

When Recorded Mail To:

City of Cottonwood  
827 N Main St.  
Cottonwood AZ  
86326



INSTRUMENT # 9454950  
OFFICIAL RECORDS OF  
YAVAPAI COUNTY  
MARGO W. CARSON  
REQUEST OF:

CITY OF COTTONWOOD  
DATE: 09/16/94 TIME: 10:45  
FEE: 4.00 SC: PT:  
BOOK 2897 PAGE 675 PAGES: 008

EIK	FEE
	4
MAP	\$1
PCL	\$5
	\$1
	4

INDEXED &  
MICROFILMED

Caption: Sixth Amendment to and assignment of ground lease  
DO NOT REMOVE  
THIS IS PART OF THE OFFICIAL DOCUMENT

Enclosed for re-recording is a Sixth Amendment to and Assignment of Ground lease between the city of Cottonwood and Cottonwood Airpark, Inc., with Exhibit A, which was not originally sent with the document for recording in August.

INDEXED &  
MICROFILMED



INSTRUMENT # 9450250  
OFFICIAL RECORDS OF  
YAVAPAI COUNTY  
MARGO W. CARSON  
REQUEST OF:  
CITY OF COTTONWOOD  
DATE: 08/24/94 TIME: 10:30  
FEE: 3.00 SC: PT:  
BOOK 2885 PAGE 393 PAGES: 005

BK	FEE
	3
MAP	\$1
PCL	\$1
	\$1
	3

When Recorded Return to:  
Robert Erven Brown, p.a.  
11811 North Tatum Blvd.  
Suite 3031  
Phoenix, Arizona 85028-1641

**SIXTH AMENDMENT TO,  
AND ASSIGNMENT OF,  
GROUND LEASE**

**"EFFECTIVE DATE":** JULY 5, 1994

**"LANDLORD":** THE CITY OF COTTONWOOD, formerly known as the "Town" of Cottonwood, an Arizona municipality

**"OLD TENANT":** COTTONWOOD AIRPARK, INC., an Arizona corporation

**"NEW TENANT" and, hereafter, "TENANT":** COTTONWOOD AIRPARK L.C., an Arizona Limited Liability Company

**"LEASED PREMISES":** Described in Section 2, Premises and Survey, in the original Ground Lease dated May 5, 1983, as amended (see below for amendments).

**"PURPOSE OF AMENDMENT":**

(a) Deletion of the "Released Parcel" as described on Exhibit A from the definition of "Premises" in the Ground Lease as of the Effective Date of this Sixth Amendment; and to

(b) Approve Substitution of Cottonwood Airpark L.C. as the "Tenant" in place of Cottonwood Airpark, Inc. and to release Cottonwood Airpark, Inc. from all obligations and liabilities under this Ground Lease as of the Effective Date.

## **BACKGROUND**

**A.** The Landlord and the Old Tenant signed a Ground Lease Agreement dated May 5, 1983, which is referred to as the "Original Lease". (A Memorandum of Lease dated May 23, 1983 was recorded on January 4, 1984 in Book 1597, pages 576 - 581 and later corrected by an instrument recorded July 1, 1985 in Book 1734, pages 11 - 15 of the Records of the Yavapai County Recorder.) It was amended by the First Amendment dated November 30, 1983, the Second Amendment dated March 12, 1985, the Third Amendment dated August 21, 1985, the Fourth Amendment dated February 7, 1989, and the Fifth Amendment dated January 1, 1994 (collectively, the "Prior Amendments") all of which are incorporated by reference. The Original Lease, the Prior Amendments and this Sixth Amendment are collectively referred to as the "Ground Lease".

**B.** The terms and conditions contained in the Ground Lease are hereby ratified, confirmed and continue in full force and effect. The Term Commencement Date of December 31, 1983 began a 25 year Term as to certain portions of the Lease and a 50 year Term as to certain other portions. The Lease also granted options for renewal. The parties intend to ratify and affirm the length of the Term and of the option rights to the maximum extent allowed at law or in equity. There are no amendments, modifications, supplements or other agreements or understandings except for those contained in the Ground Lease. Landlord acknowledges that Tenant has paid all rent, fully performed all of its obligations and is in good standing under the Ground Lease.

