

**BENSON AIRPORT HANGAR LEASE
AGREEMENT XXXXX, LLC**

at
Benson Municipal Airport

THIS LEASE AGREEMENT (the "Agreement"), binding and effective pursuant to its terms, is entered into this XX day of XXXXX, 20XX, by and between the City of Benson, an Arizona body politic, hereinafter referred to as "LESSOR", whose Authorized Representative is:

Vicki Vivian, City Manager
City of Benson
120 W. 6th Street
Benson, Arizona 85602
(520) 586-2245

and the CONTRACTOR, hereinafter referred to as "LESSEE", whose complete name, address and Authorized Representative is:

XXXXXX, member and manager of
XXXXXXX", an Arizona Limited Liability Corporation
P.O. Box xxxxx
Benson, Arizona 85602
(520) XXX-XXXX

in consideration of the mutual covenants contained herein, the parties agree as follows:

I. LEASED PROPERTY:

The LESSOR will lease to the LESSEE the following described real property situated at the Benson Municipal Airport-Paul Kerchum Field, which measures approximately [XX feet x XXX feet, the legal description for which is attached hereto as Exhibit "A" and by reference incorporated herein]. Herewith, this real property will be referred to as the "Leased Premises".

II. USE OF LEASED PROPERTY:

A. The LESSEE shall be required to construct [one (1)] general aviation hangar upon the leased premises at the Benson Municipal Airport-Paul Kerchum Field which shall be used to store aircraft and other activities associated with the use and regular maintenance of aircraft.

B. LESSEE is granted the use, in common with others similarly authorized, of all airport facilities, equipment, improvements, and services, which have been or may hereinafter be provided at or connected with the airport from time to time including, but not limited to, the landing field and any extensions thereof or additions thereto, roadways, runways, aprons, taxiways, sewage and water facilities, floodlights, landing lights, beacons and all other conveniences for flying, landings, and takeoffs.

C. LESSEE acknowledges that its right to conduct business operations do not extend to any areas of the Municipal Airport outside of the Leased Premises unless subject to a separate written agreement.

II. LESSEE'S RESPONSIBILITIES:

In exchange for LESSOR'S permission to construct [one (1)] aviation hangar upon the leased premises and to conduct those activities authorized in Section II, LESSEE shall be responsible for the following activities during the entire lease term as may be extended from time to time:

A. LESSEE shall be solely responsible for all costs associated with installing a fire protection system as required by the building code.

B. LESSEE shall be solely responsible for all costs associated with the building construction and hangar apron improvements, including A/C paving around the hangar building.

C. LESSEE shall maintain the leased premises in a neat and clean manner, free of weeds and debris.

D. LESSEE shall construct [xx (x)] metal hangar building(s), which shall comply with all applicable laws, ordinances, rules, regulations, and applicable orders, including but not limited to, the Americans with Disabilities Act of 1990, 42 U.S.C. § 1201 et. seq. LESSEE must complete construction of the building(s) within twelve (12) months after this agreement is signed.

E. LESSEE shall obtain a building permit and meet all requirements of the Benson Airport Operating Regulations, including installation of remotely alarmed smoke and/or heat detection devices, as approved by the Benson Fire Chief, until such time as land telephone lines are reasonably available to the Leased Premises, at which time a remote monitoring system must be installed within sixty (60) days.

F. LESSEE shall procure all design and construction services with the methods established and the manner prescribed by Title 34 of the Arizona Revised Statutes. LESSOR will not authorize any improvements which would otherwise allow a lien to attach to the Leased Premises.

III. LEASE PAYMENTS:

LESSEE agrees to pay LESSOR for the use of the premises, rights, services and privileges granted hereunder according to the following:

A. For the exclusive use of the Leased Premises, which consists of approximately xxxxxxxxxxxx (xx,xxx) square feet, the lease rate shall be xxxx (\$.xx) per square foot for the first year amounting to an annual payment of xxx xxxxxxxxxxxx AND NO/100'S DOLLARS (\$x,xxx.00).

