Lessee under Article 3, above, during the term hereof, Lessee shall pay all taxes, licenses, charges, fees or assessments levied or to be levied upon personal-property, fixtures or equipment placed by Lessee upon the Leased Premises, and insurance, of whatsoever kind or nature, incident to or arising out of the conduct of Lessee's business. Failure to have an appropriate current license or permit for Lessee's conduct of business shall be a breach of this Lease. Lessee will promptly pay all utilities and other charges used on the Leased Premises, including electric, gas, water, garbage, sewage, telephone, internet, all maintenance and operating costs and other services which may be incurred in connection with Lessee's use of the Leased Premises, and save harmless City therefrom. The City is not responsible for any payments that may be associated with any demolition or construction of any improvements or infrastructure.

ARTICLE 8 – LIEN

To secure the payment of any rent amount that becomes due, and to satisfy all reasonable costs incurred by City in recovering said rent amount, City shall have a first and prior lien on any and all improvements, fixtures, and equipment placed on the Leased Premises, owned by Lessee.

ARTICLE 9 – PERSONAL PROPERTY

All personal property and fixtures of Lessee in or on the Leased Premises shall be kept at the sole risk of Lessee, and City shall not be liable for any damage thereto or to Leased Premises or to Lessee for interruption of business or otherwise, provided that City shall be liable for its gross negligence and willful misconduct. Lessee hereby waives all causes or rights of recovery against City, its agents, employees, invitees and tenants for any loss to such personal property and fixtures on the Leased Premises or to consequential loss arising therefrom caused by fire or other casualty. The liability of The City shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978. §§ 41-4-1 et seq., as amended and the New Mexico Civil Rights Act, NMSA 1978 §41-4A-1 et seq. **ARTICLE 10 – IMPROVEMENTS**

10.01 Lessee may place on the Leased Premises a paved or unpaved roadway and an access gate as described in the New Mexico Historical Air Museum Agreement.

10.02 No other improvements shall be placed on or alterations made to the Leased Premises without the prior amendment of this Lease pursuant to Article 22 hereof to permit such improvement placement. Lessee shall maintain and protect from waste and trespass all improvements placed on the Leased Premises.

10.03 Ownership Of Improvements, Improvement Removal And Reclamation Before relinquishment or termination of this Lease without re-lease to Lessee, or upon City's cancellation of this Lease as provided herein, City may either declare title to the improvements without payment or compensation to the Lessee or City may order the removal of such improvements. City may declare title to certain improvements and may order the removal other improvements. City will inventory the improvements and provide notice to the Lessee of its intent to declare title to the improvements or its order to remove the improvements sixty (60) days before relinquishment or termination of the Lease. If City determines certain improvements must be removed, Lessee shall remove those improvements and shall restore the Leased Premises to their condition existing prior to the placement of said improvements; provided, however, if any rent amount is due and unpaid at the time of Lease cancellation or termination, Lessee shall remove improvements and restore the Leased Premises as herein provided only at such time, in such manner and under such conditions as City may in writing demand. Notwithstanding anything to the contrary herein, so long as improvements are maintained to the standards contained in paragraph 6.01 above, City shall not order the removal of those improvements and shall keep all improvements intact at least through the term of the New Mexico Historical Air Museum Agreement. Lessee hereby waives, and shall not assert, any right to compensation for improvements on the Leased Premises. This paragraph shall survive termination of this Lease. The foregoing rights of City shall be cumulative to City's right to cancel this Lease as herein provided.

10.04 Equipment. Except as otherwise provided herein, Lessee shall have the right to install such equipment as may be necessary to conduct of its business on the Leased Premises; and at

the expiration or termination of the Lease, Lessee shall have the right to remove all of such equipment installed by Lessee that is removable without damage to the Leased Premises.

10.05 Signs And Advertising. Lessee shall not erect, maintain, or display any signs or other advertising at or on the Leased Premises without first obtaining the written approval of City, such approval not to be unreasonably withheld.

ARTICLE 11 – RELINQUISHMENT

Lessee, if not in default under this Lease, may at any time apply to relinquish the Lease to City and be relieved of further obligations under the lease, provided, however, such relinquishment shall not be valid or effective until approved in writing by City. Lessee must file an application to relinquish the Lease at least ninety (90) days prior to the date on which the Lessee requests the relinquishment to go into effect. The City's approval of relinquishment shall not be unreasonably withheld. Upon relinquishment Lessee shall not be entitled to the refund of any rent previously paid but shall not be responsible to make any additional payments after providing notice of relinquishment. **ARTICLE 12 – ASSIGNMENT**

Lessee shall not assign this Lease, any part thereof, or assign any improvements located on the Leased Premises without the prior written amendment of this Lease pursuant to Paragraph 22 hereof to permit such assignment. Any lease assignment without lease amendment shall be null and void. City may condition such lease amendment upon an increase in the rent amount and the modification or addition of other Lease provisions. The City's approval of an assignment shall not be unreasonably withheld.

