

When recorded return to:

Robert Erven Brown, p.a.  
4401 E. Greenway Rd. Ste. 200  
Cottonwood, AZ 86326

Solder

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| BK  | FEE |
|     | 3   |
| MAP | \$4 |
| PCL | \$5 |
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3104797 BK 3626 PG 140  
Yavapai County  
Patsy Jenney-Colon, Recorder  
12/22/1998 03:19P PAGE 1 OF 5  
CITY OF COTTONWOOD  
RECORDING FEE 3.00  
SURCHARGE 0.00  
POSTAGE 0.00

## EIGHTH AMENDMENT TO GROUND LEASE

### BACKGROUND

#### The Ground Lease

- A. The City of Cottonwood, formerly known as the Town of Cottonwood, an Arizona municipality, is the "Landlord" under a "Ground Lease Agreement" dated May 5, 1983. The City entered into the Ground Lease to encourage economic development of the Cottonwood Airport industrial property to further economic development within the City of Cottonwood.
- B. A memorandum of the Ground Lease dated May 23, 1983 was recorded January 4, 1984 in Book 1597, pages 576-581 and thereafter corrected by an instrument recorded July 1, 1985 in Book 1734, pages 11-15 of the records of the Yavapai County Recorder (the "Memorandum of Ground Lease").
- C. The Ground Lease Agreement 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, (the proposed Fifth Amendment dated January 1, 1993 was never signed), the Sixth Amendment dated July 5, 1994, and the Seventh Amendment dated September 16, 1997. The Ground Lease Agreement and all Amendments are collectively referred to as the "**Ground Lease.**"
- D. Cottonwood Airpark L.C. ("CALC") is the successor in interest to Cottonwood Airpark I, L.C. as successor in interest to Cottonwood Airpark, Inc., which was originally named as "Tenant" under the Ground Lease Agreement.

#### The Purposes of the Eighth Amendment

- E. On or about September 16, 1998, CALC recorded in the offices of the Yavapai County Recorder at Book 3601, page 974, the Assignment of Tenant Rights in Lot 101 and Lot 102 (except the South 31.98 feet thereof) of Cottonwood Airpark for the purpose of making a qualified assignment of certain of its rights to Lots 101 & 102 to S & S Verde Properties, L.L.P., an Arizona limited liability partnership ("Verde"), owned by Carl F. and Shirley A. Seitz, husband and wife ("Seitz"). (Lot 101 and Lot 102 (except the South 31.98 feet thereof is referred to as "Lots 101 & Partial 102"). The "Verde Effective Date" of this Assignment is July 1, 1998.
- F. On or about August 14, 1998, CALC recorded in the offices of the Yavapai County Recorder at Book 3593, page 833, the Assignment of Tenant Rights in the North 100 Feet of Lot 108 of Cottonwood Airpark to David P. Mongini and Sheila M. Mongini, husband and wife ("Mongini") of some of the rights possessed by CALC under its

Ground Lease with the City of Cottonwood, i.e., to the North 100 feet of Lot 108 (referred to as "Partial 108").

- G. On or about August 14, 1998, CALC recorded in the offices of the Yavapai County Recorder at Book 3594, page 837, the Assignment of Tenant Rights in Lot 107 of Cottonwood Airpark to Mongini and/or MMC, L.L.C. of all of its rights under its Ground Lease with the City of Cottonwood to Lot 107 (Lot 107 and the north 100 feet of Lot 108 are referred to as "Lot 107 & Partial 108") The "Mongini Effective Date" of the Mongini Assignment is June 23, 1998.
- H. As required by the Ground Lease, the written consent of the City of Cottonwood to the assignment by CALC of its rights in these transactions has been granted by the City of Cottonwood as Landlord. The purpose of this Amendment is to clearly reflect the reduction in the description of the property now leased by Tenant under the Ground Lease due to the above transactions and for certain other limited purposes set forth below.

### **AGREEMENT**

**Now, therefore, for valuable consideration received, the parties agree that:**

**1. Incorporation by Reference.** The facts, circumstances, descriptions and definitions contained in the Background section of this Amendment are hereby incorporated by reference as an integral part of this Amendment. If there is a conflict or inconsistency between the provisions of this Eighth Amendment and any prior Amendment or a conflict between the provisions of this Eighth Amendment and any provision of the Ground Lease, then the provisions of this Eighth Amendment shall prevail and control. All of the other terms and conditions contained in the Ground Lease (as amended by the prior Amendments) remain in full force and effect, except as modified by this Eighth Amendment.

**2. Amendment Regarding Lot 101 & Partial 102.** As of the Verde Effective Date, the City as Landlord under the Ground Lease and Tenant hereby:

**2.1** agree that all of Tenant's rights regarding Lot 101 and 102 (except the south 31.98 feet thereof) have been assigned by Tenant to Verde, except for certain limited reversionary rights as defined in the "Assignment of Tenant Rights in Lot 101 & 102" (except the south 31.98 feet thereof) of Cottonwood Airpark defined above ;

**2.2** certify that formal approval of the Assignment to Verde has been granted by the City; Landlord agrees to look solely to Verde for collection of all rents and other amounts arising from the Ground Lease for Lot 101 & Partial 102 after the Verde Effective Date of the Assignment and releases CALC (and its predecessors) as "Tenant" from all obligations or duties arising under the Ground Lease relative to Lot 101 & Partial 102;

**2.3** acknowledge receipt of all rent and other amounts owed by Tenant to Landlord under the Ground Lease and confirm that there are no uncured defaults or breaches by Tenant under the Ground Lease as of the Verde Effective Date;