B. The lease rate will automatically be adjusted upwards two percent (2%) per year during each of the first five (5) years of the lease. After this period, the lease rate will be established for each future five (5) year period to reflect a two percent (2%) rate increase per year or the average percentage rate of the "consumer price index", whichever is higher, for the previous five (5) year period. No individual lease rate increase effectuated through an automatic rate increase, in any event, will exceed a four percent (4%) increase per year.

C. LESSEE'S annual lease payments shall be due LESSOR in advance, with the first payment due on the 1st day of XXXX, 20XX, hereinafter referred to as the commencement date. Thereafter, annual lease payments shall be due on the anniversary of the commencement date. All payments shall be made payable to the City of Benson, Airport Account, and shall be mailed to or made in person at 120 W. 6th Street, Benson, Arizona 85602. Any payment not received on or before the 15th day after the anniversary of the commencement date shall incur a late payment charge of FIVE HUNDRED AND NO/100'S DOLLARS (\$500.00) per month and all outstanding balances shall accrue interest at the rate of one percent (1%), compounded monthly until paid in full. Further, a TWENTY FIVE AND NO/100'S DOLLARS (\$25.00) fee will be assessed on all returned checks.

IV. UTILITIES:

LESSEE shall be solely responsible for obtaining and paying for all necessary and related costs associated with utility services on the leased premises and all applications and connections, including communications, shall be made in the LESSEE'S name only. LESSEE will be responsible for all the costs associated with extending and connecting to utilities.

V. TERM OF LEASE:

LESSOR and LESSEE agree that the term of this lease agreement shall be subject to the following:

A. The term of this agreement shall commence on the date of execution and shall continue for an initial term of _____ (the "Initial Term"). If LESSEE is not in default, this Agreement may be renewed at the option of the LESSEE for **one (1)** consecutive term of _____ for a maximum total term of _____. In no event shall the duration of this Agreement, including the initial term and renewal term, exceed eighty (80) years.

B. If the LESSOR fails to perform any act or render any service required to be performed hereunder by LESSOR under the term of this agreement, and if LESSOR fails to remedy and such default in a manner reasonably satisfactory to LESSEE within thirty (30) days following the receipt from LESSEE of written notice to remedy the same, LESSEE may elect to terminate this agreement by providing LESSOR with ninety (90) days written notice of his intent to transfer or terminate the lease.

C. If the LESSEE fails to perform any act or render any service required to be performed hereunder by LESSEE under the term of this agreement, and if LESSEE fails to remedy any such default in a manner reasonably satisfactory to LESSOR within thirty (30) days following the receipt from LESSOR of written notice to remedy the same, LESSOR may elect to terminate this agreement by providing LESSEE with ninety (90) days written notice of its intent to terminate the lease.

D. In the event of expiration or termination, for any reason, of this Agreement, all parties hereby agree that all right, title and interest to all improvements upon the leased premises shall vest in LESSOR.

E. In the event that the Lease is terminated by the LESSOR, through no fault of the LESSEE, the LESSEE shall be compensated for the fair market value of LESSEE's improvements,

as determined by a certified real estate appraiser agreed upon by the parties, at a prorated rate based upon the time remaining in the Initial Term. By way of example, if LESSOR terminates this Agreement, through no fault of LESSEE, at the start of the 20th year in a 40 year term, LESSOR shall compensate LESSEE 50% of the fair market value of LESSEE's improvements. LESSOR shall have two (2) years following the termination of the Agreement to pay any sums owed to LESSEE under this Article VI (E).

VI. IMPROVEMENTS AND MAINTENANCE:

A. LESSEE hereby acknowledges that the purpose of this agreement is to facilitate construction of an aviation hangar upon the real property known as the Benson Municipal Airport-Paul Kerchum Field to which all right, title and interest to shall vest in LESSOR upon expiration or termination of this Agreement.