ARTICLE 13 – SUBLEASE

Lessee shall not sublease the rights granted hereunder, any part thereof, any portion of the Leased Premises or any improvements located on the Leased Premises without the prior written approval of City to permit such sublease. Any sublease without City's approval shall be null and void. City may condition such approval upon an increase in the rent amount and the modification or addition of other Lease provisions, however any such modification or addition to the Lease shall not be unreasonable. The City's approval of a sublease shall not be unreasonably withheld.

ARTICLE 14 – COLLATERAL ASSIGNMENT

Any attempt to collaterally assign or leasehold mortgage Lessee's interest in this Lease, or in any Improvements, is void and will not vest the purported Lender with any right, title, interest, claim or privilege with respect to this Lease or Improvements absent prior approval in writing by City.

ARTICLE 15 – WAIVER

No employee or agent of City has the power, right, or authority to orally waive any of the terms, conditions, or covenants hereof and no waiver by City of any of the terms, conditions, or

covenants hereof shall be effective unless in writing and executed by City. City's waiver of Lessee's breach or default of any of the terms, conditions or covenants hereof shall not constitute or be construed as a waiver of any other or subsequent breach or default by Lessee. The failure of City to enforce at any time any of the terms, conditions or covenants hereof or to exercise any option herein provided, or to require at any time performance by Lessee of any of the terms, conditions, or covenants hereof shall not constitute or be construed to be a waiver of such terms, conditions, or covenants, nor shall it affect the validity of this Lease or any part thereof, or City's right to thereafter enforce each and every such term, condition, and covenant.

ARTICLE 16 – WAIVER, RELEASE AND PROTECTION OF THE LEASED PREMISES

Lessee is leasing the Leased Premises based on Lessee's own inspection and investigation of and judgment regarding the Leased Premises. City makes no warranties or representations of any kind or nature with regard to the Leased Premises or with regard to this transaction.

If accidental discharge, release, spill, or fire or any other event having environmental consequence occurs, Lessee agrees to provide notice to City at the same time and in the same manner as Lessee is required to provide to the federal, state or local agency having responsibility for enforcing compliance with environmental laws, regulations and policy. Lessee agrees that, upon request by City, City shall have access to all reports, documents, test data, and all other materials provided by City to or received by Lessee from a governmental agency having responsibility for enforcing compliance with environmental or other laws.

In the event City is required to incur any cost or expense to enforce the provisions of this lease, including but not limited to consultants, engineers, soil, air or water sampling and attorneys' fees and costs, Lessee shall be liable for and reimburse City for said costs and expenses.

ARTICLE 17 – LIABILITY; INDEMNIFICATION; INSURANCE.

17.01 LIABILITY. City shall not be liable to Lessee or to Lessee's employees, customers, visitors or any other person or entity for any death or injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the Leased Premises in connection with or arising out of Lessee's operations and use of the Leased Premises, except to the extent caused by the willful misconduct or gross negligence of City.

The liability of The City shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978. §§ 41-4-1 et seq., as amended and the New Mexico Civil Rights Act, NMSA 1978 §41-4A-1 et seq.

17.02 INDEMNIFICATION. Lessee shall hold harmless, indemnify and defend City, and City's employees, agents, and contractors, in both their official and individual capacities, from any and all liabilities, claims, losses, damages, or expenses, including but not limited to reasonable attorneys' fees, loss of land value, third party claims, penalties or removal, remedial or

restoration costs arising out of, alleged to arise out of or indirectly connected with a) the operations hereunder of Lessee or Lessee's employees, agents, contractors, or invitees, b) the activities of third parties on the Leased Premises, *provided that* City is not at fault. In the event that any action, suit or proceeding is brought against Lessee in connection with this Lease, Lessee shall, as soon as practicable but no later than three (3) days after it receives notice thereof, notify the legal counsel of City. This Paragraph shall survive the termination, cancellation or relinquishment of this Lease, and any cause of action of City to enforce this provision shall not be deemed to accrue until City's actual discovery of said liability, claim, loss, damage, or expense.

