

LEASE AGREEMENT

This Lease Agreement ("Lease") is made and effective _____, 2023 ("Effective Date"), by and between the City of Douglas, an Arizona municipal corporation ("City") and Barnard Spencer Joint Venture ("Tenant").

RECITALS

A. The City owns and operates the Douglas Municipal Airport ("Airport") located in Cochise County, Arizona.

B. Tenant desires to Lease from the City and the City desires to lease to the Tenant a portion of the Airport identified on Exhibit A attached hereto, consisting of twenty (20) acres (the "Premises").

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

1. Term.

A. The City hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from the City for an initial term ("Initial Term") of twelve (12) months commencing on the Effective Date.

B. At the end of the Initial Term, provided Tenant is not in default under the terms of the Lease, the Lease will be extended for an additional twelve (12) months on a month-to-month basis (the "Extended Term") by Tenant giving written notice to the City not less than thirty (30) days prior to the expiration of the Initial Term. The Extended Term may be terminated at any time by Tenant by providing notice not less than fifteen (15) days prior to the expiration of each additional one-month term. The rent for the Extended Term shall be at the rent set forth in Section 3. All provisions of the Lease shall apply to the Extended Term.

2. Expansion of the Premises.

During the term of the Lease, Tenant shall have the option to expand the Premises to include land contiguous to the existing Premises, the exact location of which shall be agreed upon by the parties, acting reasonably ("Expanded Premises"). The monthly rent for the Expanded Premises shall be based on \$925/per acre). Tenant may elect to expand the Premises in multiple stages and may exercise the option to expand by providing the City with not less than thirty (30) days written notice as to how much, and the preferred location of land that Tenant wishes to occupy. The Expanded Premises shall be subject to all the Lease provisions provided herein. As used herein "Premises" shall include the initial Premises and the Expanded Premises.

3. Rent.

A. Rent. Tenant shall pay to the City rent in the amount of Eighteen Thousand Five Hundred and No/100 Dollars (\$18,500) per month during the Initial Term and the Extended Term (based on a rate of \$925/per acre). Each rent payment shall be due in advance on the first day of each month during the Initial Lease Term and the Extended Term. The rent amount for any partial calendar month shall be prorated on a daily basis.

B. Interest and Late Fees. If Tenant fails to pay any installment of rent in full within five (5) days of the date it is due as provided herein, Tenant shall be responsible for interest on the unpaid rent at the rate of twelve percent (12%) per annum from the due date until payment in full is made.

C. Taxes. In the event any governmental authority shall impose a tax or imposition based upon any rent payments or any other sums paid or owing hereunder for the receipt of such amounts by City, then Tenant shall pay such amounts to City at the same time and in addition to the rent payments hereunder, which amounts may include, but are not limited to, any or all rental, transaction privilege, sales, excise or other similar tax, except income taxes. Tenant's obligation to pay such amounts together with any interest thereon and/or penalties therefor, shall survive the termination of this Lease.

4. Use.

A. Permitted Purpose. Tenant shall use the Premises for operation of a contractor's yard, job staging area, general construction operations, and general office purposes. Tenant shall not use the Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, or device, except that Tenant may store fuel in bulk storage tanks for the fueling of construction equipment and vehicles. All activities shall be conducted in compliance with all applicable laws, rules and regulations.

B. Dangerous Conditions. Tenant agrees to exercise reasonable care when using the Premises and all improvements thereon to discover and promptly remedy any conditions that may pose an unreasonable risk of harm to members of the general public or other Airport users or that may constitute a violation of law. If an unsafe, defective or dangerous condition, or violation of the law is discovered, Tenant warrants that no one other than Tenant and City employees, agents and representatives will be admitted to the Premises and no property belonging to any party other than Tenant and City will be transported to, collected at or stored upon the Premises until the unsafe, defective or dangerous condition, or violation of law is corrected.

