

FTZ 221 FOREIGN-TRADE ZONE OPERATOR AGREEMENT

This Agreement is made by and entered into, as of this _____ day of _____, 20__, by and between the City of Mesa, a municipal corporation ("GRANTEE"), and Mesa Skybridge_("OPERATOR"), a Limited Liability Company.

RECITALS

WHEREAS, the City of Mesa is the GRANTEE of Foreign-Trade Zone No. 221 ("FTZ 221") pursuant to Board Order # 883 and #1538 of the United States Foreign-Trade Zones Board (the "Board") and dated April 25, 1997;

WHEREAS, GRANTEE deems it practicable to limit its participation in the everyday operations of FTZ 221 and to place the operations of FTZ 221 at the premises described in Exhibit A attached hereto (the "Premises") under the supervision of OPERATOR;

WHEREAS, the Premises was designated as a general purpose zone on April 25, 1997 (Board Order # 883 and #1538); and

WHEREAS, OPERATOR, upon the terms and conditions herein set forth, desires to be its own authorized Foreign-Trade Zone Operator of FTZ 221, Site 1 and to undertake the development and exclusive operational management of foreign-trade zone activities at the Premises in accordance with the standards of operations required by U.S. Customs and Border Protection ("Customs") and the Board;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings hereunder and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1 **AUTHORITY GRANTED/ACCEPTED**

Section 1.01 AUTHORITY - GRANTEE grants OPERATOR the authority to activate FTZ 221 at the Premises for the sole purpose of those activities described in Exhibit A, attached hereto (the "Permitted FTZ Activities"), in full compliance with applicable laws and in accordance with the terms of this Agreement. OPERATOR agrees to provide its Zone Fee Schedule to the GRANTEE as a written amendment to this Agreement and OPERATOR agrees to provide its rates or charges for all zone-specific services fairly and consistent with FTZ Regulations including the Public Utility principles. OPERATOR accepts and will have full and sole responsibility for the operation, management and conduct of Permitted FTZ Activities at the Premises. OPERATOR will comply fully with all applicable laws and regulations of the Board, Customs and other governmental entities and agencies relating to activities within FTZ 221 at the Premises and the Zone Schedule (as defined below). OPERATOR has the right to engage the services of a subcontractor(s) to assist in the operation of its Permitted FTZ Activities (as defined below) at the Premises subject to the approval of GRANTEE, with such approval not to be unreasonably withheld. If OPERATOR engages the services of a subcontractor(s), OPERATOR agrees to remain primarily liable for the performance of all obligations under this Agreement.

Section 1.02 GRANTEE LIABILITY - GRANTEE will not be held liable for violations by OPERATOR.

ARTICLE 2

RECORDS AND REPORTING

Section 2.01 ANNUAL REPORT/RECORDS - OPERATOR will submit to GRANTEE at the end of each calendar year and in accordance with law and regulations, a complete and accurate annual report as required by the Board. The report will be submitted by OPERATOR via the Board's Online FTZ Information System (OFIS) for review by GRANTEE no later than January 31st following the end of each calendar year. GRANTEE will submit a complete and accurate annual report to the Board covering all operations of FTZ 221 no later than 90 days following the end of each calendar year. If OPERATOR fails to submit to GRANTEE the information required for GRANTEE's timely submission of a complete and accurate annual report to the Board, each day of failed submission will constitute a separate offense under the FTZ Regulations and may be subject to a fine of not more than \$1,000 by the Board. OPERATOR will keep all financial and accounting records concerning operations at the Premises for a period of five (5) years following the date the merchandise reflected in such records is shipped from the Premises, or for the period of time as prescribed by all applicable regulations, whichever is longer. OPERATOR will keep current layout drawings of the Premises showing activated portions and a file showing required activation approvals.

Section 2.02 AUDITS/INVESTIGATIONS - OPERATOR will promptly notify GRANTEE in writing of any initiation of audit or investigation by any government agency related to the FTZ operation. OPERATOR will provide to GRANTEE upon request any reports and information related to such audit or investigation.