The City acknowledges that it will be responsible for injury to persons or property to the extent such injury results from the negligent or intentional actions or omissions of that party's employees, officers or agents. The liability of The City shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978. §§ 41-4-1 et seq., as amended and the New Mexico Civil Rights Act, NMSA 1978 §41-4A-1 et seq.

Lessee further agrees that its obligation to indemnify, defend and hold harmless City shall not be limited to the limits or terms of the liability insurance, required pursuant to this Lease.

17.03 INSURANCE. Lessee shall purchase, or cause to be purchased, and maintain in effect during the Term of this Lease with insurance carriers or risk retention groups authorized to do business in the State of New Mexico and approved by the City, any insurance required by this paragraph. The insurance and additional insured requirements contained in this Lease are considered minimum coverage amounts and Lessee may elect greater coverage limits than what is specified in this Agreement or as may be required by law. All applicable coverage, unless specified otherwise, shall remain in full force and effect until the expiration, cancellation, or termination of the Agreement and for the subsequent three (3) years following the expiration, cancellation, or termination for loss covered by and occurring during the term of the Lease.

A. General Liability Insurance

Lessee shall carry and maintain, at Lessee's cost and expense, a policy of commercial general liability insurance (in the broadest form then available in New Mexico) that names the City as an insured party or additional insured party protecting the City against claims for bodily injury, personal injury, death and property damage. These required coverages may be provided by one or more policies. Such insurance must include coverage for all exposures arising from Lessee's operations, and contractual liability, to protect the Lessee and any additional insured parties from claims for bodily injury, including death, as well as from claims for property damages or loss which may arise from activities, omissions, and operations of the Lessee under the Lease, whether such activities, omissions, and operations be by the Lessee, subcontractor, or by anyone employed by or acting for the benefit of the Lessee in conjunction with this Lease. Such liability insurance coverage shall also extend to damage, destruction and injury to City-owned or

City-leased property and City personnel, and caused by or resulting from work, acts operations or omissions of Lessee.

Such insurance must specifically provide coverage for the City and its employees and agents in minimum amounts of \$2 million dollars (\$2,000,000.00) for damage to or destruction of each legally described real property arising out of a single occurrence; 2 million dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury or death; and \$2 million dollars (\$2,000,000.00) with respect to any one occurrence. Higher coverage for the City may be reasonably required by the City from time to time, including but not limited to increases needed to provide complete coverage for City's maximum liability under the New Mexico Tort Claims Act, NMSA 1978 § 41-4-1 et seq. and New Mexico Civil Rights Act, NMSA 1978 § 41-4A-1 et seq. City shall have no liability for premiums charged for such coverage, and inclusion of City as an insured party is not intended to, and shall not make City a partner or joint venturer with Lessee in its operations.

B. Property Coverage

In addition, the Lessee must obtain at its own expense, insurance coverage adequate to protect its operations, property, employees and agents in amounts Lessee finds sufficient but in no case shall such property insurance coverage be for less than one hundred percent (100%) Replacement Cost of Improvements on an Agreed Value Basis. Lessee shall be solely responsible for obtaining insurance policies that provide coverage for losses of Lessee-owned property, including improvements, and City shall be named as an additional insured on the policy. City shall not be required to provide such insurance coverage or be responsible for payment of Lessee's costs for such insurance.

22.5. Within ten (10) days after the execution of this Lease by City and delivery to Lessee, Lessee shall deliver to City original or duplicate certificates of insurance evidencing all the insurance which is required to be maintained under this Lease by Lessee certifying that all requirements set forth herein have been complied with, and within ten (10) days prior to the expiration of any such insurance, other original or duplicate certificates evidencing the renewal of such insurance. A certificate, policy, endorsement or rider which states that failure to give City notice imposes no liability or obligation on the insurer shall not be in compliance with this Lease. The following specific extensions of coverage must be indicated on the Certificate of Insurance:

- (1) Contractual liability
- (2) Bodily Injury and Property Damage liability
- (3) Premises operations
- (4) Personal injury
- (5) Advertising injury

- (6) Fire legal liability
- (7) Medical expense
- (8) Independent contractor/consultants/subcontractor/consultants
- (9) Products – completed operations
- (10) Pollution Liability
- (11) Additional insured endorsement (primary& non-contributing in favor of City)
- (12) Waiver of subrogation in favor of City

The above required Liability limits can be a combination of Primary Limits and Excess Liability/Umbrella limits. For example, certificates or policies stating that the insurer shall "endeavor to notify" and that "failure to give such notice imposes no obligation" on the insurer are unacceptable to City. Failure to comply with the insurance specifications in this Lease is a material breach of the Lease. Different types of required insurance may be written in one or more policies.