B. It is agreed, that LESSEE, during the existence of this lease, may make other improvements or alterations to the leased premises in addition to the required improvements as set forth above. However, before commencement of any work, LESSEE shall first receive the written approval of LESSOR'S designated representative, which LESSOR may withhold in its sole discretion. LESSOR's approval or denial of LESSEE's request shall be provided to LESSEE within a reasonable amount of time.

C. Future Improvements to the Leased Premises shall be at the sole cost of the LESSEE. The Leased Premises are provided "AS IS" and LESSOR makes no warranties as to the condition or fitness for purpose. **LESSOR EXPRESSLY DISCLAIMS ANY WARRANTY OF HABITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.** Any improvements that may be necessary for LESSEE'S purposes shall be the sole responsibility of LESSEE and any such improvements provided by LESSEE shall be deemed to be for the benefit of the LESSEE and the LESSOR shall not reimburse LESSEE for any expenses incurred thereby. LESSEE agrees to require that its contractors post a payment and performance bond for any construction or improvement work performed at the Leased Premises unless separately waived by the LESSOR.

D. LESSEE must determine for itself whether it shall be required to perform some excavation and grading to prepare the site for LESSEE's building. Before any such work commences, LESSOR'S representative must approve such work in writing. All such work will be deemed to be for the benefit of the LESSEE and the LESSOR shall not reimburse LESSEE for any expenses incurred. LESSEE shall be responsible for conducting reasonable potholing to identify any underground utilities.

E. At the expiration or termination of this Agreement, and all executed option periods, all title, right and ownership to all fixed assets located on the Leased Premises shall vest with the LESSOR. It is agreed that all personal property shall remain the personal property of the LESSEE and be subject to removal by LESSEE, where such removal will not cause damage or injury to the leased premises, if any. Under no circumstances shall LESSEE remove any building improvements, electrical or plumbing fixtures which have become a part of LESSOR'S real property by virtue of their installation in the ground.

F. At all times during the term of this agreement, LESSEE shall be responsible for maintaining structures upon the Leased Premises and the immediate grounds in an attractive

manner and in good condition, including, but not limited to the removal of trash and tumbleweeds from the Leased Premises.

G. LESSEE shall, at all times during the term of this agreement, at LESSEE'S own expense, repair, and maintain in a good and safe condition, any improvements on the Leased Premises, and shall use all reasonable precaution to prevent waste, damage or injury to the leased premises.

VII. LIENS:

LESSOR believes that the Leased Premises cannot be subjected to mechanic's liens because it is government-owned property. Notwithstanding this position, LESSEE shall keep the Leased Premises free and clear of any and all mechanics, material men and other liens or claims arising out of or related to LESSEE'S use and occupancy of the Leased Premises, excepting landlord's written consent granted by LESSOR providing mortgagee the right to operate the Leased Premises during the term of this Agreement but shall not permit said mortgagee ownership rights in the real property where the Leased Premises are located. In the event that an adverse lien is filed against any building or structure erected by LESSEE on the Leased Premises, LESSEE hereby agrees have any such lien removed within ninety (90) days and to indemnify, defend and hold harmless the LESSOR, its officers, agents, and employees against all liability for any such debt(s), and further, agrees that LESSEE shall be responsible for any and all costs, including attorney's fees, that may be associated with any loss LESSOR may incur as a result of LESSEE'S encumbrance of any structures placed upon the Leased Premises.

VIII. TAXES AND ASSESSMENTS:

LESSEE shall pay all taxes, assessments and charges including, without limiting the generality of the foregoing, personal and any applicable real property taxes and utility charges, which may be taxed or charged to the LESSEE or upon the Leased Premises in connection with LESSEE'S use and occupancy of the Leased Premises. It shall be the obligation of LESSEE to pay any assessed personal property taxes on any goods, equipment, inventory, machinery, movable trade fixtures or other personal property located in or upon the Leased Premises.

