CITY CLERK
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C-8138
08/27/2012

WHEN RECORDED, RETURN TO:
City of Glendale
City Clerk
5850 West Glendale Avenue
Glendale, Arizona 85301

LEASE AGREEMENT
Airport Terminal Office
(Master Lease form adopted by Ordinance No. 2761 New Series)

This Lease Agreement ("Lease") is executed to be effective the 1st day of September, 2012, between the City of Glendale, an Arizona municipal corporation ("City"), and Pivotal Properties, LLC ("Lessee").

WHEREAS, the City is the owner of the Glendale Municipal Airport located at 6801 North Glen Harbor Boulevard ("Airport");

WHEREAS, Lessee desires to lease certain office space ("Property") in the Airport terminal on which to occupy and operate aviation related operations, such property being more particularly described below and in Exhibit A attached hereto; and

WHEREAS, the City is willing to lease the Property to Lessee on the terms and conditions specified below.

NOW, THEREFORE, in consideration of the following mutual covenants and conditions, the parties hereby agree as follows:

1. LEASE; PRIVILEGES; RESTRICTIONS

A. The City hereby leases to Lessee the Property, described as Suite 206B, located in the Glendale Municipal Airport Terminal Building, consisting of 253.5 square feet and as set out in Exhibit A.

B. The City leases the Property to Lessee and grants to Lessee the following privileges, uses and rights:

1) The general use of all public facilities and improvements which are now or may hereafter be constructed at the Airport related to the Property, including corridors, lavatories and designated parking areas.

2) The right of ingress and egress from the Property over and across designated Airport property and the public roadways serving the Airport, and the public parking areas, to be utilized by the Lessee, its agents, employees and invitees.

C. Lessee shall not use the Property for any purposes other than those specified above. Any new or additional uses require the prior written approval of the City. All rights granted to Lessee under this Lease are non-exclusive.

D. Lessee shall not engage in any activities on the Airport that interfere with the use of the Airport and facilities for airport purposes.

E. Lessee is prohibited from developing residential living quarters on the Property. Any identified residential living quarters on the Property may be declared an event of default and subjects this Lease or any sublease to being declared null and void.

2. TERM

A. The original term of this Lease shall be for a period of 1 year (not to exceed five years) commencing on September 1, 2012 and expiring on August 31, 2013, unless sooner terminated pursuant to the provisions contained herein.

B. The City grants to Lessee an option to renew this Lease for five successive one year periods, subject to the same terms and conditions as are contained in this Lease, provided that Lessee is not in default of any of its obligations under this Lease at the time of renewal. Lessee may exercise the option by delivering to the Airport Manager written notice of its intention to do so at least sixty (60) days prior to the expiration of the original term of this Lease or any renewal thereof together with proof of insurance as required by this Lease.

3. RENT

A. From the effective date of this Lease, Lessee's annual rent will be $5,358.99. The monthly rental installment will be $446.58.

B. Lessee shall pay rent due on a monthly basis, divided into twelve equal installments, due on the first day of each month. Payments should be remitted to the City's finance and accounting office at 5850 West Glendale Avenue, Glendale, Arizona 85301.

C. The Lease rate will increase under the Consumer Price Index (CPI) annually based upon the anniversary month of the execution of this Lease and be calculated and implemented as follows: subtract the published CPI (All Urban Consumers, U.S. city average, 1982-84=100) for the anniversary month of the previous year from the CPI (All Urban Consumers, U.S. city average, 1982-84=100) for the anniversary month of the then current year; divide the result by the previous year CPI; then multiply the resulting factor by the current rental rate to determine the amount of increase; add the amount of increase to the then current rate to establish the rate that will become effective the 1st of the second month following the anniversary month. Rate increases under this paragraph do not require notice to

the Lessee and will become effective by operation of this Lease without further action.

D. If the City establishes a market-based annual rental increase in any particular year, then either the CPI above or the market study increase will apply for that year, whichever is greater.

E. If Lessee fails to pay any rent in full on or before the due date, Lessee shall be responsible for payment of a late fee in the amount of $50.00, due by the fifteenth day of the month. Any amounts paid later than fifteen days after the due date shall also bear interest on the unpaid principal balance at the rate of 18% annually from the due date until payment in full is made.