In the event of any cancellation of any insurance coverage required by or on behalf of Lessee pursuant to this Lease, whether it be for non-payment of premium or for other than nonpayment of premium, or in the event of any adverse, material change of any insurance required by this Lease effected by the insurance carrier providing such coverage, Lessee must email a copy of the cancellation notice or notice of adverse, material change to City's legal counsel and mail a copy to the address below no later than three (3) business days after the receipt of a cancellation notice or a notice of adverse material change.

Air Center Manager
1 Jerry Smith Circle
Roswell, New Mexico 88203

City agrees to waive its rights of subrogation that it may have against Lessee in the event Lessee's insurance providers pay insurance proceeds to City based on any act or failure to act by Lessee.

ARTICLE 18 – DEFAULT AND CANCELLATION

Upon either Party's violation of any of the terms, conditions, or covenants contained herein, including the failure to pay the rent when due, the other Party may cancel this Lease after providing sixty (60) days' written notice of the default by registered mail. The mailing of such notice as herein provided shall constitute notice of the intention to cancel the Lease and no proof of receipt of such notice shall be necessary in order to enforce the lease cancellation sixty (60) days after the mailing of the notice if the breaching Party has not cured the default to the

non-breaching Party's satisfaction within said sixty (60) day period. The Parties agree that if a court of competent jurisdiction determines that one Party has breached any of the terms, conditions or covenants of this Lease, the breaching Party shall pay the costs incurred by the non-breaching Party in litigating the default, including reasonable attorney fees. In the event of a breach of the terms of this Lease, the nonbreaching Party also shall have all remedies available at law or equity.

ARTICLE 19 – DAMAGE OR DESTRUCTION OF LEASED PREMISES

In the event the Leased Premises are damaged by fire or other perils, City may, in its sole and absolute discretion, repair or rebuild the same within a reasonable time after the event causing such damage. City shall in its sole discretion have the option to: (1) to repair, reconstruct or restore the Leased Premises within a reasonable time of the event causing the damage, in which case this Lease shall continue in full force and effect, but the rent shall be proportionately reduced as provided above during the period of such repair, reconstruction or restoration, or (2) to give notice to Lessee at any time within sixty (60) days after such damage occurs, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving to Lessee such notice of termination, this Lease shall terminate and all interests of Lessee in the Leased Premises shall cease on the date so specified in such notice and Lessee shall pay the rent, as proportionately reduced, based upon the extent, if any, to which such damage interfered with the business carried on by Lessee in the Leased Premises, up to the date of such termination. If the damage is due to the fault or neglect of Lessee or its employees, as reasonably determined by City, there shall be no reduction of rent.

City shall not be required to repair any damage by fire or other casualty, or to make any repair or replacements of any leasehold improvements, fixtures, or other personal property of Lessee.

ARTICLE 20 – COMPLIANCE WITH APPLICABLE FEDERAL, STATE, OR LOCAL LAW OR REGULATION

Lessee shall fully comply with all federal and state laws, regulations, rules, ordinances and requirements, applicable to the Leased Premises or to Lessee's operations thereon, including but not limited to all applicable federal and state laws governing water, endangered or threatened species, hazardous materials, environmental protection, land use, health and safety, cultural, historic or archeological/paleontological properties, waste, trespass, including all applicable federal, state, or local law or regulations that may be promulgated after the effective date of this Lease. Lessee agrees to protect the Leased Premises from waste or trespass. Lessee's compliance with all laws, regulations, and policy shall be at its own expense.

ARTICLE 22 – AMENDMENT

This Lease shall not be altered, changed, or amended except by an instrument executed by both City and Lessee.

ARTICLE 23 – APPLICABLE LAW

This Lease shall be governed by the laws of the State of New Mexico.

ARTICLE 24 – SUCCESSORS IN INTEREST; THIRD PARTIES

All terms, conditions and covenants of this Lease and all amendments thereto shall extend to and bind the heirs, successors and assigns of Lessee and City. There are no third-party beneficiaries of this Lease.

ARTICLE 25 – BANKRUPTCY

If Lessee should be adjudged bankrupt, either voluntarily or involuntarily, City shall have the option to pursue with the Court having jurisdiction all remedies to which City may be entitled in law or equity. In no event shall Lessee's interests in this Lease be deemed to be an asset of Lessee.

ARTICLE 26 -- HOLDOVER

If Lessee enters upon the Leased Premises after the termination or cancellation of this lease for any purpose, or leaves any equipment, buildings, materials, property or debris on the Leased Premises after the termination or cancellation of this lease, except to the extent contemplated otherwise in Section 10.03, the rent due City for such entry or presence shall be prorated for each day or any part of a day. Nothing contained herein shall be construed as the grant to Lessee of the right to enter the Leased Premises for any purpose after the termination or cancellation of this Lease without the prior written consent of City.