C. Cooperation with Other Parties. Tenant, along with all other Airport users and tenants, is responsible for cooperating in the safe and efficient operation of the Airport. Tenant shall take reasonable steps to keep the Airport manager, other tenants, and other Airport users informed as to Tenant's activities and schedules on the Airport. Tenant will coordinate and will take reasonable steps to cooperate with other Airport users in order to help ensure that all users have equal access to the Airport and its facilities. If Tenant's failure or unwillingness to abide by this Section 4(C) creates safety hazards or monopolistic use of the Airport or its facilities, such failure or unwillingness shall be deemed a material breach hereof for which City may terminate this Lease.

D. Non-Exclusive Rights. Tenant shall have the exclusive right to occupy and use the Premises while in compliance with the terms and conditions of this Lease. All other rights granted to Tenant under this Lease are non-exclusive. The City may, in its sole discretion and at any time, permit third parties to conduct any and all business activities at the Airport which City deems appropriate, or conduct such activities itself, provided that such activities do not require or materially interfere with Tenant's use of the Premises. The City agrees to provide Tenant with reasonable notice of third parties it has permitted to conduct business activities at the Airport sufficient such that Tenant may notify the City of any concerns that such use will materially interfere with Tenant's use of the Premises.

5. Water, Electric and Sewer.

A. Extension of Water and Electric. The Tenant will complete the extension of the water and electric service for Tenant's use to the planned location of the temporary office building to be located on the Premises at Tenant's sole cost and expense. Tenant shall follow the City of Douglas standards for water and the City shall inspect all work performed by Tenant or Tenant's contractors. Tenant shall follow the Arizona Public Service (APS) standards for electric service installation and meet all APS and City Code regulations. The City shall work with the Tenant to provide necessary utility easements as appropriate.

B. Septic Tanks. Tenant will have the option to re-use existing septic tanks or to provide new septic tanks. Tenant may move the existing septic tanks located on the Premises to Tenant's desired location on the Premises, at Tenant's sole cost and expense. The City will clean out the existing septic tanks at a cost of \$115.50 per 1,000 gallons plus a \$50 transportation fee per load. Tenant may also, or in the alternative, install new septic tanks on the Premises at Tenant's desired location. If Tenant decides to use the existing septic tanks, at the end of the Lease term, Tenant shall clean out the septic tanks and move them to a location agreeable to the City.

C. Fees.

1. Water Fees. Tenant shall pay the City of Douglas water consumption rates in accordance to meter size as established in the City Code used by Tenant in conjunction with its use and occupancy of the Premises, plus the standard delivery service fees and taxes charged by the City of Douglas as part of their public service utility fees.

2. Utility Fees. Tenant may connect with any and all utility services available to the Premises and shall be responsible for the payment of said utilities used in its operations.

6. Pavement to and on the Premises.

The City will provide pavement millings on the Premises at Tenant's cost, which shall be negotiated between the City and Tenant prior to the Tenant performing such work. In the event Tenant and the City are unable to agree to a price for pavement millings, Tenant has the right to forego the pavement millings. In the event the City and Tenant agree to a price, and should Tenant choose to agree to the City providing said pavement millings, then Tenant shall clear and grub the Premises while using dust control measures as approved by the City at Tenant's sole cost.

7. Alterations and Improvements.

Tenant shall have the right to make any further improvements from time to time following the City's written consent; provided the same are made in a workmanlike manner and utilizing good quality materials. Tenant shall be responsible for determining whether it is subject to local building codes or building permit requirements, and for compliance with them to the extent they are applicable. All structural, electrical, plumbing or mechanical construction or reconstruction shall conform to City of Douglas construction and technical codes. No such work shall be commenced without first submitting required plans and obtaining required permits from the City. All such work shall be permitted, inspected and approved by the City prior to concealment or use. Tenant shall promptly pay all entities supplying labor or materials in connection with any construction on the Premises and shall keep the Premises free and clear of liens and claims of lien. All permanent improvements made to the Premises shall belong to the City at expiration or termination of the Lease. Tenant shall have the right to place and install personal property, trade fixtures, equipment

and other temporary installations in and upon the Premises, and fasten the same to the Premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Premises by Tenant thereafter, shall remain Tenant's property free and clear of any claim by the City. Tenant shall remove all personal property, trade fixtures, equipment and other temporary installations at the end of the Lease Term. All damage to the Premises caused by such removal shall be repaired by Tenant at Tenant's expense.