Section 2.03 RECORD DEFICIENCIES - In the event that any audit, inspection, or examination by Customs, the Board, or GRANTEE discloses that books, records, or operational procedures of OPERATOR are not in conformance with the requirements of Federal, State, and/or local law and this Agreement, GRANTEE may order the immediate correction of the documents or procedures. If OPERATOR determines that such correction will take in excess of five (5) business days, OPERATOR will submit to GRANTEE (and if required, to the Board and Customs), for its approval, a plan of performance for the correction of such discrepancy and will proceed with all due diligence to correct the deficiency in the manner described in the approved plan.

ARTICLE 3 ACTIVATION AND ACTIVITIES

Section 3.01 ACTIVATION/ FOREIGN-TRADE ZONE OPERATIONS MANUAL - Prior to the commencement of operating within FTZ 221, OPERATOR will establish standards of operation and management, prepare and file with Customs a Foreign-Trade Zone Operations Manual in compliance with the requirements of the Board and Customs, and require conformance thereto of all persons, firms and corporations admitted by it to the Premises. OPERATOR will secure activation of FTZ 221 at the Premises from Customs pursuant to Section 146.6 of the Customs Regulations.

Section 3.02 OPERATOR ACTIVITY - OPERATOR will be responsible for the timely filing of all Customs documents prepared by a broker or individual firms using the Premises, scheduling on-site inspections by Customs personnel as appropriate, and preparing and retaining such zone management records supporting all transactions as deemed necessary and appropriate. GRANTEE has prepared a zone schedule (the "Zone Schedule") that sets forth rates, charges, rules and regulations for FTZ 221 operations. As appropriate, information concerning OPERATOR's foreign-trade zone operations will be included in the Zone Schedule. OPERATOR will be responsible for the receipt, verification, and physical count of all merchandise admitted to the Premises on the proper Customs Reports, the appropriate handling of all merchandise, and the preparation and shipment of all merchandise, and physical count of all merchandise for, import, export, zone to zone transfer or destruction with prior authorization of Customs and such other U.S. government agencies as may be appropriate.

Section 3.03 PRODUCTION ACTIVITY - Production is any activity involving the substantial transformation of a foreign article resulting in a new and different article having a different name, character, and use, or activity involving a change in the condition of the article which results in a change in the customs classification of the article or in its eligibility for entry for consumption. Production activity at the Premises will not be conducted by OPERATOR without prior authorization from the Board.

Section 3.04 RETAIL TRADE - Retail trade is prohibited in activated areas of the Premises. Sales or other commercial activity involving domestic, duty-paid, and duty-free goods may be conducted within an activated area at the Premises under a permit issued by GRANTEE and approved by the Board.

ARTICLE 4 ACCESS

Section 4.01 ACCESS/NOTICE - OPERATOR will permit representatives of GRANTEE, the Board and Customs to enter and inspect the Premises, merchandise, and relevant records at all reasonable times upon reasonable notice (except in the case of emergency) or as otherwise required by law. OPERATOR will, if requested by GRANTEE, provide GRANTEE copies of all correspondence, notices, reports and other written communications received by OPERATOR from or given by OPERATOR to the Board or Customs that relates to the operations of the OPERATOR at FTZ 221.

ARTICLE 5 COSTS

Section 5.01 OPERATOR COSTS - OPERATOR will pay all costs of activation of FTZ 221 at the Premises, all fees charged by Customs or the Board attributable to operations at the Premises and the cost of bonds required by Customs for OPERATOR'S activities at the Premises.

Section 5.02 FOREIGN-TRADE ZONE OPERATORS BOND - OPERATOR will secure at its own expense and keep in full force and effect a Foreign-Trade Zone Operators Bond in a sufficient amount as required and directed by Customs.

Section 5.03 FEES & CHARGES -

OPERATOR will pay to GRANTEE a onetime activation fee of one thousand dollars (\$1,000). GRANTEE also charges an annual administration fee of five thousand dollars (\$5,000) to offset its costs to administer the Foreign Trade Zone. The fee may be adjusted as set forth in the Zone Schedule and at all times shall be fair and reasonable.