**2.4** agree that the failure of Verde to pay rent, to pay property taxes, or to otherwise fully comply with the terms of the Ground Lease shall be considered a default by Verde only as to Lot 101 & Partial 102 and shall not be considered as a default by Tenant under the Ground Lease affecting any of the other rights of CALC or affecting any other property

leased by CALC. Landlord agrees to exercise its remedies for a default by Verde as provided under the Ground Lease solely against Lot 101 & Partial 102;

**2.5** agree that, conversely, in the event of a default by CALC under the Ground Lease, Landlord will exercise its rights solely against CALC and will not construe a default by CALC as a default by Verde under Lot 101 & Partial 102. So long as Verde pays its rent and timely performs all other obligations as required under Lot 101 & Partial 102, any default by CALC regarding its other obligations under the Ground Lease shall not be construed as a default by Verde;

**2.6** acknowledge that Verde shall independently comply with the insurance provisions of Section 14 of the Ground Lease regarding Lot 101 & Partial 102; and

**2.7** agree that the property taxes for Lot 101 & Partial 102, if any, shall be separately assessed and paid by Verde.

**3. Amendment Regarding Lot 107 & Partial 108.** As of the Mongini Effective Date, the City as Landlord under the Ground Lease and Tenant hereby:

**3.1** agree that all of Tenant's rights regarding Lot 107 and Partial 108 have been assigned by Tenant to Mongini;

**3.2** certify that formal approval of the Assignment to Mongini has been granted by the City; Landlord agrees to look solely to Mongini for collection of all rents and other amounts arising from the Ground Lease for Lot 107 & Partial 108 after the Mongini Effective Date of the Assignment and releases CALC (and its predecessors) as "Tenant" from all obligations or duties arising under the Ground Lease relative to Lot 107 & Partial 108;

**3.3** acknowledge receipt of all rent and other amounts owed by Tenant to Landlord under the Ground Lease and confirm that there are no uncured defaults or breaches by Tenant under the Ground Lease as of the Mongini Effective Date;

**3.4** agree that the failure of Mongini to pay rent, to pay property taxes, or to otherwise fully comply with the terms of the Ground Lease shall be considered a default by Mongini only as to Lot 107 & Partial 108 and shall not be considered as a default by Tenant under the Ground Lease affecting any of the other rights of CALC or affecting any other property leased by CALC. Landlord agrees to exercise its remedies for a default by Mongini as provided under the Ground Lease solely against Lot 107 & Partial 108;

**3.5** agree that, conversely, in the event of a default by CALC under the Ground Lease, Landlord will exercise its rights solely against CALC and will not construe a default by CALC as a default by Mongini under Lot 107 & Partial 108. So long as Mongini pays its rent and timely performs all other obligations as required under Lot 107 & Partial 108, any default by CALC regarding its other obligations under the Ground Lease shall not be construed as a default by Mongini;

**3.6** acknowledge that Mongini shall independently comply with the insurance provisions of Section 14 of the Ground Lease regarding Lot 107 & Partial 108; and

**3.7** agree that the property taxes for Lot 107 & Partial 108, if any, shall be separately assessed and paid by Mongini.

**4. Ratification.** 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.

**This Eighth Amendment is legally binding as of the respective Effective Dates regardless of the actual date of signing.**

**COTTONWOOD AIRPARK L.C., an Arizona limited liability company by its Majority Member**

**MFW, L.L.P., an Arizona limited liability partnership (formerly known as FMW Development Company)**

By *[Signature]*

Approved as to form:

**MAGNUM, WALLS, STOOPS & WARDEN, P.L.L.C.  
City attorneys for the City of Cottonwood**

By *[Signature]*

**THE CITY OF COTTONWOOD**

By *[Signature]*  
**City Manager**

Date: 11-23-98

**ATTEST:**

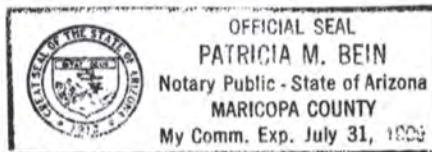
By *[Signature]*  
**City Clerk**

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

Before me, the undersigned Notary Public, on this 18<sup>th</sup> day of November, 1998, personally appeared William E. Molloy, an authorized signatory of Cottonwood Airpark LC, who is personally known to me to be (or satisfactorily proved himself/herself to be) the person who executed the foregoing, acknowledging that he/she executed the same for the purposes therein contained, being authorized so to do.

*[Signature]*  
Notary Public

My Commission Expires:  
7-31-99



STATE OF ARIZONA )  
 ) ss.  
County of Yavapai )

Before me, the undersigned Notary Public, on this 23rd day of November, 1998, personally appeared Brian Mickelsen, the City Manager of the City of Cottonwood, who is personally known to me to be (or satisfactorily proved himself/herself to be) the person who executed the foregoing Consent, acknowledging that he/she executed the same for the purposes therein contained, being authorized so to do.

Sue Schoonmaker  
Notary Public

My Commission Expires:  
October 22, 2001



STATE OF ARIZONA )  
 ) ss.  
County of Yavapai )

Before me, the undersigned Notary Public, on this 23rd day of November, 1998, personally appeared Marianne Jimenez, the City Clerk of the City of Cottonwood, who is personally known to me to be (or satisfactorily proved himself/herself to be) the person who executed the foregoing Consent, acknowledging that he/she executed the same for the purposes therein contained, being authorized so to do.

Sue Schoonmaker  
Notary Public

My Commission Expires:  
October 22, 2001