8. **Acceptance of Premises.**

Tenant's taking of possession of the Premises shall be conclusive evidence of Tenant's acceptance thereof in good order and satisfactory condition. Tenant agrees that no representation respecting the condition of the Premises and that no promises to alter, repair or improve the Premises either before or after the execution hereof, have been made by the City or its agents to Tenant unless the same are contained herein or made a part hereof.

9. **Tenant to Maintain Premises.**

Tenant shall, at no expense to the City, maintain the Premises and all improvements located thereon in a neat, clean, safe condition, free of weeds, trash and debris, and in compliance with all applicable laws, rules, regulations and orders. Tenant shall maintain the Premises in conformance with a dust control plan approved by the City. Tenant shall, at its sole cost and expense, be responsible for the cleanup and remediation associated with any oil and gas leakage or spillage on the Premises to the extent caused by Tenant, its employees, contractors, agents, subtenants, customers, or invitees. In connection with the leakage or spillage of oil or gas on the Premises, the provisions of Section 15(F) shall apply.

10. **Insurance.**

A. Tenant shall obtain and maintain in full force, with a company or companies authorized to transact the business of insurance in the State of Arizona and with an A.M. Best rating of not less than A-VII, selected by Tenant and reasonably acceptable to City, insurance (either as part of any other policy or policies carried by Tenant, or separately) covering all of Tenant's activities on the Airport Premises as follows:

1. Liability Insurance. During the term of this Lease, Tenant shall procure and maintain, or cause to be procured and maintained, in full force and effect, a comprehensive insurance policy or policies providing for the protection of City and its officers, agents, servants and employees, and insuring said parties against:

(a) general liability, including all direct loss or liability for damages for bodily injury, personal injury, death or damage to property, including loss of use thereof, occurring on or in any way related to the Premises (including but not limited to any sidewalks, streets or other public ways adjoining the Premises) or occasioned by reason of occupancy by and the operations of Tenant upon, in and around the Premises, with limits of \$2,000,000 per occurrence and \$4,000,000 General Aggregate Limit and a minimum of \$1,000,000 property damage coverage;

(b) automobile liability covering owned vehicles and non-owned leased or hired vehicles with combined single limits of no less than \$2,000,000 per occurrence; and

(c) Worker's Compensation and employer's liability coverage in the amounts required by law.

2. Property Insurance. Extended property coverage in an amount equal to or greater than the replacement cost of the improvements, facility, and any fixtures constructed or affixed to the Premises by Tenant.

3. Tenants Property. Tenant waives all right of reimbursement from the City for damage or destruction of Tenant's property which could have been recovered by Tenant purchasing its own insurance.

B. Deductible. Intentionally omitted.

C. Modification of Requirements. The City may adjust or increase liability insurance amounts and requirements as the City deems reasonably necessary, or as may be required because of changes in the insurance requirements imposed by City's insurer or by applicable law. Tenant shall comply with such adjustments or increases within ninety (90) days from receipt of the City's written request .

D. Certificates. Upon or prior to the commencement of the Term of this Lease and at least annually thereafter, Tenant shall furnish to the City certificates of insurance showing the amount and type of the insurance then in effect that is required to be procured and maintained by it hereunder and stating the date and term of the policies evidencing such insurance. Certificates evidencing any renewal, replacement or extension of any or all of the insurance required hereunder, or of renewals, replacements or extensions of such renewals, replacements or extensions, shall be delivered by Tenant to the City prior to the expiration of any policy of insurance renewed, replaced or extended by the insurance represented by any such certificate. Each policy of insurance required hereunder shall provide for not less than thirty (30) days' notice to the City and Tenant before such policy may be canceled, except for ten (10) days for non-payment of premium.

E. Additional Insurance. The provisions of this Lease as to insurance required to be procured and maintained shall not limit or prohibit, or be construed as limiting or prohibiting Tenant from obtaining any other or greater insurance with respect to the Premises or improvements thereon or the use and occupancy thereof.

