

## AIRPORT LEASE AGREEMENT

This Airport Lease Agreement ("Agreement") is made and entered into this 7<sup>th</sup> day of November, 2012, having an effective date of November 1, 2012, by and between the CITY OF PAGE, a municipal corporation organized and existing under the laws of the State of Arizona (the "Lessor"), and American Aviation, Inc., (the "Lessee").

### RECITALS:

**Whereas**, American Aviation, Inc., submitted a proposal in response to the City of Page's Request For Proposal published in August 2012; and

**Whereas**, on September 26, 2012, City Council accepted American Aviation's proposal contingent and subject to 1) a restriction of the lease to seventy-five percent (75%) of the open hangar space (in contrast to American Aviation's proposal of leasing the entire hangar) and 2) in addition to one (1) five year renewal option, a second five year renewal at the City's discretion and terms (in contrast to the proposal's offer of two (2) five year renewal options at American Aviation's option.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree to the following demise:

1.1 Agreement Documents. The following documents are hereby incorporated by reference into this Agreement, and shall be referred to as the Agreement Documents:

- a. City of Page, Request For Proposals- Page Airport Terminal and Hangar Lease Proposal.
- b. American Aviation, Inc.'s Proposal.

The above named documents are essential parts of this Agreement, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complimentary and to describe the entire Agreement. Lessee agrees to be bound by all terms, conditions, covenants, and obligations in the Agreement Documents as if each were again fully set forth verbatim herein. In the event there are conflicting terms in the above referenced documents, the City's Request For Proposals shall take precedent over Lessee's Proposal, and the expressed terms this Agreement shall take precedence and control both.

## **Premises/Privileges**

2.1 Premises. As described in the Agreement Documents. The open hangar lease space shall be restricted to seventy-five percent (75%) as illustrated in the City's Request for Proposal. In the event the City, for whatever reason, no longer desires to utilize the remaining twenty-five percent (25%), Lessee shall have the first right of refusal to rent the space.

2.2 Use of Airport. The Premises shall be used by the Lessee only for conducting the aviation business activities specified in this Agreement and shall be used for no other purpose unless the Lessor otherwise agrees in writing in advance. Lessor hereby grants the Lessee the following general privileges, uses, and rights, all of which are subject to the terms, conditions, and covenants hereinafter set forth and all of which will be non-exclusive relative to the Public Airport Facilities.

2.3 Use of Airport Public Facilities. Lessee shall be allowed the general use of all Public Airport Facilities and improvements which are now or may hereafter be constructed and are appurtenant to the Airport, except as hereinafter provided, to be used by the Lessee for the operations herein defined. The right of ingress and egress from the Premises over and across the public roadways serving the Airport may be utilized by Lessee, its agents, patrons, and invitees, subject to the City's ordinances, rules and regulations as now or may hereinafter be applicable to the Airport. Use of the Premises including any hangars, tie-downs and movable or portable hangars for the repair, maintenance, or storage of automobiles, boats, travel trailers, recreational vehicles, or other property not related to aircraft or air aviation business is expressly prohibited.

2.4 Use of Airport Parking Lot. Provided that Lessee is not in default under the terms of this Agreement, Lessor agrees to provide Lessee with the general use of the 93-space parking lot at the 10<sup>th</sup> Street side of the Premises during the effective term(s) of this Agreement, unless restricted by Federal Aviation Administration (FAA) or Transportation Security Administration (TSA) for security purposes, or as otherwise restricted.

2.5 Fixed Based Operations. In addition to the general privileges, uses and rights hereinbefore described, the Lessor hereby grants to Lessee the non-exclusive right to engage in the business of Fixed Based Operator. Lessee shall continue to provide services and expand services as referenced in the Agreement Documents.

Lessee shall not engage in additional business activities upon the Premises and shall not delete Services herein above provided unless approved in writing by the Airport Director/Manager.

## **Term**

3.1 Term. The effective date of this Lease shall commence on November 1, 2012, and shall, subject to the terms hereof, remain in full force and effect for five (5) years following the effective date of this Agreement, unless sooner terminated as herein provided.