F. Any other fees or charges outlined in this Lease are in addition to the rent required under this paragraph.

4. TIE-DOWN FEES

Any tie-down space desired by Lessee during the term of this Lease is subject to the availability, standard terms and conditions, and the then currently authorized rates for tie-down space.

5. INSTRUCTION, RENTAL AND CHARTER FEES

Lessee shall pay City the then currently authorized fees for aircraft users or aircraft located at the Airport and used by Lessee for flight instruction, aircraft rental or aircraft charters.

6. AVIONICS SALES, MAINTENANCE AND REPAIR SERVICES

Lessee shall pay City 2½% of Lessee's gross sales on avionics, maintenance and repair services at the airport.

7. AIRCRAFT SALES

Lessee shall pay City 2½% of Lessee's gross sales on aircraft sales originating from Lessee's operations at the airport. This provision is applicable regardless of the location at which the transaction is closed.

8. DEPOSITS

Upon execution of this Lease, Lessee will deposit with City a refundable damage deposit equal to the amount of one month's rent in the amount of $446.58. A nonrefundable cleaning deposit for general cleaning, carpet shampooing, minor repairs and touchup will be required at the same time in the amount of $126.75. Deposits will be maintained by the City in non-interest bearing accounts.

9. UTILITIES

In addition to monthly rent, Lessee shall pay City a pro-rata share for utility services provided by the City based upon square feet of leased space. Utilities include water, wastewater, electricity and natural gas. Payment for utilities is due the first day of the month and should be remitted to the City's finance and accounting office at 5850 West Glendale Avenue, Glendale, Arizona 85301.

10. IMPROVEMENTS

A. Lessee is not authorized to make improvements or modifications to Airport property without the prior written consent of the City and without posting appropriate payment and performance bonds. Before commencing any improvements or modifications, Lessee shall submit detailed construction plans and specifications to the City; and upon completion of the construction, Lessee shall provide the City with two complete sets of detailed plans and specifications of the work as completed. All improvements and modifications must be constructed in a good, workmanlike manner by licensed contractors. All improvements or modifications made to Airport property become the property of the City, at no cost to the City, upon termination of Lessee's interest under this Lease.

B. The City may require modifications to the Property necessary for the safety of air navigation. If any improvements or modifications to the Property made by Lessee interfere with any F.A.A. navigational aid, Lessee is responsible for removing the interference at its sole cost. All improvements and modifications made by Lessee shall be constructed in a good, workmanlike manner by licensed contractors.

11. ACCEPTANCE; MAINTENANCE; REPAIRS

A. Lessee warrants that it has inspected the Property and accepts possession of the Property 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 F.A.A. and by ordinances of the City, and Lessee acknowledges the suitableness and sufficiency of the Property for the uses permitted hereunder.

B. City will maintain the structural integrity, basic utility accessibility and other major items of maintenance as to preserve the value of the Property; however, Lessee is responsible for all other maintenance or repairs as stated herein. Lessee shall maintain the property and keep it at all times in a safe and serviceable condition and in accordance with the minimum standards for maintenance and operation required by applicable Federal, state and local agencies, including but not limited to the United States Department of Transportation ("DOT") and the United States Federal Aviation Administration ("FAA").

C. The City reserves the right, but is not obligated to Lessee, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Lessee concerning those activities.

D. Lessee is solely responsible, at its cost, to make repairs for any damage caused by Lessee, or its agents, employees, or invitees to the Property. Lessee shall maintain the Property and keep it at all times, in a clean and orderly condition and appearance, including any personal property or fixtures of the Lessee. Lessee is responsible for regular and routine janitorial services on the Property.