F. Additional Insured. All insurance required by this Section, excluding Workers' Compensation and Employer's Liability, shall be procured and maintained in the name of Tenant and shall show the City as an additional insured. All policies required under this Section for property and builder's risk insurance shall provide for payments of the losses to Tenant and the City as their respective interest may appear; provided that during the period of any construction, any builder's risk insurance carried pursuant hereto may provide for payment to the contractor, as its interest may appear. All proceeds from any such insurance shall be used to repair or restore such destruction or damage or to reimburse either of the parties for expenditures made or incurred in such restoration or repair.

G. Use of Proceeds. Proceeds of liability and property damage insurance required under this Section shall be applied toward extinguishing, satisfying or remedying the liability, loss or damage with respect to which such proceeds may be paid.

H. Waiver of Subrogation. Each Party hereto waives all claims for recovery from the

other party for any loss or damage to any of its property on the Premises insured under valid and collectible insurance policies to the extent of any recovery collected from such policies. The Parties agree that all material insurance policies shall be endorsed with a clause which waives subrogation against the other Party.

I. Insurance by City. In the event the City determines in its reasonable discretion that Tenant has failed to obtain the insurance required under this Section, then the City may, but shall not be obligated to, upon written notice to Tenant, procure and maintain any or all of the insurance required of Tenant under this Section. In such event, all costs of such insurance procured and maintained by the City on behalf of Tenant shall be the responsibility of Tenant and shall be fully reimbursed to the City within thirty (30) days after the City advises Tenant of the cost thereof.

J. Environmental Insurance. In the event Tenant undertakes any type of manufacturing, maintenance or other activities that involve the use or generation of any substance regulated by federal, state or local governmental authorities as hazardous, toxic or solid waste, Tenant shall obtain environmental insurance in an amount of at least \$2,000,000.

11. Indemnity.

The City shall not be liable for liability or damage claims for injury to persons or property from any cause relating to Tenant's use of the Premises or for those arising out of damages or losses occurring on other areas of the Airport that may be used by Tenant during the term of this Lease or any extension thereof, except to the extent such damage or injury results from the intentional misconduct or the negligence of the City or the City's officers, employees, agents or contractors. Tenant shall defend, indemnify and hold the City harmless against any and all causes of action, claims, damages, demands, costs, penalties and expenses (including reasonable attorney's fees and expenses incurred in the defense thereof) resulting from any injury to person or property or from loss of life sustained in or about the Premises caused by, or resulting from any act, omissions or negligence of Tenant or any employee, agent, subtenant, customer or invitee of Tenant, except to the extent such damage or injury results from the intentional misconduct or the negligence of the City or the City's officers, employees, agents or contractors. The City shall give to Tenant prompt and reasonable notice of any such claims or actions against it covered by this indemnity and Tenant shall have the right to investigate compromise and defend the same. The City expressly retains the right to join in any investigation, compromise and defense should it deem such action necessary or appropriate. Tenant's obligations under this Section 11 shall survive the expiration or termination of this Lease.

12. Signs.

Following the City's written consent, Tenant shall have the right to place on the Premises, at locations selected by Tenant, any signs which are permitted by applicable zoning ordinances and private restrictions. The City may refuse consent to any proposed signage that is in the City's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Premises. The City shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs. At the expiration or earlier termination of this Lease, Tenant shall remove all signage unless the City agrees in writing that the signage does not need to be removed. Tenant shall repair all damage to the Premises resulting from the removal of signs installed by Tenant.

13. Damage and Destruction.

If the Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for Tenant's purposes, then Tenant shall have the right within thirty (30) days following damage to elect by notice to the City to terminate this Lease as of the date of such damage.