**C.** Landlord wants to regain legal control of a parcel of land located at the Cottonwood Airport. Referred to as the "Released Parcel" in the legal description in Exhibit A, this Released Parcel presently is a part of the Premises leased to Tenant in the Ground Lease. Tenant is willing to remove this Released Parcel from the description of the Premises upon payment by Landlord to Tenant of compensation by Landlord's waiver of the requirement for payment of certain Rent and by crediting Tenant with 10 acres of developed property as called for in the development plan and timetable contained in the Ground Lease.

**D.** The corporate existence of the Old Tenant is being terminated and replaced by a limited liability company of the same name with essentially the same principals. Landlord has agreed to approve that transfer, release the Old Tenant and permit assumption of the Lease obligations by the New Tenant and as otherwise set forth below.

## **Agreement**

Therefore, in consideration of these covenants and agreements, and to compensate Tenant for its damages sustained through the loss of a portion of its

valuable lease rights, Landlord, Old Tenant and New Tenant hereby amend the Ground Lease by this "Sixth Amendment":

1. **Incorporation By Reference.** The provisions of the Background section of this "Sixth Amendment" and all Exhibits are incorporated as a material part of the Ground Lease. If there is a conflict or inconsistency between the provisions of this Sixth Amendment and any prior amendment or a conflict between the provisions of this Sixth Amendment and any provision of the Ground Lease Agreement, then the provisions of this Sixth Amendment shall prevail and control.

2. **Assignment and Release.** Old Tenant hereby bargains, sells, assigns, sets over, and transfers to New Tenant with full recourse all of its right, title and interest in, and arising from, the Ground Lease, as amended, including all improvements located on the Leased Premises, if any. As of the Effective Date the Old Tenant has no further right, title, interest or responsibility for the performance of any obligation under the Ground Lease. All Rent and other payments due from the Old Tenant to the Landlord as of the Effective Date have been paid in full.

3. **Released Parcel.** Tenant and New Tenant hereby release, quit claim and return to Landlord, and Landlord hereby accepts from Tenant, the Released Parcel. As of the Effective Date the Released Parcel is (a) no longer included in the definition of the "Premises" of the Ground Lease and (b) is no longer subject in any manner to the terms and conditions of the Ground Lease. Tenant has neither any further right, title, interest nor responsibility for the Released Parcel.

4. **Consideration for Relinquishment.** In consideration for the relinquishment of its rights in the Released Parcel, the \$24,000 in Rent previously paid by Tenant for the Released Parcel shall be applied by Landlord as a credit against future Rent due from Tenant under the Ground Lease of \$8,000 in each of the calendar years 1994, 1995 and 1996. In addition, Tenant is hereby credited with 10 acres of developed property as required in the development plan and timetable contained in the Ground Lease.

5. **Landlord's Further Obligations.** Landlord warrants, represents, covenants and agrees that it shall:

a. Hold harmless, defend and indemnify the Tenant from all costs, charges, damages or claims arising from the Landlord's ownership or use of the Released Premises from the Effective Date of this Amendment;

b. Pay all real property taxes, personal property taxes, taxes on possessory rights and/or all assessments of any kind which may be assessed against the Released Parcel.

6. **Assumption of Obligations.** New Tenant hereby formally assumes and agrees to perform all obligations of the Tenant under the Ground Lease as of the Effective Date.

7. **Indemnification of Landlord.** In consideration of the grant of this approval of transfer, New Tenant agrees to indemnify, defend and hold Landlord harmless from any and all claims or damages arising from granting consent to substitute the New Tenant for the Old Tenant.

8. **Affirmation of Lease.** All of the other terms and conditions contained in the Ground Lease Agreement (as amended by the Prior Amendments) remain in full force and effect, except as modified in this Sixth Amendment.