IX. ASSIGNMENT, SUBLEASE OR LICENSE:

A. LESSEE shall not at any time assign it rights to the Leased Premises under this agreement or any part thereof without the prior written consent of the LESSOR, wherein such approval shall not be unreasonably withheld; provided, LESSEE shall have the right upon completion of construction and receipt of a Certificate of Occupancy issued by the City of Benson to transfer all right, title and interest to Benson Municipal Airport-Paul Kerchum Field Pad "X", L.L.C., as successor of XXXXXXXX.

B. LESSEE shall not be prevented from subletting space in any of the buildings or structure hereafter erected by LESSEE on the premises and said subletting shall not require prior approval by the LESSOR.

X. COMPLIANCE WITH LAWS AND REGULATIONS:

A. LESSEE and LESSOR shall comply with all federal, state, and city laws, rules and regulations, controlling or in any manner affecting the use or occupancy of the Leased Premises or the airport. LESSEE shall operate the facilities in compliance with any and all federal, state, and city regulations pertinent to the operations of the Benson Municipal Airport-Paul Kerchum Field, and shall not engage in any activities which may adversely affect airport operations as determined by the LESSOR in its sole discretion, which discretion LESSEE admits may be exercised in arbitrary or unreasonably. LESSEE'S rights hereunder are subject to any prior or overriding rights of the United States.

B. All City of Benson regulations and ordinances, as applicable to this facility or the operations conducted thereon, and any future amendments thereto, including, but not limited to, building permit and development fees, are incorporated by reference into this lease and shall be considered part of the regulations LESSEE must comply with under the terms of this Agreement.

C. Additionally, LESSEE is responsible for acquiring and maintaining in current status any and all necessary permits and/or certifications as required by all applicable State and/or Federal agencies governing all activities associated with LESSEE'S occupancy of the Leased Premises.

XI. ENTRY TO PROPERTY:

A. LESSEE shall have at all times the full and free right of ingress to and egress from the Leased Premises and facilities referred to herein for LESSEE, sub-lessees, its employees, customers, guests and other invitees.

B. LESSOR or LESSOR'S agents shall be allowed to inspect the Leased Premises as deemed necessary and appropriate upon reasonable notification to LESSOR or sub-lessees of not less than twenty-four (24) hours' notice. LESSOR, or LESSOR'S agents may enter the Leased Premises at any time in case of fire or other emergency.

XII. PARKING:

LESSEE shall utilize existing designated parking areas and LESSEE'S vehicles shall not cause undue interference with any other airport activity. In the event that LESSEE'S activity upon the Leased Premises should generate the need for additional parking facilities, LESSEE shall be required to provide additional parking in an area to be designated by LESSOR in conformance with the City of Benson's regulations and ordinances.

XIII. INDEMNIFICATION:

LESSEE agrees to indemnify, defend and hold harmless the LESSOR, its officers, agents, and employees against all liability for injuries to persons or property damage caused by the LESSEE'S negligent use or occupancy of the premises, or from any claims for damages, liabilities, fines, or claims of every kind, including attorney fees, arising or in any manner occasioned, by the acts or omissions of the LESSEE, its tenants, assignees, invitees, or guests, in the use of occupancy of the Leased Premises.

LESSEE shall further indemnify, defend, and hold harmless LESSOR, its officers, agents, and employees from and against any and all losses, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys fees) suffered, incurred by or asserted as a result of (i) the presence of any Hazardous Materials or any failure of LESSEE or any other person to comply with all applicable environmental federal, state or local laws or regulations relating to the Leased Premises or the use of the Leased Premises at any time during the term of this Agreement; or (ii) any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency which has resulted or is alleged to have resulted directly or indirectly from the presence of any Hazardous Materials relating to the Leased Premises; or (iii) any claim, demand or cause of action, or any other action or proceeding, whether meritorious or not, brought or asserted which directly or indirectly relates to, arises from or is based upon any matters described in clauses (i) and (ii) of this section; or (iv) any matter set forth in clauses (i), (ii) or (iii) of this section with respect to any period of LESSEE's use of the Leased Premises after the later of the expiration or sooner termination of this Agreement. LESSEE further agrees to take any and all timely action necessary to remediate, as required by any federal, state, or local governmental agency.