14. Notice.

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to City to:

City of Douglas
Attention: City Manager
425 E. 10th Street
Douglas, AZ 85607

If to Tenant to:

Barnard Spencer Joint Venture
Attn: Derek Tisdell
701 Gold Ave
Bozeman, MT 59715

The Parties shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

15. Compliance with Rules, Regulations and Laws.

A. Compliance with all Applicable Laws. Tenant and all persons operating under the rights granted hereby shall observe and obey all rules and regulations with respect to the use of the Airport and the Premises which have been or may in the future be adopted by the City and shall further abide by all applicable laws, statutes, ordinances, rules, orders, and regulations of all governing bodies which are now in effect or which may hereafter be put into effect.

B. Non-Discrimination.

1. Non-Discrimination Covenants.

(a) Tenant for itself, its heirs, personal representatives, subtenants, 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 improvements are constructed, maintained, or otherwise operated on the Premises for a purpose for which a Department of "Transportation ("DOT") program or activity is extended or for another purpose involving the provision of similar services or benefits, Tenants shall maintain and operate such improvements and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(b) The Tenant for itself, its 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: (1) 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 improvements, (2) 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 nation origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(c) Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Tenant may be allowed to make reasonable nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchases.

(d) Tenant assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Tenant assures that it will require that its covered suborganizations provide assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effort.

2. Non-Compliance. Non-compliance with any provisions in this Section shall constitute a material breach hereof and in the event of such non-compliance City shall have the right to terminate this Lease and the estate hereby created without liability therefore or at the election of the City or the United States, either or both shall have the right to judicially enforce these provisions.

3. Subleases. Tenant agrees that it shall insert the provisions of this Section in any sublease by which the City grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises herein subleased.

C. FAR Part 107; Airport Access; Airport Safety. Tenant and all persons operating under the rights granted hereunder shall comply with Part 107 of the Federal Aviation Regulations with respect to aircraft operations and airport security at the Airport.

Tenant shall at all times take reasonable steps to control, police and regulate the use of the Premises and of the Airport premises to prevent unauthorized persons and the general public from obtaining access to the Airport. Such steps by Tenant shall include, but not be limited to, steps requested by City and those required under Federal Regulations. Tenant must secure the Premises so that there is no inadvertent or purposeful unauthorized entry in or upon the Airport by people, vehicles or animals. In addition, Tenant will adhere to FAA requirements and guidance regarding vehicular and pedestrian training and operations on the Airport movement arms (i.e., airfield) to avoid runway, vehicular and pedestrian incursions.

D. State and Federal Aviation Regulations. Tenant will conduct its operations

and activities on the Airport so as to conform to all applicable regulations of the Federal Aviation Administration and the Arizona Department of Transportation.

E. Exclusive Rights Prohibited. 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 49 U.S.C. §40103(e) and §47107(a)(4).

F. Environmental Laws. Tenant, at its own expense, shall ensure that Tenant and Tenant's agents, employees, invitees, and subtenants comply with all present and hereafter enacted Environmental Laws defined herein, and any amendments thereto, affecting Tenant's operation on the Premises.

1. Definitions.

(a) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6941 et seq.; the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking water Act, 42 U.S.C. § 300h et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Arizona Environmental Quality Act, A.R.S. § 49-201 et seq.; the Arizona Hazardous Waste Management Act, A.R.S. § 49-921 et seq.; the Arizona Underground Storage Tank Regulation statute, A.R.S. § 49-1001 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.

(b) "Hazardous material" includes:

(1) Those substances now or hereafter included within the definitions of hazardous substance, hazardous material, toxic substance, regulated substance, or solid waste in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; and the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; and in the regulations promulgated thereunder;

(2) Those substances now or hereafter included within the definitions of hazardous substance, pollutant, toxic pollutant, regulated substance, hazardous or solid waste in the Arizona Environmental Quality Act, A.R.S. § 49-201 et seq.; including, but not limited to, the Water Quality Assurance Revolving Fund statute, A.R.S. § 49-281 et seq.; the Hazardous Waste Management Act, A.R.S. § 49-901 et seq.; the Solid Waste Management statute, A.R.S. § 49-701 et seq.; and the Underground Storage Tank Regulation statute, A.R.S. § 49-1001 et seq.;

(3) Those substances listed in the United States Department of Transportation Table (49 C.F.R. § 172.101 and amendments thereto) or by the Environmental Protection Agency as hazardous substances (40 C.F.R. Part 302 and amendments thereto); and,

(4) All substances, materials and wastes that are, or

that become, regulated under, or that are classified as hazardous or toxic under any environmental law.