In witness of our agreement to these terms and conditions the parties executed this Sixth Amendment to be legally binding between them as the Effective Date.

**LANDLORD:**

THE CITY OF COTTONWOOD,  
an Arizona municipality

By: Joseph D. Jones

Its Mayor

**OLD TENANT:**

COTTONWOOD AIRPARK, INC.,  
an Arizona corporation

By: William Fulkerson

Its Vice Pres.

**NEW TENANT:**

COTTONWOOD AIRPARK L.C.  
an Arizona limited liability  
company acting through its Members  
Jack Seitz & FMW Development:

(1) Jack Seitz

Jack Seitz

(2) FMW Development Company, an  
Arizona general partnership acting  
through its General Partners:

a) FM DEVELOPMENT COMPANY, an  
Arizona General Partnership, acting  
through its general partners:

i) By: William E. Molloy

William E. Molloy

ii) By: C B Investments, a General  
Partnership

By: William Fulkerson

William Fulkerson

b) C W CORPORATION,  
an Arizona corporation

By: C. W. Waddoups, Jr.

C. W. Waddoups, Jr., Pres.

I, the undersigned secretary of the City Council of the City of Cottonwood, hereby personally affirm and certify that this Sixth Amendment has been duly considered in full compliance with all legal requirements for approval by the City Council and do further affirm and certify that this Sixth Amendment has been approved, ratified and accepted by the City Council on behalf of the City of Cottonwood.

8-3-94

Date

*Marianne J. Hester*

Secretary of the City Council of the  
City of Cottonwood

APPROVED AS TO FORM:

*Melinda Garrahan*

Melinda Garrahan, City Attorney

MANGUM, WALL, STOOPS & WARDEN, P.L.L.C.

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LEGAL DESCRIPTION  
COTTONWOOD AIRPARK, INC. LEASE AREA EXCEPTION  
COTTONWOOD MUNICIPAL AIRPORT

A parcel of ground lying in Section 33, Township 16 North, Range 3 East, and Section 4, Township 15 North, Range 3 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona, as partially shown on a Parcel Location Map for said Section 33, prepared by SEC, Inc. November 17, 1992 (Project No. 92-1004CS) and as partially described in a legal description for the Cottonwood Municipal Airport prepared by Joe Jones & Associates, Inc. June 27, 1983 (Job No. 83-56) and more particularly described as follows:

Commencing at the Southwest Corner of Section 33, said corner being a 1917 G.L.O. Brass Cap;