As used in this Agreement, the term "Hazardous Material" means any explosives, hazardous or toxic substances, radioactive materials or waste or related materials, defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws or regulations and in excess of de minimus or inconsequential amounts used at or on the Leased Premises, including without limitation, petroleum-based products and other chemical products and similar compounds. LESSEE shall not cause or permit any Hazardous Material to be generated, produced, brought upon, used, stored, treated or disposed of in or about the Leased Premises in violation of applicable law by LESSEE, its tenants, assignees, invitees, or guests without the prior written consent of LESSOR. LESSOR shall be entitled to take into account such other factors or facts as LESSOR may reasonably determine to be relevant in determining whether to grant or withhold consent to LESSEE's proposed activity with respect to Hazardous Material.

XIV. INSURANCE:

A. During the term of this Agreement, LESSEE shall, at its own expense, take out and maintain liability insurance on the Leased Premises and on his business operations in the amount of TWO MILLION AND NO/100 (\$2,000,000) DOLLARS. This liability insurance shall provide a minimum of ONE MILLION AND NO/100 (\$1,000,000) DOLLARS liability coverage for each occurrence and with such insurance companies, as shall be satisfactory to the LESSOR to protect and indemnify the LESSOR from all damages or claims of any kind whatsoever, arising from the LESSEE'S use and occupancy of the Leased Premises. Such coverage shall be primary and non-contributory and shall insure LESSOR against LESSEE's performance under Article XIV of this Agreement. LESSEE shall maintain builder's risk coverage during construction of the hangar.

B. LESSEE shall, at its own expense, take out and maintain property insurance in an amount sufficient to cover the value of all property owned, leased, or stored by the LESSEE on the Leased Premises.

C. LESSEE shall cause all liability insurance policies to name the LESSOR as an additional insured (and LESSOR shall be endorsed as such) and LESSEE shall provide the LESSOR with certificates of insurance evidencing the coverage and naming LESSOR as an

additional insured within thirty (30) days of signing this Agreement or prior to occupancy, whichever is sooner. A current certificate of insurance will be provided on the anniversary of the policy, to the LESSOR at the same address to which lease payments are sent. Should insurance be canceled, notification must be sent to the LESSOR within ten (10) working days.

XV. DEFAULT OR BREACH:

Each of the following events shall include, but are not limited to, events which would constitute a default or breach of this lease by LESSEE:

- A. If LESSEE shall fail to pay LESSOR any lease payments when such payments shall become due.
- B. If LESSEE shall fail to perform or comply with any of the conditions of this Lease.
- C. If LESSEE shall abandon all or a portion of the entire Leased Premises.
- D. If this Lease shall be transferred to or shall pass to or dissolve on any other person or party without the prior written consent of the LESSOR and such consent shall not be unreasonably withheld.
- E. If LESSEE shall fail to maintain current, required amounts of insurance coverage.

In the event of LESSEE's breach of this Agreement, LESSOR shall have all remedies available under applicable law, including the immediate option to terminate this Agreement upon five (5) days' written notice to LESSEE if such breach is not cured within that timeframe. If LESSOR terminates this Agreement as a result of LESSEE's breach, LESSOR may seek payment of any unpaid rent accrued at the time of such termination, in addition to future unpaid rent for the remainder of the term of this Agreement, subject to LESSOR's duty to mitigate its damages. LESSOR shall be entitled to collect all fees and costs it incurs as a result of LESSEE's breach.