3.2 Renewal Option. In the event this Agreement is in full force and effect and the Lessee is not in default and in compliance of all terms, responsibility, and obligations hereunder, Lessee shall have a onetime option to renew this Agreement for one additional term of five (5) years. Said renewal option shall occur automatically unless Lessee provides Lessor with written notice of its intention not to exercise the option at least six months prior and no more than twelve (12) months prior to the expiration of the current term.

In the event Lessee exercises its option and this Agreement is in effect at the end of ten (10) years, the City, through City Manager or Council may, in its sole discretion, subject to renegotiation of any terms herein, renew this Agreement for one additional five (5) year term.

#### **Lease Rates and Fees**

4.1 Base Lease Rate. As set forth in American Aviation, Inc.'s Proposal. Adjustment of rates and fees shall be pursuant to the City of Page Airport Rates and Charges Policy, as amended. Each monthly payment, together with any additional fees as provided herein shall be payable in advance on the first day of each month, with the first month's lease payment to be pro-rated on a daily basis, if appropriate.

4.2 Fuel Supply Farm. As described and referenced in the Airport Lease Agreement entered into by the City of Page and American Aviation on the 8<sup>th</sup> day of November, 2007. The fuel flowage fees shall be paid on a monthly basis to Lessor during each year Lessee conducts operations pursuant to this Agreement. The fees shall be pursuant to the City of Page Airport Rates and Charges Policy, as amended. All fuel flowage fees due to Lessor shall be paid within thirty (30) days of the date of delivery of the fuel invoice to lessee.

4.3 Termination of Lease Due to Late Payment/Fees. The Lessor may terminate this Agreement immediately, upon 10 days written notice to be served as hereinafter provided, in the event Lessee fails to pay all sums owed to Lessor under the terms of this Agreement by or on the first day of each month. Penalties for late payments shall be pursuant City of Page Airport Rates and Charges Policy, as amended.

4.4 Payment Bond. The Lessee, upon the execution of this Agreement and prior to entering the Premises, shall furnish to Lessor a payment bond or cash deposit conditioned upon the faithful and true performance, observation and compliance with all of the terms, conditions, and provisions of this Lease

Agreement. The payment bond or cash deposit shall be in an amount equal to 10% of the guaranteed first year annual base amount but in no event less than \$5,000.00.

4.5 Miscellaneous Charges. In addition to lease fees, Lessee shall pay all applicable sales and use taxes applicable to the lease of the Premises, including a 3% City lease tax. All other fees and charges pursuant to the City of Page Airport Rates and Charges Policy, as amended.

### **Construction and Installations by Lessee**

5.1 Permission of Lessor Required. Except as provided for elsewhere in this lease, the Lessee shall not construct any building, structure, or improvement upon the Premises, nor shall the Lessee undertake any major alteration, structural improvement, or major repair upon the Premises unless the written permission of the Lessor has been obtained, which permission shall not be unreasonably withheld. Notwithstanding anything to the contrary, and as set forth more fully in Section 8 of this Agreement, Lessee shall be entitled to impose a mortgage or other encumbrance on the improvements without obtaining prior written consent of the Lessor; provided, however, that said mortgage or lien will be imposed for the purpose of obtaining financing associated with the development of the Premises.

5.2 Construction of Improvements. Any construction which may be performed by the Lessee pursuant to written permission of the Lessor shall be done at Lessee's sole expense. The location, design, type of construction, dimensions, and other features of any improvements constructed on the Premises by the Lessee shall be submitted to Lessor for its reasonable review and approval prior to commencement of construction.

### **Custodial Services and Maintenance**

6.1 Custodial Services. The Lessor shall provide janitorial services, cleaning and custodial equipment and supplies for the Premises within the terminal, and for restrooms in the hangar. The Lessee shall maintain the described Premises within the hangar.

6.2 Maintenance by Lessor. The Lessor shall maintain or cause to be maintained and repaired in good condition, the Public Airport Facilities including the buildings, runways, taxi strips, parking aprons, including the parking apron that is a portion of the Premises; provided, however, that Lessor shall not be responsible for EXTRAORDINARY REPAIRS to Public Airport Facilities that are caused by Lessee's employees and agents which are in excess of ordinary wear and tear.

6.3 Utilities. In addition to any rental or other fee amounts due, the Lessee shall be responsible for all utilities for the Premises rented by Lessee in accordance with the City of Page Airport Rates and Charges Policy, as amended.