ARTICLE 27 – NOTICES The

Addresses for notice are:

For Notice to City:

Air Center Manager
1 Jerry Smith Circle
Roswell, NM 88203

For Notice to Lessee:

New Mexico Historical Air Museum, Inc.
Michael J. Hershman c/o Amy Vernazza
9 West 57th Street, 27th Floor

New York, New York 10019
Phone: (212) 715-0207
Email: mhershman@solovievgroup.com

ARTICLE 28 – RULES OF CONSTRUCTION

- (a) The captions and headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.
- (b) All references in this Lease to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Lease unless some other reference is established.

ARTICLE 29 – CALCULATION OF TIME

Any time period calculated by reference to "days" means calendar days unless expressly otherwise stated; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be first day following that is not a Saturday, Sunday, or such observed holiday.

ARTICLE 30 – STATUS OF CITY

Lessee acknowledges that City is a governmental entity which manages the Leased Premises pursuant to state law.

ARTICLE 31 – ENTIRE AGREEMENT AND AMENDMENT

This Lease and the New Mexico Historical Air Museum Agreement is intended by the Parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, with all negotiations, considerations, and representations between the Parties having been incorporated in them. No course of prior dealings between the Parties shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease and the New Mexico Historical Air Museum Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Lease other than those specifically set forth herein and in the New Mexico Historical Air Museum Agreement.

IN WITNESS WHEREOF, this Lease is executed the __ day of _____, 20__.

For City

By: Chad Cole, City Manager

By: Hessel Yntema, City Attorney

For Lessee:

New Mexico Historical Air Museum, Inc.

By: Michael Hershman
Its: Vice President

ATTEST:

Amalia Martinez, City Clerk

Exhibit

LEASE DESCRIPTION

Beginning at the Northwest corner of the lease, identified as (A), which lays approximately S 34° 29' 25" E a distance of 6786.52' from a survey control cap "BH-25-346-03".

Thence: S 89° 46' 10.4" E for a distance of 50.00' feet to a point on a line.
Thence: departing from said point S 00° 00' 00.00" W a distance of 521.21' feet to a point on a line.

Thence: departing from said point S 02° 37' 02.69" E a distance of 175.18' feet to a point on a line.
Thence: departing from said point S 24° 56' 54.34" E a distance of 88.23' feet to a point on a line.

Thence: departing from said point S 54° 43' 29.40" E a distance of 84.83' feet to a point on a line.
Thence: departing from said point S 68° 36' 17.06" E a distance of 175.82' feet to a point on a line.

Thence: departing from said point S 74° 09' 11.54" E a distance of 1976.66' feet to the beginning of a curve, said curve turning to the right through an angle of 62° 41' 09.77", having a radius of 175.00' feet, and whose long chord bears S 42° 48' 36.77" E for a distance of 182.05' feet, to a point of intersection with a non-tangent line.

Thence: N 89° 59' 26.32" W a distance of 80.51' feet, along the existing perimeter fence, to a point on a line.
Thence: N 23° 45' 34.86" W a distance of 27.84' feet to a point on a line.
Thence: N 49° 12' 17.20" W a distance of 88.23' feet to a point on a line.

Thence: N 71° 32' 08.85" W a distance of 175.18' feet to a point on a line.
Thence: N 74° 09' 11.54" W a distance of 1976.66' feet to the beginning of a curve, said curve turning to the right through an angle of 74° 09' 11.54", having a radius of 175.00' feet, and whose long chord bears N 37° 04' 35.8" W for a distance of 211.00' feet.

Thence: N 00° 00' 00.0" E a distance of 716.12' feet to the beginning of a curve, said curve turning to the right through an angle of 74° 09' 11.54", having a radius of 175.00' feet, and whose long chord bears N 37° 04' 35.8" W for a distance of 211.00' feet.

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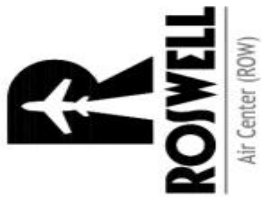
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The above described lease contains 3.96 Acres more or less.

NM HISTORICAL AIR MUSEUM
TOW ROAD LEASE



ROSSELL INTERNATIONAL AIR CENTER (ROW)
1 JERRY SMITH CIRCLE
CITY OF ROSWELL, NEW MEXICO 88203

