

FINAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Agreement”) is made and entered into this ____ day of January, 2022 (“Effective Date”) by and between Philip J. Parish as trustee of the Philip J. Parish and Kristine Lavandero Revocable Living Trust, a trust (“Parish”) and La Cholla Airpark, Inc., an Arizona corporation (“LCAP”).

RECITALS

- A. On September 11, 2020, Parish filed a legal action in the Pima County Superior Court against LCAP, civil case No. C20203884 (the “Lawsuit”), alleging, among other things, three claims, including promissory estoppel, breach-of-contract/easement, and breach-of-contract/CC&Rs.
- B. LCAP has denied all claims and allegations asserted in the Lawsuit.
- C. On November 9, 2021, the parties engaged in a settlement conference before the Honorable Richard Gordon of the Pima County Superior Court.
- D. At the settlement conference, the parties reached a settlement which resolved all claims and allegations arising out of the Lawsuit, a copy of which is attached hereto and incorporated herein as Exhibit 1 (“Settlement”). In furtherance of the parties’ Settlement, the parties have determined, upon the advice of their own independent legal counsel, and to avoid the expense of further litigation, that it is desirable to more fully memorialize the terms and conditions of their Settlement as set forth in this Agreement.

COVENANTS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, as well as in consideration of the covenants, conditions, representations, releases, and other terms contained herein, the parties agree as follows.

- 1. **Recitals; Exhibits.** The parties hereby expressly agree that the foregoing Recitals and all Exhibits attached hereto are true and correct and are incorporated herein as material terms of this Agreement.
- 2. **Material Settlement Terms.** As full and final settlement of all claims and allegations asserted in the Lawsuit, as well as Parish’s agreement to dismiss the Lawsuit with prejudice once LCAP has satisfied all terms and obligations set forth herein, LCAP agrees to the following:
 - (a) LCAP shall relocate, construct and pave N. Pilot Drive over a portion of the existing N. Pilot Drive which shall consist of a 16’ paved roadway and 4’ shoulders on each side of the paved roadway. The relocated N. Pilot Drive shall be situated along the eastern margin of LCAP’s common area property and shall extend north from W. Beech Way to the north side of the Parish’s brick driveway (where the driveway currently intersects N. Pilot

Drive), where it shall terminate. [See Exhibit 2 attached hereto and incorporated herein]. The relocated N. Pilot Drive will be subject to the same maintenance by LCAP as any other LCAP roadway.

(b) The relocated N. Pilot Drive shall be impassable beyond the Parish driveway unless LCAP determines to extend the relocated N. Pilot Drive further north of the Parish property, in its reasonable discretion. [See Exhibit 2-A]

(c) LCAP shall install a paved teardrop (wedge) turnaround on the west side of the hangar on the Parish property where Parish's current driveway intersects N. Pilot Drive as depicted in Exhibit 2-A.

(d) LCAP shall construct an 18' wide paved runway connector from the west edge of relocated N. Pilot Drive (across from Parish's current driveway) to the runway. [See Exhibit 2-A]

(e) LCAP shall erect and/or install safety devices and signage along the relocated N. Pilot Drive to protect against runway incursions from unauthorized vehicles and pedestrians, as determined by LCAP's reasonable discretion. [See Exhibits 2-A & 2-B]

(f) LCAP shall install an automated access gate at the intersection of the relocated N. Pilot Drive and Beech Way. The access gate shall have a keypad opener to be used by the LCAP community and LCAP shall provide Parish with a remote opener for the gate. LCAP shall also install signage indicating limited access as well as safety devices to protect against runway incursions from unauthorized vehicles and pedestrians., as determined in LCAP's reasonable discretion. [See Exhibit 2-B]

(g) LCAP shall install a paved turn-around at the intersection of the relocated N. Pilot Drive and Beech Way. [See Exhibit 2-B]

(h) As of the Effective Date hereof, pursuant to the parties Settlement agreement, LCAP has paid to Parish a portion of Parish's attorney's fees and legal costs in the amount of \$67,500.00.

3. **Additional Settlement Terms.**

(a) The parties anticipate that completion of the improvements described in Sections 2(a)-(h) herein above shall be within 180 days from November 9, 2021. The Hon. Richard Gordon retains the discretion to increase this timeframe as necessary. Unless otherwise agreed, the parties shall appear before the Hon. Richard Gordon on February 11, 2022 (and at increments thereafter as determined by the Judge) to provide a status update on all pending settlement obligations.

(b) The Lawsuit shall be placed on the dismissal calendar through August 31, 2022, and the case shall be dismissed thereafter with prejudice and without further notice unless a party requests an extension of time (which shall be decided on an *ex parte* basis by the Hon.

Richard Gordon).