E. If Lessee fails to repair or maintain the Property to the satisfaction of the City, within a period of twenty days after written notice from the City to do any maintenance or repair work required to be done by Lessee, the City may terminate this Lease or, at its option, enter the Property, without the entering causing or constituting a termination of this Lease or any interference with the possession of the Property, and maintain or repair, any part of the Property or the improvements thereon, and do all things reasonably necessary to accomplish the work required, and all costs thereof are payable to the City by Lessee on demand. However, if in the opinion of the City, Lessee's failure to perform maintenance endangers the safety of the public, the employees, the Property or other tenants at the Airport, and the City so states in notice to Lessee, the City may, in its sole discretion, elect to perform the maintenance at any time after the giving of notice, and Lessee, upon demand, shall pay the City for all work done. If the City, its officers, employees or agents undertake any work hereunder, Lessee hereby waives any claim for damages, consequential or otherwise, resulting therefrom 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 Lease and shall not impose upon the City any obligations unless stated otherwise herein.

12. <u>ADDITIONAL OBLIGATIONS OF LESSEE</u>

A. Lessee shall at all times employ and designate a manager to supervise and manage its operations hereunder and provide the City with the manager's name and contact information within 48 hours of the manager's appointment. Lessee shall employ a sufficient number of trained personnel on duty to provide for the efficient and proper compliance with its obligations under this Lease. Upon request of the Airport Manager, Lessee will provide, and its employees shall wear or carry, badges or other suitable means of identification.

B. Lessee will conduct its operations in an orderly and proper manner so as to not unreasonably annoy, disturb, endanger or be offensive to others. Lessee shall not produce on the Airport any disturbance that interferes with the operation by the City or the F.A.A. of air navigational, communication or flight equipment on the Airport.

C. Lessee is responsible for controlling the conduct and demeanor of its officers, agents, employees, and invitees and, upon objection from the City concerning the conduct or demeanor of any such person, Lessee shall immediately take all lawful steps necessary to remove the cause of the objection.

D. Lessee shall comply with all written instructions of the City in disposing of its trash and refuse and use a system of refuse disposal approved by the City.

E. Lessee will not commit nor permit to be done anything which may result in the commission of a nuisance, waste or injury on the Property.

F. Lessee will not, 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 Property.

G. Lessee will take measures to ensure security of the Property and implement any additional security measures as requested in writing by the Airport Manager. All security costs are borne by Lessee.

H. Lessee shall provide prompt, written notice to the City of any person or entity performing flight instruction, air taxi, aircraft charter or aircraft leasing of any sort on the Airport for commercial purposes without a valid permit from the City.

13. INGRESS AND EGRESS

The City may, at any time, temporarily or permanently, close or consent to or request the closing of, any roadway at the Airport and any other way at, in or near the Property presently or hereafter used as such, so long as a reasonable means of ingress and egress remains available to Lessee. Lessee hereby releases and discharges the City, its officers, employees and agents, and all other governmental authorities from all claims, demands, or causes of action which Lessee may at any time have against any of the foregoing, arising out of the closing of any roadway or other area, provided that a reasonable means of access to the Property remains available to Lessee. 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 Property.

14. ASSIGNMENT AND SUB-LETTING

A. Lessee will not assign or sub-lease any of its interest under this Lease, nor permit any other person to occupy the Property, without the prior written consent of the City. City will not unreasonably withhold consent so long as Lessee presents compelling reasons to City for the assignment or sublease. As a condition of approval, Lessee shall submit biographical and financial information of the proposed assignee or sub-lessee as well as the potential terms of the sub-lease at

least thirty days prior to any anticipated transfer of Lessee's interest. The terms of this Lease will be considered as incorporated into any sub-lease.

B. Lessee may not mortgage, encumber or assign any portion of its right, title and interest in this Lease to lenders for any purpose.

C. With an approved sub-lease, Lessee shall pay the City 2% of any increment of rent paid to Lessee by the sub-lessee that is greater than the amount of rent then currently paid by the Lessee to City (sub-lease surcharge). The sub-lease surcharge payment shall be made concurrently with the rental payment required under this Lease.

15. ADVERTISING SIGNS

Lessee may install signage on the Property identifying its business. The number, general type, size, and location of signs must be approved in writing by the Airport Manager prior to installation. Any use of the City's advertising board is subject to the then current terms, conditions and rates for use. Any sign installation outside the terminal building or elsewhere on the Airport must comply with this paragraph as well as with applicable City zoning code requirements.