Section 5.04 PRIVILEGES - GRANTEE makes no representations or warranties as to the particular privileges and benefits which may accrue to OPERATOR from foreign-trade zone site operations as those privileges and benefits may vary as a result of changes in federal law, determinations of the Board and Customs and operational decisions of OPERATOR. GRANTEE will in no way be liable for any costs or losses sustained by OPERATOR as a result of its use of the zone. In addition, GRANTEE makes no warranties or representations regarding the benefits that may or may not be realized through participation by property owners, zone operators or zone users.

Section 5.05 OBLIGATIONS - OPERATOR will notify GRANTEE in writing, within ten (10) days following the commencement thereof, of any action, suit or proceeding, and of the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality, which may materially adversely affect the OPERATOR's financial condition or ability to meet its obligations hereunder. OPERATOR agrees to operate in conformance with all applicable laws and regulations. GRANTEE will not be liable for any actions of OPERATOR or violations of any laws by zone participants.

Section 5.06 LEGAL FEES - OPERATOR agrees to reimburse GRANTEE for any legal costs and expenses incurred by GRANTEE that are directly attributable to the operation and maintenance of the Premises, that are not already covered by the \$5,000 annual fee.

Section 5.07 VENUE - The venue for any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be Maricopa County, Arizona. Each Party waives the right to object to venue in Maricopa County.

ARTICLE 6

INDEMNIFICATION

Section 6.01 INDEMNIFICATION - OPERATOR agrees to protect, indemnify, defend and hold harmless GRANTEE and its directors, officers, employees, servants, agents, and affiliates from and against all loss, damage, fines, suits, claims, demands and liability, including reasonable attorneys' fees and costs, whether insured or not, arising out of or incident to OPERATOR's obligations and operations hereunder. OPERATOR agrees to provide GRANTEE with notice in writing of any statement of facts or situation arising out of or incident to Operator zone operations that give rise to a claim by GRANTEE for indemnification. OPERATOR will be responsible for legal fees and other costs incurred in the defense and settlement of such claim. Operator obligations to indemnify GRANTEE will survive this Agreement.

ARTICLE 7

TERM AND TERMINATION

Section 7.01 TERM and SURVIVAL - This Agreement will commence on the date written in the first sentence of this Agreement and remain in effect for a term of ten (10) years so long as this Agreement is not terminated under the provisions of this Agreement. This Agreement will automatically terminate 10 years after the Agreement commences as set forth in this Section 7.01, unless the OPERATOR sends notice to GRANTEE 6 months prior to the expiration date requesting an extension of a mutually agreeable time-frame, subject to any applicable fees or fee changes in force at such time. This extension is important to the OPERATOR, CUSTOMS and the GRANTEE to maintain active zone operations without subjecting Zone Users to compliance issues. All obligations of OPERATOR under this Agreement attributable to time periods or events occurring prior to the date of such termination or expiration will survive such termination or expiration. The parties acknowledge that Foreign Trade Zone regulations require GRANTEES to have written agreements with OPERATORS at all times, so any renewals must be processed prior to the expiration of any existing Operator Agreement.