(c) "Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

2. Compliance.

(a) Tenant shall not cause or permit any hazardous material to be used or generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Tenant, its agents, employees, contractors, invitees, subtenants, or any third party to the extent such use, generation, manufacture, production, storage, release and/or transport is in violation of any Environmental Law. Tenant shall indemnify, defend and hold harmless City, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss damage, expense, penalties and costs (including legal and investigation fees or costs) arising from or related to any claim or action for injury, liability breach of warranty or representation or damage to persons or property and any and all claims or actions brought by any party or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are brought as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises during the term of this Lease or any previous sublease of the Premises by Tenant or its owners or related entities. This obligation includes but is not limited to all costs and expenses related to cleaning up the Premises and all land, soil and underground or surface water as required under the law. Tenant's obligations and liabilities under this paragraph shall continue so long as City bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises during the term of this Lease. This indemnification of City by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material located on the Premises or present in the soil or ground water on, under or about the Premises. The parties agree that City's right to enforce Tenant's promise to indemnify is not an adequate remedy at law for Tenant's violation of any provision of this paragraph; City shall have all the rights and remedies set forth in this Lease as well as all other rights and remedies provided by law.

(b) Without limiting the foregoing, if the presence of any hazardous material on, under or about the Premises, caused by Tenant's use of the Premises, then Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Premises to the condition existing prior to the introduction of any such hazardous material to the Premises; provided that the City's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse effect on the Premises.

If the Tenant discovers presence of any hazardous material on, under or about the Premises, which Tenant was unaware of prior to Tenant's use of the Premises, then Tenant shall promptly provide the City with notice of the same. Upon notice to the City of such conditions, the City and Tenant shall confer on how to act necessary to mitigate such hazardous materials on the Premises, and should the City direct the Tenant to provide such mitigation, the City shall pay the Tenant for said work at an agreed upon price between the City and the Tenant.

In the event Tenant shall fail timely to commence or cause to be commenced or fail diligently to prosecute to completion such actions as are necessary to return the Premises to the conditions existing prior to the introduction of any hazardous materials to the Premises, the City may, but shall not be obligated to, cause such action to be performed, and all costs and expenses (including, without limitation, attorneys' fees), caused by the Tenant, and incurred by the City in connection therewith, shall be paid by Tenant.

(c) For hazardous materials and/or conditions caused by the Tenant's use of the Premises, Tenant shall, at Tenant's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of any governmental authority having jurisdiction (the "Government") under the Environmental Laws. Should the Government determine that a site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken because of any release of hazardous materials at the Premises which occur during the term of this Lease, and arise from the Tenant's use of the Premises, then Tenant shall, at Tenant's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to City, Tenant shall promptly provide all information requested by City to determine the applicability of the Environmental Laws to the Premises, or to respond to any governmental investigation or to respond to any claim of liability by third parties, based on Tenant's use of the Premises, which is related to environmental contamination.

(d) Tenant shall promptly notify City of any of the following: (i) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Tenant's operation on the Premises, and (ii) any change in Tenant's operation on the Premises that will or has the potential to change the City's or Tenant's obligations or liabilities under the Environmental Laws.

3. Subtenants. Tenant shall insert the provision of this Section in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

16. Entire Agreement.

This Lease terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Lease may be modified only by a further writing that is duly executed by both Parties.

17. Governing Law; Venue.

This Lease shall be governed, construed and interpreted by, through and under the laws of the State of Arizona. Any litigation between the parties hereto concerning this Lease shall be initiated in Cochise County, Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county.

18. Assignment. Tenant shall not assign this Lease or sublet any portion of the Premises, or allow any other persons except the employees, agents, and invitee of Tenant to occupy the Premises without the prior written consent of the City, which consent may be withheld, in the City's sole discretion. The City shall have the right to assign this Lease at any time without consent of the Tenant.