16. DEFAULT; TERMINATION BY CITY

A. The City may terminate this Lease by giving Lessee thirty days written notice after any of the following events:

1) The failure of Lessee to perform any of its obligations under this Lease, if Lessee fails to cure its default within the thirty day notice period; or

2) The taking of possession for a period of ten days or more of substantially all of the personal property used on the Property belonging to Lessee by or under lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.

B. The City may place Lessee in default of this Lease by giving Lessee thirty days written notice of Lessee's failure to timely pay the rent provided for in this Lease or any other charges required to be paid by Lessee pursuant to this Lease. During the thirty day notice period, Lessee shall cure any default; otherwise, the City may elect to terminate this Lease or do any of the following:

1) Institute action(s) to enforce this Lease;

2) Take possession of the Property, and without terminating this Lease, and on behalf of Lessee, re-let the same or any part thereof for a term, shorter, longer, or equal to the then unexpired remainder of the Lease term. The

City may at any time after taking possession terminate this Lease by giving notice to Lessee and sue for damages;

3) Terminate this Lease, without further notice to Lessee, re-enter the Property and recover damages, including but not limited to, all costs of repossession and re-letting and brokerage commissions for services performed by or for the City;

4) Exercise the "Remedies of Landlord" as set forth in *Arizona Revised Statutes*, Title 33; or

5) Exercise any other remedy allowed by law or equity.

C. If Lessee at any time fails to maintain all insurance coverage required by this Lease, the City may, upon written notice to Lessee, immediately terminate this Lease or secure the required insurance at Lessee's expense.

D. Upon the termination of this Lease for any reason, all rights of Lessee will terminate, including all rights of Lessee's creditors, trustees, and assigns, and all others similarly situated as to the Property.

E. Failure by the City to take any authorized action upon default by Lessee of any of its obligations hereunder does not constitute a waiver of default nor of any subsequent default by Lessee. Lessee and City agree that acceptance of rent and other fees by the City under this Lease for any period after a default by Lessee of any of its obligations will not be considered a waiver or estoppel of the City's right to terminate this Lease for any subsequent failure by Lessee to comply with its obligations.

17. TERMINATION BY LESSEE

Lessee may terminate this Lease at any time that it is not in default in its obligations by giving the City thirty days written notice after any of the following events:

A. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining Lessee's use of any substantial portion of the Property and the remaining in force of such injunction for a period of thirty consecutive days.

B. The inability of Lessee to use any substantial portion of the Property for a period of thirty consecutive days, due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, local or airport emergencies or Acts of God or the public enemy.

C. The lawful assumption by the United States Government of the operation, control, or use of the Airport or any substantial part of it for military purposes in time of war or national emergency.

18. INDEMNIFICATION

Lessee shall defend, indemnify and hold harmless the City, including its elected or appointed officials, agents, boards, commissions and employees, from all loss, damages or claims of whatever nature, including attorneys' fees, expert witness fees and costs of litigation, which arise out of any act or omission of Lessee, including its agents, employees and invitees in connection with Lessee's operations at the Airport and which result directly or indirectly in the injury to or death of any persons or the damage to or loss of any property, or arising out of the failure of Lessee to comply with any provisions of this Lease. The City shall in all instances, except for loss, damages or claims resulting from the sole negligence of the City, be indemnified by Lessee against all such loss, damages or claims, regardless of whether the loss, damages or claims are caused in part by the negligence, gross negligence or fault of the City. The City shall give Lessee prompt notice of any claim made or suit instituted which may subject Lessee to liability under this Section, and Lessee may compromise and defend the same to the extent of its own interest. The City may, but has no duty, to participate in the defense of any claim or litigation with attorneys of the City's selection without relieving Lessee of any obligations hereunder. Lessee's obligations hereunder shall survive any termination of this Lease or Lessee's activities at the Airport.