Section 7.02 TERMINATION/SURVIVAL OF OBLIGATIONS – OPERATOR will have the right, at anytime, upon sixty (60) days prior written notice, to terminate this Agreement without cause and all rights and obligations hereunder. GRANTEE will have the right to terminate this Agreement and all rights and obligations hereunder for cause, including upon the occurrence of any of the following: (i) the default by OPERATOR of any provisions of the Operator Agreement beyond all applicable notice and grace periods, (ii) the entry by a court of (A) a decree or order for relief in respect of OPERATOR in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law; or (B) a decree or order adjudging OPERATOR as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of OPERATOR, under any applicable federal or state bankruptcy, insolvency, reorganization, or other similar law, or (C) a decree or order appointing a custodian, receiver, liquidator, assignee, sequestrator or other similar official of OPERATOR or of any substantial part of the property of the OPERATOR, or ordering the winding up or liquidation of the affairs of OPERATOR, or (D) the continuance of any decree or order described in the immediately prior subsections A through C (inclusive) for relief or any such other decree or order unstayed and in effect for a period of sixty (60) days, or (iii) the breach by OPERATOR of any provision of this Agreement which breach is not cured within thirty (30) days after GRANTEE gives OPERATOR written notice thereof. Notwithstanding the foregoing, if, during the thirty (30) day period specified in clause (iii) above, OPERATOR presents to GRANTEE a written plan to cure such breach including the time to cure such breach, subject to GRANTEE's reasonable approval, the time for cure will be extended provided OPERATOR commences promptly and proceeds diligently to cure such breach. Additionally, in the event GRANTEE wishes to terminate its participation in FTZ 221 for any reason, GRANTEE will have the right to terminate this Agreement and any and all rights and obligations hereunder, upon one hundred eighty (180) days prior written notice to OPERATOR. In the event of such termination, OPERATOR will have the right to apply to transfer its FTZ operations under a successor organization or another qualified grantee. OPERATOR represents and warrants that upon termination, deactivation, or expiration of this Agreement for any reason, whatsoever, OPERATOR will completely perform and fulfill any and all of its obligations and duties which arose or accrued during the term of the Agreement. OPERATOR's indemnity obligations, bond obligations, and record and record retention obligations will survive termination or expiration of the Agreement. In the event of bankruptcy, OPERATOR waives any and all of OPERATOR'S lien rights, if any, or claims of ownership against the inventory or equipment of any of its zone customers; provided, however, that the foregoing waiver of lien rights shall not be deemed a waiver of any ownership rights or lien rights of any third party.

Section 7.03 TRANSFER OR REVOCATION OF GRANT - If the grant for FTZ 221 will be revoked, transferred or canceled, this Agreement will terminate, and OPERATOR will have no claim against GRANTEE by reason of such revocations, transfer or cancellation. In the event of such revocation, transfer or cancellation OPERATOR will have the right to apply to transfer its FTZ operations under a successor organization or another qualified grantee.

Section 7.04 CHANGE OF CONTROL - OPERATOR will promptly notify GRANTEE in writing upon sale or transfer of ownership or change in voting control of more than fifty percent (50%) of the capital stock or assets of: (i) OPERATOR, or (ii) a parent organization of OPERATOR that owns a controlling interest in OPERATOR. GRANTEE will have the right to terminate this Agreement immediately upon such notification or require the execution of a new Agreement of similar form and substance; such approval of the new Agreement shall not be unreasonably withheld.

ARTICLE 8 **ADVERTISING**

Section 8.01 ADVERTISING - GRANTEE and OPERATOR may advertise that Operator operations are within FTZ 221. Such advertising will always seek to preserve a favorable image of FTZ 221.

ARTICLE 9

INSURANCE

Section 9.01 INSURANCE - OPERATOR agrees to carry with an insurance company or companies who do business in Arizona, insurance for the benefit of GRANTEE and with GRANTEE as an additional insured, covering liability for FTZ 221 in an amount not less than \$1,000,000.00 combined single limit for bodily injury and property damage liability per occurrence. Such insurance policy will contain a provision that for all claims covered under such policy it provides primary coverage without contribution from any other insurance carried by or for the benefit of GRANTEE or any other additional insured (provided, contribution is allowable if such additional insured is an affiliate of OPERATOR). Copies of such coverage will be provided to GRANTEE upon request.

ARTICLE 10

MISCELLANEOUS

Section 10.1 INDEPENDENT PARTIES - OPERATOR and GRANTEE are not and will not be considered, and agree not to represent to any person that they are, joint venturers, partners, or agents of each other, and neither will have any authority to act on behalf of the other or the power to bind or obligate the other except as set forth in this Agreement.