(c) The Hon. Richard Gordon shall retain jurisdiction through dismissal of the case and shall decide all disputes arising out of this Agreement, with the possibility of sanctions or an award of attorney's fees and costs at his discretion.

(d) Parish approves, in all respects, the Amended Access Agreement entered into by LCAP and Margalit Zur-Potts attached hereto and incorporated herein as Exhibit 3.

(e) The parties hereby agree that this Agreement is enforceable pursuant to *Ariz. R. Civ. P. 80(a)*.

RELEASE, DISCHARGE AND DISMISSAL

4. In consideration of the Covenants set forth herein, upon the Effective Date hereof, the parties, for themselves and their heirs, successors and assigns, contractors, agents, representatives, attorneys and partners, do hereby unconditionally, irrevocably, and forever release, waive, and forever discharge the other party and their heirs, successors and assigns, contractors, agents, representatives, attorneys and partners, directly or indirectly, of and from any and all claims, demands, liabilities, causes of action, expenses, losses, costs, and fees of any kind or of any nature or for any act or omission that occurred or arose on or before November 9, 2021 of this Agreement (hereafter referred to collectively as "Claims" and individually as a "Claim"), arising out of the claims or allegations stated in the Lawsuit. This release and waiver includes all Claims, whether based on a contract, quasi-contract, tort, negligence, strict liability, law, equity, statute, regulation, ordinance, or any other theory of recovery, and whether a Claim arises from an alleged personal injury, property damage, sickness, lien, loss of use, any other economic loss, or other violation of any law, or any other claimed injury or damage, in which the act or omission occurred on or before the Effective Date of this Agreement, arising out of the claims or allegations stated in the Lawsuit.

5. This release and waiver is intended to and does cover all Claims of any kind or nature and all damages of any kind or nature, and in any amount, whether known or unknown, arising out of the Lawsuit, to any or all of the parties as of November 9, 2021.

6. This release and waiver shall be fully binding upon, and in complete settlement between and among, the parties and their respective assigns and successors. Execution of this Agreement, the payment of any sums set forth herein, and the satisfaction of the other covenants discussed herein shall not be construed as an admission of wrongdoing or liability by any of the parties hereto, liability therefore being expressly denied by all parties, but rather as a compromise and settlement of disputed claims.

WARRANTIES AND REPRESENTATIONS

7. The parties hereto warrant and represent, each to the other, that they have been fully informed and have full knowledge of the terms, conditions, and effects of this

Agreement, and that each has the capacity and authority to enter into, execute, and be bound hereby.

8. The parties warrant and represent, each to the other, that no promise or inducement has been offered or made except as herein set forth.

9. In entering into this Agreement, all parties expressly acknowledge and represent that: (1) they have been advised and thereby have relied upon the advice of independent legal counsel, or have had a reasonable opportunity to consult with independent legal counsel, with respect to the meaning and legal effect of the terms and conditions of this Agreement; (2) they have read and fully understand the terms set forth herein; and (3) they have executed and entered into this Agreement freely and without coercion, duress, or undue influence by any person and thereby intend to be legally bound according to all terms and conditions hereof.

ATTORNEYS' FEES AND COSTS

10. Except as set forth in Paragraph 2h herein, each party hereto shall bear its own attorneys' fees and costs incurred in conjunction with this Agreement, the Contract and/or the Lawsuit. The parties shall execute such additional documents as reasonably necessary to satisfy their obligations hereunder, and do such other acts as may be reasonably required to effectuate the purposes of this Agreement.

ENTIRE AGREEMENT AND SUCCESSOR IN INTEREST

11. This Agreement and the Exhibits attached hereto constitute the entire Agreement between the parties with regards to the matters set forth herein. All prior discussions and negotiations are merged and integrated into and are superseded by this Agreement and the Exhibits attached hereto. This Agreement shall inure to the benefit of, shall be specifically enforceable by, and shall be binding upon, the heirs, successors and assigns of the parties hereto.

GENERAL CONDITIONS

12. **Governing Law.** This Agreement shall be construed in accordance with and shall be governed by the laws of the State of Arizona.

13. **Survival.** All warranties, covenants, representations and releases contained herein shall survive this Agreement.

14. **Invalid Provisions.** If, after the Effective Date, any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable herefrom and all other provisions hereof shall remain in full force and effect.

15. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which, when so executed and delivered, shall be an original, and all such counterparts shall

together constitute one and the same instrument and agreement.

WHEREFORE, the parties hereto have set their hands in agreement hereof as of the Effective Date hereof.

PARISH

Philip J. Parish, *as trustee*
of the Philip J. Parish and Kristine Lavandero
Revocable Living Trust

Kristine Lavandero, *as trustee of the*
Philip J. Parish and Kristine Lavandero
Revocable Living Trust

LA CHOLLA AIRPARK, INC.

Pennie Gillette-Stroud, *Board President*