19. INSURANCE

Lessee shall procure, and at all times, maintain the following types and amounts of insurance for its operations on the Property:

A. Commercial general liability including broad form contractual, personal injury, premises, completed operations and fire legal liability in the amount of not less than $2,000,000 per occurrence; hangarkeeper's liability if storing aircraft in the amount of not less than $2,000,000 per occurrence; and aircraft flight operations liability coverage in an amount of not less than $1,000,000 aggregate with a sub-seat limit of not less than $100,000 if providing flight operations, sales or schools.

B. Automobile liability insurance for all owned, non-owned or hired vehicles in an amount of not less than $2,000,000 combined single limit per occurrence.

C. Fire and extended casualty coverage for all improvements and fixtures on Lessee's premises in an amount of not less than the full replacement value thereof, to the extent Lessee has an insurable interest in the Property.

D. Worker's compensation and employer's liability coverage in the amounts required by law.

E. Insurance shall be in a form satisfactory to and from a company acceptable to the City's Risk Manager, shall name the City as an additional insured and shall require thirty days written notice to the City before modification or termination. The insurance must also include contractual liability coverage for the obligation of

indemnity assumed in this Lease. Policy issuer must possess an A.M. Best rating of at least A.

F. The City's Risk Manager may determine other requirements necessary for Lessee's operations. Insurance requirements are subject to periodic review and adjustment by City.

20. QUIET ENJOYMENT

So long as Lessee timely pays the rent required under this Lease and performs all of its other obligations under this Lease, Lessee may peaceably have and enjoy the exclusive use of the Property and all the privileges granted herein for use of the Airport. Exclusive use of the Property does not confer any exclusivity as to type of operation relative to other Airport tenants.

21. SURRENDER OF POSSESSION

Upon the expiration or termination of this Lease, Lessee's right to occupy the Property and exercise the privileges and rights granted under this Lease cease, and it shall surrender and leave the Property in as good condition as it was upon initial occupancy, normal wear and tear excepted. Unless otherwise stated, all trade fixtures, equipment, and other personal property installed and placed by Lessee on, but not attached to the Property, remain the property of Lessee, and Lessee may, at any time during the term of this Lease remove the fixtures, equipment or personal property and Lessee shall repair, at its sole cost, any damage caused by removal. Any property not removed by Lessee becomes part of the Property and ownership vests with the City.

22. NOTICE

A. All notices required or permitted under this Lease may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

TO THE CITY:
Glendale Municipal Airport
Attention: Airport Manager
6801 North Glen Harbor Boulevard, Suite 201
Glendale, Arizona 85307

with a copy to:
City Attorney
CITY OF GLENDALE
5850 West Glendale Avenue, Suite 450
Glendale, Arizona 85301

TO LESSEE:
Pivotal Properties, LLC
ATTN: Michael P. Edger
6801 N. Glen Harbor Blvd., Suite 206B
Glendale, AZ 85307

with a copy to: Statutory Agent:
Michael Edger
PO Box 28184
Scottsdale, AZ 85255

B. Any notice given by certified mail is considered received on the next business day after the date of mailing. Either party may designate in writing a different address for notice purposes under this Section.

23. SEVERABILITY

If any provision of this Lease is declared invalid by a court of competent jurisdiction, the remaining terms shall remain effective if elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations.

24. TAXES AND LICENSES

A. Lessee shall pay any leasehold tax, possessory interest tax, sales tax, personal property tax, transaction privilege or other exaction assessed or assessable as a result of its occupancy of the Property or conduct of business at the Airport under authority of this Lease, including any tax assessable on the City. In the event that laws or judicial decisions result in the imposition of a real property tax on the interest of the City, the tax shall also be paid by Lessee for the period this Lease is in effect.

B. Lessee acknowledges that it may be a "prime lessee," as defined in A.R.S. § 42-6201, and that it may, or in the future, may be subject to government property lease excise tax liability under this Lease. Lessee further acknowledges that any failure by Lessee to pay taxes due under this section after notice and an opportunity to cure constitutes a default that could result in divesting Lessee of any interest in or right to occupancy of the Property.

C. Lessee shall, at its own cost, obtain and maintain in full force and effect during the term of this Lease, all licenses and permits required for its business purpose.