### **Encumbrances upon Property**

7.1 Limitations on Right to Encumber. Except as provided in Section 7.2 below, neither the Lessee nor any successors-in-interest to the Lessee shall engage in any financing or any other transaction creating any general leasehold mortgage or other encumbrance or lien upon the Property, or suffer any encumbrance or lien to be made against or attached to the Property without the prior written consent of the Lessor. In the event any Mortgagee of Lessee requests confirmation that any proposed lien is authorized by this Agreement, the City Manager shall be authorized to provide such written confirmation as may be required by such Mortgagee so long as such proposed lien is in fact authorized by this Agreement.

7.2 Consent Not Required. Notwithstanding the provision of Section 7.1 above, Lessee shall be entitled to impose a leasehold Mortgage or other leasehold encumbrance or lien upon the Property without obtaining the prior consent of the Lessor if the mortgage or lien has been imposed for the purpose of obtaining any financing associated with developing the Property for a Fixed Base Operation as defined in this Agreement.

7.3 Delivery of Notice. The Lessee shall be obligated to notify the Lessor in writing in advance of any financing secured by a leasehold deed of trust or other similar lien and security instruments it proposes to enter into with respect to the Property, and of any leasehold encumbrance or lien that will be created against or attached to the Property, whether by voluntary act of Lessee or otherwise. The notice shall set forth at a minimum the name and address of the proposed Mortgagee, as well as the general terms and conditions of the mortgage. Failure of the Lessee to notify the Lessor in writing in advance of any incumbrance or lien of the leasehold shall be considered a material breach of this Lease.

7.4 Construction Lien Indemnity. Any and all construction activity occurring on the Property by Lessee with written permission by Lessor shall be conducted in accordance with and shall comply with all applicable laws, rules, and regulations of the City of Page, the State of Arizona, and the United States Government. During the course of construction, the Lessee will comply with all applicable Worker's Compensation and other labor laws. The Lessee shall pay and discharge all claims for labor and material prior to the expiration of the time provided for filing of liens for claims of such nature. The Lessee shall indemnify and hold Lessor harmless from any and all liability or claims for damage, of every kind and nature, which might be asserted against the Lessor on account of or in any way related to such construction.

## **Indemnity and Insurance**

8.1 Indemnity. To the fullest extent permitted by law, Lessee shall indemnify, defend and hold harmless City, its agents, officers, officials and employees from and against any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including any reasonable attorney fees and/or litigation expenses, which may be brought or made against or incurred by City on account of (1) loss or damage to any property or interest of City, its officers, employees and agents, or any damages, injury to person or property, or death of any person arising out of, relating to, or alleged to have resulted from any acts, errors, omissions, work, or services of Lessee, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives, (2) any workers' compensation claims, unemployment compensation claims or unemployment disability claims of employees of Lessee or claims under similar such laws or obligations. This indemnification shall not extend to any loss, damage, injury, or death to the extent caused by the sole negligence or willful misconduct of City, or its employees. The amount and type of insurance coverage requirements set forth within this Agreement shall in no way be construed as limiting the scope of the indemnity as set forth herein.

Lessee hereby agrees that Lessor, in the absence of negligence or willful misconduct on the part of Lessor, shall not be liable for injury to Lessee's business or any loss of income or for damage to goods, wares, merchandise, or other property of Lessee, Lessee's employees, invitees, customers, or any other person in or about the Premises, nor shall Lessor be liable for injury to the person of the Lessee, Lessee's employees, agents, or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water, or rain, or from the breakage, leakage, obstruction, or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessee. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant, if any, of the building in which the Premises is located.

8.2 Certificates of Insurance. In addition to the indemnity required herein, Lessee at all times while Lessee, its agents, and employees are leasing the Premises shall maintain the following policies of insurance. Failure on the part of the Lessee to procure or maintain the required insurance, as well as name the Lessor, its officers, agents, commissions, and employees as Additional Insureds on the subject policies, shall constitute a material breach upon which the Lessor may immediately terminate the Agreement upon written notice to Lessee. Said Certificate of Insurance shall be filed with the City Clerk and City Risk Manager prior to the City's issuance of an Agreement for the Premises.