Section 10.2 NOTICES AND REQUESTS - Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth on the attached Exhibit "A" or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. Notwithstanding anything to the contrary contained herein, **notices to OPERATOR will be effective upon delivery to the Premises.**

Section 10.3 FURTHER INSTRUMENTS, REPRESENTATIONS AND ACTIONS - Each party will deliver such further instruments and take such further action as may be reasonably requested by the other in order to carry out the provisions and purposes of the Agreement. The parties specifically recognize that GRANTEE is not obligated to, and does not intend to monitor, the day-to-day activity of the Premises, and the appearance of GRANTEE's name on the reports aforementioned will not be construed as a representation that GRANTEE has any knowledge of the quantity, character, status designation, identification, or time of admission, transfer or release of goods into or from the Premises, and that any information contained on the aforementioned reports are the representations solely of OPERATOR, and not of GRANTEE.

Section 10.4 CONSTRUCTION - This Agreement will be governed by and interpreted in accordance with the Foreign-Trade Zones Act, Regulations adopted by the Board thereunder, and all amendments thereto, and the applicable laws of the State of Arizona.

Section 10.5 COUNTERPARTS - This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, but such counterparts together will constitute but one the same Agreement.

Section 10.6 HEADINGS - Headings and captions in this Agreement are solely for the convenience of reference and will not affect its interpretation.

Section 10.7 INTEGRATION - This Agreement contains the entire agreement between the parties regarding foreign-trade zone operations by OPERATOR at the Premises and no representations, inducements, promises, or agreements, oral or otherwise, not embodied herein will be of any force or effect. This Agreement, together with the following Exhibits attached hereto (which is incorporated herein by this reference) constitutes the entire agreement between the Parties:

Exhibit A: Pertinent Information and Definitions

Section 10.8 SEVERABILITY - If any provisions of this Agreement is declared void or unenforceable, such provisions shall be severed from this Agreement, which shall otherwise remain in full force and effect.

Section 10.9 WAIVER - No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

Section 10.10 GENDER - All terms and words used in this Agreement, regardless of the number and gender in which they are used, will be deemed and construed to include any other number, singular or plural, any other gender, masculine, feminine or neuter, as the context or sense of this Agreement or any paragraph or clause herein require.

Section 10.11 AMENDMENT - This Agreement may be amended only by written document executed by both parties.

Section 10.12 - FAIR INTERPRETATION - The parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the Party who drafted a provision shall not be employed in interpreting this Agreement.

Section 10.13 CONFLICT OF INTEREST - Pursuant to A.R.S. § 38-503 and § 38-511, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to the terms of A.R.S. § 38-511.

Section 10.14 TIME OF THE ESSENCE - Time is of the essence in this Agreement and with respect to the performance required by each Party hereunder.

Section 10.15 E-Verify - To the extent applicable under A.R.S. § 41-4401 and 23-214, OPERATOR represents and warrants compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements of A.R.S. 23-214(A). Breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by City. The City retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement to ensure compliance with the above-mentioned laws.

Section 10.16 Computation of Time - In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last date of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. The time for performance of any obligation

or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix, Arizona time) on the last day of the applicable time period provided herein.

Section 10.17 Good Standing: Authority - Each Party represents and warrants that it is a duly formed and legally valid existing entity under the laws of the State of Arizona with respect to OPERATOR, or a municipal corporation within Arizona with respect to the GRANTEE and that the individuals executing this Agreement on behalf of their respective Party are authorized and empowered to bind the Party on whose behalf each such individual is signing.

GRANTEE:
City of Mesa, Arizona

OPERATOR:
Mesa Skybridge LLC

By: _____

By: _____

Printed Name: _____

Printed Name: Jose Pablo Martinez

Title: _____

Title: Project Director, VP Mesa Skybridge

Attested by: _____

Attested by: _____

Date: _____

Date: _____

EXHIBIT "A"

Pertinent Information and Definitions

GRANTEE:

City of Mesa, Arizona

ADDRESS:

City of Mesa – Foreign Trade Zone
20 East Main Street, Suite 750
Mesa, Arizona 85211
Facsimile: 480-644-2175
Attn: City Manager

OPERATOR:

Skybridge LLC

PREMISES:

Phoenix-Mesa Gateway Airport
Hangar 32
6229 S. Sossaman Rd.
Mesa, AZ 85212

PERMITTED ACTIVITIES:

The operator will be performing general-purpose activities only, including all applicable operations that do not require a production notification.