D. The taxes due under this section are not a substitute for nor in lieu of any other fees or surcharges associated with sales transactions and otherwise required under this Lease.

This Lease is governed by the laws of the State of Arizona. In the event of any litigation or arbitration between the City and Lessee arising under this Lease, the successful party is entitled to recover its attorneys' fees, expert witness fees and other costs incurred in connection with the litigation or arbitration. Both parties hereby waive any right to a jury trial and consent to a trial to the court.

26. RULES AND REGULATIONS

Lessee shall comply with all applicable federal, state, or local government agreements, laws, rules, regulations, ordinances, grant assurances, including the Americans with Disabilities Act, and with the orders of any and all governmental authorities and agencies concerning the Airport or the Property or the use thereof, including, without limitation, orders of the DOT, the FAA, the United States Department of Homeland Security, and the EPA, including all laws, ordinances, rules, regulations and orders adopted after the effective date of this Lease. All rules and regulations and minimum operating standards for the Airport, as currently existing or as may be amended or adopted, are also hereby incorporated as terms of this Lease.

27. RIGHT OF ENTRY RESERVED

A. The City may at all reasonable times enter upon the Property for any lawful purpose if the action does not unreasonably interfere with Lessee's use, occupancy or security of the Property. The City may also enter upon the Property at any reasonable time for the purpose of making any inspection it may deem appropriate for the proper enforcement of any of the covenants or conditions of this Lease.

B. Without limiting the above, the City and any utility provider may, at their own cost, whether for their own benefit or for the benefit of others at the Airport, enter the Property at all reasonable times so long entry does not unreasonably interfere with Lessee's operation to: maintain, repair or replace existing and future utility, mechanical, electrical or other systems which, in the opinion of the City, are necessary or advisable; or construct or install over, in or under the Property systems or parts in connection with maintenance and use the Property for access to other parts of the Airport otherwise not conveniently accessible.

C. If any personal property of Lessee obstructs the access of the City or any utility company providing service to any of the existing utility, mechanical, electrical and other systems, Lessee shall move the obstruction, as directed by the City or utility company. If Lessee fails to move the obstruction after direction, the City or the utility company may move it, and Lessee shall pay the cost of moving upon demand. Lessee hereby waives any claim for damages as a result the involuntary removal except for claims for damages arising from the City's sole negligence.

28. SECURITY PLAN

City reserves the right to implement an Airport Security Plan in a form acceptable to the FAA limiting access of persons, vehicles and aircraft in and around the airside and

landside of the Airport and to modify that plan from time to time as necessary to accomplish its purposes. Lessee shall at all times comply with the Security Plan or any directives of the Airport Manager under an imminent threat to security.

29. FAA REQUIREMENTS

A. The Lessee for himself, his 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 said Property described in this Lease for a purpose for which a U.S. DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

B. The Lessee for himself, his 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: (i) 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 said facilities; (ii) 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; (iii) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

C. In the event of breach of any of the above nondiscrimination covenants, the City may terminate this Lease and reenter and repossess the Property and hold the Property as if this Lease had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.

D. The Lessee assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the Lessee or its transferee for the period during which Federal assistance is extended to any Airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the Lessee or any transferee for the longer of the following periods: (i) the period during which the Property is used by the Lessee or any transferee for a purpose for which Federal assistance is extended, or for another

purpose involving the provision of similar services or benefits; or (ii) the period during which the Lessee or any transferee retains possession of the Property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

E. Lessee shall furnish its accommodations and/or services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and it shall charge reasonable, and not unjustly discriminatory, prices for each unit or service; provided, that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers or customers.

F. Lessee shall insert the above five provisions in any lease by which Lessee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Property.

G. Lessee will comply with the notification and review requirements covered in Federal Aviation Regulations ("F.A.R") Part 77 in the event future construction of a building is planned for the Property, or in the event of any planned modification or alteration of any present or future building or structure situated on the Property.

H. Lessee will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Property that exceeds the mean sea level elevations contained in F.A.R., Part 77 or amendments thereto, or that interferes with the runway and/or taxiway "line of sight" of the control tower. If these covenants are breached, the City reserves the right to enter upon the Property and remove the offending structure or object and cut the offending tree, all of which will be at the expense of Lessee.