XVI. SUPPLEMENTARY CONDITIONS:

- A. LESSEE hereby agrees to indemnify, defend and hold harmless the LESSOR, its officers, agents, and employees against all liability for injuries to persons or property damage caused by fire or other emergent situation as a result of emergency response time to the premises due to the premises' remote location.
- B. LESSEE agrees to hold harmless LESSOR for any damage that may occur to any of LESSEE'S personal property as a result of the waiver of fire protection granted to LESSEE in paragraph A. above.
- C. LESSEE is authorized to display on-premises signage in an amount as prescribed by the City of Benson, if applicable, so long as the signage complies with the City's Sign Code as amended and does not interfere with airport operations at the Municipal Airport (*see* ¶ XVIII, below).

XVII. DESTRUCTION OF PREMISES:

A. LESSOR and LESSEE agree that if the Leased Premises shall be wholly or partially damaged by an act of God to such extent that the Leased Premises shall be rendered wholly untenable, then LESSEE may elect to terminate this Lease by giving written notice of the same to LESSOR.

B. The Leased Premises, or any portion thereof, shall be deemed to be wholly untenable and if the condition of a specific structure, or structures, is no longer in compliance with the applicable State and City building codes.

C. In the event that a portion of the premises is deemed wholly untenable, LESSEE may undertake to repair, remove or replace said portion within three (3) months of the date of the damaging event. In the event LESSEE should fail to make substantial and continuous progress toward completion or repair of the damaged property or LESSOR may elect to notice LESSEE as prescribed by paragraph VI (C) of terminate the Lease if such repairs are not completed within a reasonable time period.

XVIII. DEVELOPMENT RESERVATION:

In its sole discretion, LESSOR reserves the right to further develop or improve the landing and taxiway areas of the airport as it sees fit and the right to take any action it considers necessary for the protection of the aerial approaches to the airport from obstruction. LESSOR may prevent LESSEE from erecting or permitting the erection of any building or other structure on the airport premises which, under the regulations of the Federal Aviation Administration, would limit the usefulness of the airport or constitute a hazard to aircraft.

XIX. LEGAL REMEDIES:

The laws of the State of Arizona shall govern this agreement and venue for any legal proceedings shall be within Cochise County. Any claim or controversy must first be presented in writing, with supporting documentation, to the agent of the other party. The recipient shall have ten (10) business days to prepare and deliver a response. Further, the parties hereby agree to make a good faith effort to resolve any controversy or claim through informal negotiation. Thereafter, if the parties fail to resolve the claim or controversy following a reasonable period for such resolution, but not less than twenty (20) days, the aggrieved party may pursue its legal remedies in the appropriate State Court of Arizona located in Cochise County.

XX. RIGHTS AND REMEDIES:

No provision in this document or in the LESSEE'S offer shall be construed, expressly or by implication, as a waiver by the LESSOR of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of any party to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract or by law, or the acceptance of materials or services, or the payment for materials or services, shall not release the other party(s) from any responsibilities or obligations imposed by the contract or by law, and shall not be deemed a waiver of any right of any party(s) to insist upon the strict performance of the contract. Time is of the essence.

XXI. CONTRACT:

The terms of this Lease Agreement, shall be interpreted and governed by the laws of the State of Arizona and the unenforceability of any provision herein shall not affect or impair any other provision.

XXII. CONTRACT AMENDMENTS:

This contract may be modified only by a written contract amendment signed by persons duly authorized to act on behalf of the LESSOR and the LESSEE.

IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be signed by their duty authorized representatives.

LESSEE

Date

CITY OF BENSON

Date

ATTEST:

Vicki L. Vivian, CMC
City Clerk

By:

LESSOR:

MAYOR

APPROVED AS TO FORM:

DeCONCINI McDONALD YETWIN
& LACY, PC
By Paul A. Loucks
City's Attorney

EXHIBIT A

LEGAL DESCRIPTION