8.3 Fixed Base Operation. For a Fixed Base Operation, Lessee shall provide Lessor with evidence of insurance coverage for:

(a) Commercial General Liability: Per "occurrence form" for a combined single limit of One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) Annual Aggregate. The commercial General Liability Policy, including automobile liability, shall name the City of Page, its officers, agents, commissions, and employees as Additional Insureds. All insurance shall be primary and non-contributory with any other coverage available to the City of Page, et al.

(b) Hangarkeeper's Liability Insurance. The Lessee shall provide One Million Dollars (\$1,000,000) hangarkeeper's liability for aircraft that the owner has placed under the lessee's call, custody, and control for storage or repair.

(c) Fuel Farm Specialty Insurance. Lessee shall provide Lessor with evidence of Fuel Farm Specialty Insurance coverage with a minimum general liability limit of One Million Dollars (\$1,000,000). The Lessee shall name the City of Page, its officers, agents, commissions, and employees as Additional Insureds on the subject insurance policies.

8.4 Automobile Liability. Lessee shall provide Lessor with evidence of current Automobile Liability Insurance. Such coverage shall be for a Combined Single Limit of One Million Dollars (\$1,000,000) per occurrence.

8.5 Worker's Compensation and Employees Liability. Lessee shall provide Lessor with evidence of current Worker's Compensation and Employer's Liability insurance for Statutory Limits (Coverage A); for the limits of One Hundred Thousand Dollars (\$100,000) per accident; One Hundred Thousand Dollars (\$100,000) Disease each employee; Five Hundred Thousand Dollars (\$500,000) Disease Policy Limit (Coverage B), and a waiver of Subrogation Endorsement must be provided.

All such Certificates of Insurance described herein shall be filed with the City Clerk and City Risk Manager within thirty (30) days prior to commencement of business or construction. All Certificates of Insurance shall provide that such insurance coverage will not be canceled or reduced without at least sixty (60) days prior written notice to Lessor.

All insurance companies shall be A.M. Best rated A-VI or better. An Umbrella or Following Form Excess Liability Policy may be used to complete the One Million Dollar (\$1,000,000) limits required.

The insurance requirements established herein are minimums only, and the Lessor reserves the right to require higher limits of liability insurance if, in its sole

discretion, it determines that such higher limits are necessary in accordance with industry standards.

### **Rules and Regulations**

9.1 Compliance with All Law. The Lessee shall observe and comply with all laws, ordinances, rules, and regulations of the United States Government, the State of Arizona, the County of Coconino, and the City of Page, and all agencies thereof which may be applicable to its operations or to the operation, management, maintenance, or administration of the Airport now in effect or hereafter promulgated. The Lessee further agrees to display to the Lessor any and all permits, licenses, or other evidence of compliance with all laws upon request of the Lessor. Lessee acknowledges that it shall obtain any and all licenses and/or permits required in connection with operating the business conducted by Lessee on the Premises or Property at Lessee's sole expense.

9.2 Right to Improve Landing Area. Lessor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Lessee and without hindrance or interference.

9.3 Right to Control Activities. In concert with Lessor's obligation to maintain and keep in repair the landing area of the Airport and all Publicly Owned Facilities of the Airport, Lessor reserves the right to reasonably direct and control all activities of the Lessee in such regard.

9.4 Subordination. This Lease Agreement shall be subordinate to the provisions and requirements of any existing or future Agreement between Lessor and the United States, relative to the development, operation, or maintenance of the Airport.

9.5 Reservation of Airspace. There is hereby reserved to Lessor, its successors and assigns, for the use and benefit of the whole public, a right of passage of aircraft in the airspace above the surface of the Premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.

9.6 No Interference with Airport Operations. Lessee by accepting this Lease Agreement agrees for itself, its successors and assigns that it will not make use of the leased Premises in any manner that might interfere with the landing and taking off of aircraft from the Page Municipal Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Lessor reserves the right to enter upon the Premises leased and to cause the abatement of such interference at the expense of Lessee.