I. Lessee will not make any use of the Property which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. If this covenant is breached, the City reserves the right to enter upon the Property and cause the abatement of the interference at the expense of Lessee.

J. This Lease is subordinate to City's obligations to the federal government under existing and future agreements for federal aid for the development and maintenance of the Airport. Lessee shall do nothing in its performance of its obligations under this Lease that would cause any noncompliance with such obligations of the City. City and Lessee agree that, to the extent any provisions of this Lease are in noncompliance with such obligations, City and Lessee shall take any necessary corrective action in order to bring the Lease into compliance with such obligations.

K. There is reserved to the City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Property. This public right of flight includes the right to cause any

noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from or operation on the Airport.

L. Lessee understands and agrees that nothing contained in this Lease shall be construed as granting or authorizing the granting of an exclusive right within the meaning of 49 U.S.C. §§ 40103(e) and 47107(a)(4).

M. The City reserves the right to further develop, improve, or otherwise change the Airport as it sees fit, regardless of the desires or views of Lessee, and Lessee shall not interfere with, or hinder the City in it plans, policies or actions for Airport development. This provision in no way precludes Lessee's right to public voice and input during meetings or solicitations calling for such comments or input.

30. SURVIVAL OF LESSEE'S OBLIGATIONS

If this Lease is terminated by the City in accordance with the provisions herein or if the City re-enters or resumes possession of the Property as provided herein, all of Lessee's obligations under this Lease shall survive the termination, re-entry or resumption of possession and remain in full force and effect for the full term of this Lease, and the amounts of damages or deficiencies will become due and payable to the City to the same extent, at the same times, and in the same manner as if no termination, re-entry or resumption of possession had taken place. The City may, at its option and at any time, sue to recover the full deficiency for the entire unexpired term of this Lease. The amount of damages for the period of time subsequent to termination (or re-entry or resumption of possession) will include all expenses incurred by the City in connection with regaining possession, restoring the Property, acquiring a new lease for the Property, putting the Property in order, maintenance and brokerage fees.

31. REMEDIES TO BE NONEXCLUSIVE

All remedies provided in this Lease are cumulative and additional, 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 of other remedies, shall not prevent the exercise of any other remedy.

32. TIME IS OF THE ESSENCE

Time is of the essence with regard to the performance of all of the parties' obligations under this Lease.

33. FOREIGN PROHIBITIONS

Lessee certifies under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that it does not have, and during the term of this Lease will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

34. CONFLICTS

This Lease is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

35. MISCELLANEOUS

This Lease constitutes the entire agreement between the parties and supersedes all prior negotiations, understandings and agreements between the parties concerning the matters. This Lease shall be interpreted, applied and enforced according to the fair meaning of its terms and not construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Lease may be waived or modified except by a writing signed by the party against whom such waiver or modification is sought to be enforced. The terms of this Lease are binding upon and inure to the benefit of the parties' successors and assigns.

[Signatures appear on following page.]

EXECUTED to be effective on the date specified above.

"City":

CITY OF GLENDALE, an Arizona municipal corporation

Horatio Skeete

Acting City Manager

ATTEST:

Pam Hanna, City Clerk

APPROVED AS TO FORM:

Craig Tindall, City Attorney

"Lessee":

PIVOTAL PROPERTIES, LLC an Arizona limited liability company

Printed Name: Michael P. Edger
Title: Broker - Avondale Branch Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 22nd day of August, 2012, by Michael P. Edgar, in his/her capacity as Broker of Pivotal Properties, Lessee.