During the Initial Term and/or the Extended Term of this Lease, in the event the City sells the Premises to a third party, such third party shall agree to assume the City's rights and obligations

under this Lease including, without limitation, allowing Tenant to lease the Premises through the Initial Term and/or the Extended Term.

19. **Breach.** Failure of the City or the Tenant to comply with each and every term and condition of this Lease shall constitute a breach of this Lease. Except as otherwise set forth herein, Tenant shall have ten (10) days after receipt of written notice from the City to correct the condition specified in the notice, or if the corrections cannot reasonably be made within the ten (10) day period, Tenant shall have a reasonable time to correct the default if action is commenced and thereafter diligently pursued by Tenant within ten (10) days after receipt of the notice. Except as otherwise set forth herein, the City shall have ten (10) days after receipt of written notice from the Tenant of any breach to correct the condition specified in the notice, or if the corrections cannot reasonably be made within the ten (10) day period, the City shall have a reasonable time to correct the default if action is commenced and thereafter diligently pursued by the City within ten (10) days after receipt of the notice. In the event of a breach of this Lease by Tenant, the City shall have the right to terminate this Lease and shall have all other rights and remedies provided by law. In the event of a breach of this Lease by the City, the Tenant shall have the right to terminate this Lease and shall have all other rights and remedies provided by law.

20. **Dispute Resolution.**

Neither party shall commence any litigation in any court concerning a dispute arising out of or related to this Lease, other than a claim by City for any monetary sums due hereunder, unless such party shall first give a written notice (a "Dispute Notice") to the other party setting forth the nature of the dispute. The parties shall attempt in good faith to resolve the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association (AAA) in effect on the date of the Dispute Notice. If the parties cannot agree on the selection of a mediator within twenty (20) days after delivery of the Dispute Notice, the mediator will be selected by the AAA. If the dispute has not been resolved by mediation as provided above within sixty (60) days after delivery of the Dispute Note, then either party may proceed to arbitration or litigation.

21. **Surrender.**

Upon the expiration or earlier termination of this Lease, all rights herein granted to Tenant shall cease and terminate and Tenant shall forthwith surrender the Premises to the City.

22. **Independent Contractor.**

City and Tenant shall perform their obligations under this Lease as independent contractors, and as such, shall maintain control over their employees, agents and subcontractors during the performance of their obligations. Neither Tenant or its employees, agents nor subcontractors shall be, represent, act, purport to act, or be deemed, the agent of City and neither City, its employees, agents nor subcontractors shall be, represent, act, purport to act, or be deemed, the agent of Tenant. Nothing contained in the Lease will be construed to establish the parties as partners or joint venturers. Except as expressly provided herein, neither of the Parties has any power to obligate or bind the other in any manner whatsoever.

23. **Authority to Execute.**

Each Party represents and warrants to the other that it has the right and authority to enter into this Lease.

24. **Counterparts.**

This Lease may be executed in counterparts, which together shall constitute a single instrument.

25. **Successors and Assigns.**

All the terms, covenants and conditions of this Lease shall extend to and bind the successors and assigns of the respective Parties hereto.

26. **Conflict of Interest.** This Lease is subject to the provisions of A.R.S. §38-511.

27. **Pending Sale of Premises.** There is currently pending a sale of the Airport property (“Property”) from the City to JW Resources, LLC, an Arizona limited liability company (“Whitman”). The Premises are included in the sale of the Property. At close of escrow on the sale of the Property, the City and Whitman will execute an Assignment and Assumption of Lease for this Lease. Pursuant to such Assignment and Assumption of Lease, the City will assign, convey and transfer to Whitman all of the City’s right, title and interest under this Lease and Whitman will assume all rights and obligations of the City under this Lease.

[signatures on next page]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

“CITY”

City of Douglas

By _____

Its: _____

“TENANT”

Barnard Spencer Joint Venture

By: _____

Its: _____

EXHIBIT "A"
Leased Premises