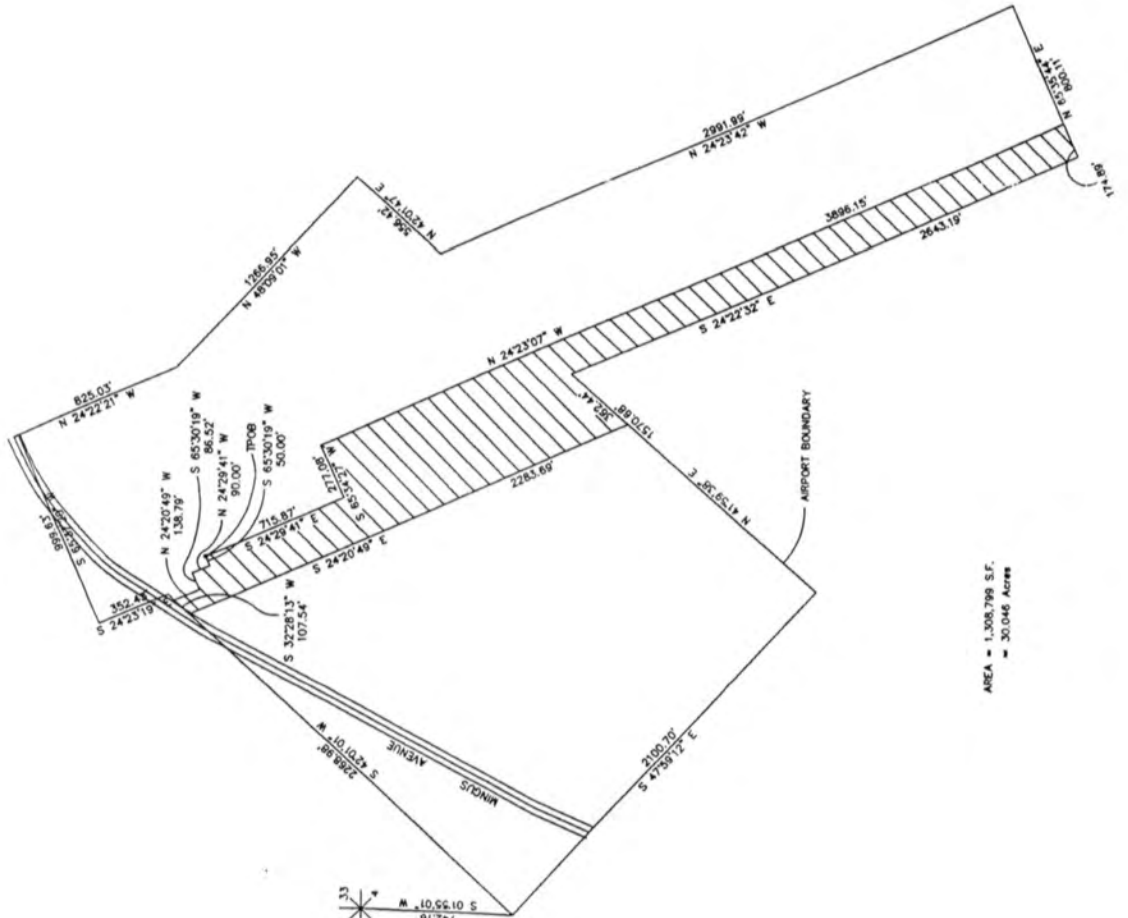
thence, South 01°55'01" West (Basis of Bearings) a distance of 742.16 feet;  
thence, North 42°01'01" East, a distance of 2268.99 feet;  
thence, South 72°59'50" East, a distance of 128.89 feet;  
thence, South 24°29'41" East, a distance of 150.00 feet to the TRUE POINT OF BEGINNING;  
thence, South 65°30'19" West, a distance of 50.00 feet to a point;  
thence, North 24°29'41" West, a distance of 90.00 feet to a point;  
thence, South 65°30'19" West, a distance of 86.52 feet to a point;  
thence, North 24°20'49" West, a distance of 138.79 feet to a point on the east right-of-way line of Mingus Avenue;  
thence, along said right-of-way line South 32°28'13" West, a distance of 107.54 feet to a point;  
thence, South 24°20'49" East, a distance of 2283.69 feet to a point;  
thence, North 41°59'38" East, a distance of 362.44 feet to a point;  
thence, South 24°22'32" East, a distance of 2643.19 feet to a point;  
thence, North 65°35'44" East, a distance of 174.98 feet to a point;  
thence, North 24°23'07" West, a distance of 3896.15 feet to a point;  
thence, South 65°34'27" West, a distance of 277.08 feet to a point;  
thence, North 24°29'41" West, a distance of 715.87 feet to the TRUE POINT OF BEGINNING, said parcel containing 1,308,799 square feet or 30.046 acres, more or less.

A:93017LG2





AREA REMOVED FROM  
COTTONWOOD AIRPARK, INC.'S LEASE



S.W. CORNER  
SECT. 33

AREA = 1,308,799 S.F.  
= 30,046 Acres



**COTTONWOOD MUNICIPAL AIRPORT**  
COTTONWOOD AIRPARK LEASE  
AREA REMOVAL

**Z & H Engineering, Inc.**  
717 WEST TOWN AVE  
MUSKOGEE, OKLAHOMA 74403  
PHONE (405) 893-2734

DATE	BY	DATE

PROJECT NO.: 08011 SCALE: 1" = 800'