9.7 No Exclusive Right. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive

right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

### **Termination**

10.1 Termination by Either Party. The Lessor and/or the Lessee may cancel this Agreement by giving thirty (30) days advance written notice to be served as hereinafter provided, upon or after the happening of any one of the following events:

(a) The failure or refusal of the FAA or TSA, at any time during the term of this Agreement, to permit Lessee to operate in or from the Airport and such refusal or failure is not reversed or cured within one hundred and twenty (120) days.

(b) Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof for airport purposes which affects the Lessee's operation; and the remaining in force of such injunction for a minimum period of ninety (90) days if the injunction materially affects the Lessee's normal operations.

(c) The inability of Lessee to use, for a period in excess of ninety (90) days the Airport or the Premises, rights, licenses, services, or privileges leased to Lessee hereunder because of any law or any order, rule, regulation, or other action or any non-action of the FAA or any other governmental authority, or because of fire, earthquake, or other casualty or acts of God or the public enemy.

(d) The assumption by the United States Government or any authorized agency thereof of the operation, control, or use of the Airport or any substantial portions thereof, in such a manner as to substantially restrict Lessee, for a period of ninety (90) days, from operating Lessee's normal operations thereon.

10.2 Termination of Lease Due to Conflict of Interest. This Agreement may be cancelled pursuant to ARS §38.511, the provisions of same incorporated herein by this reference.

10.3 Termination of Lease Due to Breach. The Lessor may terminate this Agreement immediately, upon 30 days written notice to be served as hereinafter provided, in the event Lessee fails to comply with any obligation, provision, or condition as set forth within this Agreement. In the event the breach is for failure to pay rent or any other monetary sum owed to the Lessor under this Agreement, the Lessor may terminate this Agreement upon 10 days written notice.

10.4 Termination of Lease by Lessor and Lessee. In addition to any right to terminate this lease under state law due to breach or default, Lessor reserves the right to terminate this agreement, for no cause, upon thirty (30) day's written notice to Lessee. Lessee may also terminate this Agreement, for no cause, upon thirty (30) day's written notice to Lessor.

10.5 Removal of Property. Upon the termination or expiration of this Agreement by expiration thereof, the Lessee shall not damage the Airport or Premises by removal of personal property.

10.6 Ownership of Improvements. Permanent improvements to the leased Premises, including but not limited, to buildings, parking lots, hangars, parking aprons, etc., shall become the property of the Lessor at the termination of the Lease or any extensions thereof unless the Lessor determines that it would not be in its best interest to own such improvements. In that event, Lessee shall remove such improvements, within sixty (60) days of the termination of the Lease, at Lessee's sole expense.

#### **Miscellaneous**

11.1 Notices. Any notice desired or required to be served by either party upon the other or any notice provided for in this Agreement shall be in writing and shall be deemed given, if mailed, three (3) business days after being deposited in the United States mail, certified, return receipt requested, to the party to whom addressed, as set forth herein below:

Lessor:                   City of Page  
                                  P.O. Box 1180  
                                  Page, Arizona 86040

Lessee:                    American Aviation, Inc.  
                                  337 N. 2370 West, Suite 228  
                                  Salt Lake City, UT 84116

Any party may change the address to which notice shall be delivered or mailed by notice duly given.

11.2 Applicable Law and Venue. This Agreement shall be interpreted and enforced according to Arizona Law, except when pre-empted by Federal Law. Lessee waives all rights to object to venue in Coconino County, Arizona.

11.3 Attorney Fees. In the event that either party hereto shall institute and prevail in any action or suit for the enforcement of any of its rights hereunder, the prevailing party in said action shall be entitled to collect reasonable attorney fees and costs arising therefrom.

11.4 Severability. In the event any provision of the Agreement is held invalid and unenforceable, the other provisions of this Agreement shall be valid and binding on the parties hereto.

11.5 Entire Agreement. This Agreement contains the complete Agreement and understanding between the parties, and this Agreement shall not be modified,

except in writing executed by both parties. Any and all agreements in conflict herewith are hereby rescinded.

IN WITNESS WHEREOF, the parties hereto have entered into this Amended Agreement effective as of the day and year first hereinabove written.

CITY OF PAGE

AMERICAN AVIATION, INC.

BY: William R. Diak

BY: Jerry S. Knight

ITS: Mayor

ITS: President

ATTEST: Kim Larson  
Deputy City Clerk

APPROVED AS TO FORM: [Signature]  
City Attorney