OFFICIAL SEAL
CINDY TURSKI
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm Expires Feb. 14, 2014

Notary Public

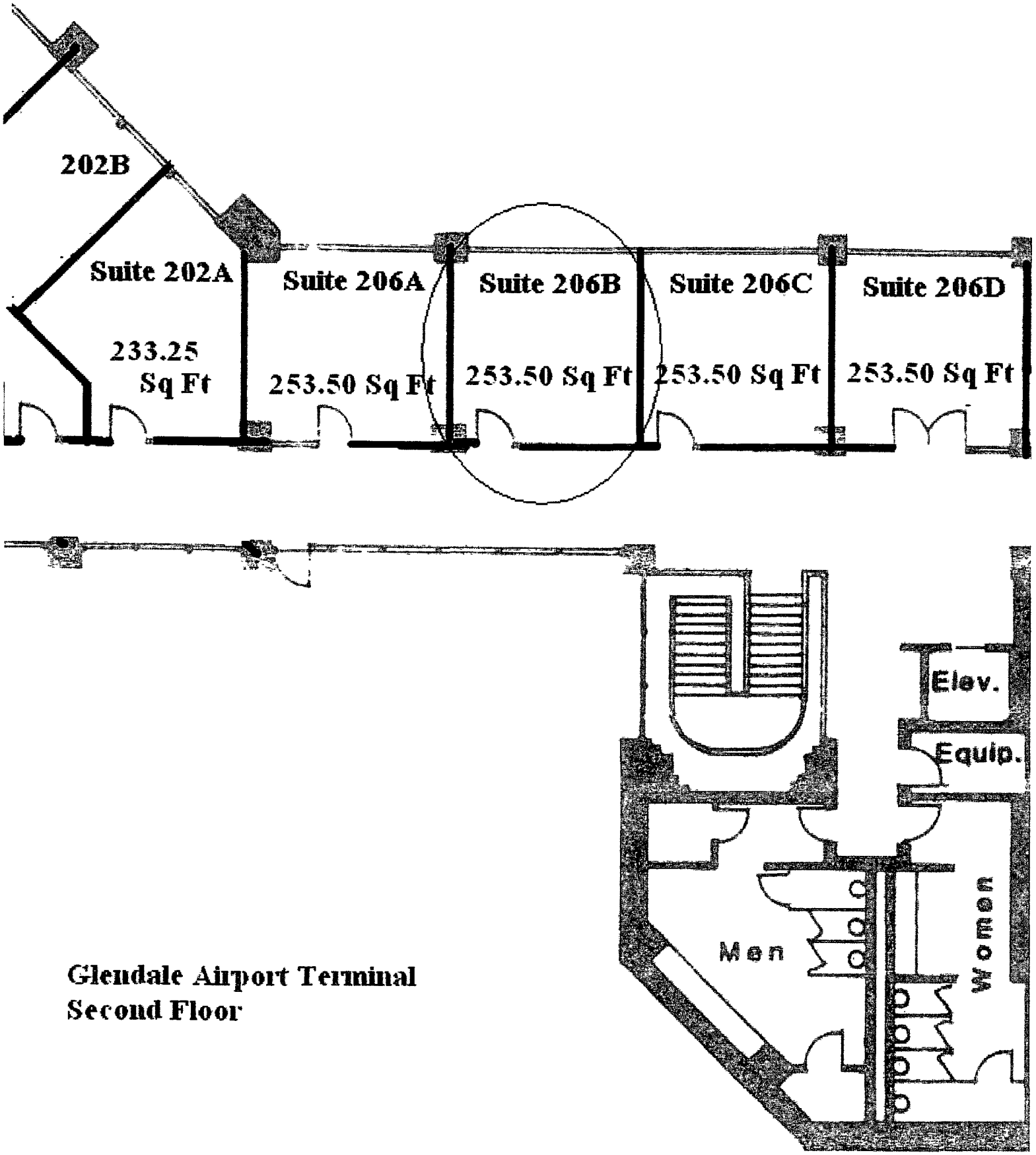
My Commission Expires:

2/14/2014

EXHIBIT A

(Diagram attached)

EXHIBIT - A



Glendale Airport Terminal
Second Floor

Recorded by.
City Clerk's Office
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
ELECTRONIC RECORDING
20120773075,08/28/2012 03.37,
C8138-20-1-1--,N

CITY OF GLENDALE, ARIZONA

AGREEMENT C- 8138

(Lease Agreement, Airport Terminal Office)

(PLEASE DO NOT REMOVE ~ THIS IS PART OF THE OFFICIAL DOCUMENT)