

LEASE OF PROPERTY AT THE WILLCOX AIRPORT

This LEASE is hereby entered into by, and between, the County of Cochise, a political subdivision and a body politic of the State of Arizona, acting by and through its duly elected Board of Supervisors, hereinafter referred to as the "LESSOR," and Vogel Family Properties, LLC, a California limited liability company, 300 Paseo Tesoro, Walnut CA 91789, hereinafter referred to as "LESSEE."

The LESSOR, in consideration of the terms and conditions stated herein, does hereby let and lease unto the LESSEE, and the LESSEE, as tenant, hereby takes and accepts from the LESSOR, the real property hereinafter described, designated as the "LEASED PREMISES."

This LEASE is made for the term and upon the conditions and agreements herein expressed. The LESSOR, the LESSEE, their successors and assigns, do hereby respectively agree to keep and perform each and all of the conditions and agreements herein set forth.

1. LEASED PREMISES

An area approximately 100 feet by 100 feet, generally described as Airport Facility #14-Future Hangar as depicted on Sheet 4-Terminal Area Drawing, Airport Layout Plan, A.I.P. No. 3-04-0049-004-2013 for the Cochise County Airport, Willcox, Arizona, dated 07/2014, along with a right of access to the airport ramp, taxiways, and runways.

This area is more particularly described in Exhibit "A." attached hereto and incorporated by reference herein.

2. TERM

The term of this LEASE shall be for a twenty (20) year period, beginning on the first day of _____, and upon approval of the parties, unless altered by the exercise of the conditions provided for under the LEASE. LESSEE shall have an option to renew this LEASE, on the same terms and conditions for two (2) additional twenty (20) year periods, by providing written notice of intent to renew to LESSOR at least six (6) months before the expiration of the current twenty (20) year term. The maximum allowable term of the lease is sixty (60) years. During the term of this LEASE, and with the LESSOR's approval, LESSEE may transfer, assign or sublet this LEASE. LESSEE must provide LESSOR with written notice of LESSEE's intent to transfer, assign or sublet this LEASE at least 60 days in advance of the transfer, assignment or sublease agreement. LESSOR may not unreasonably withhold approval of the transfer, assignment or sublease agreement, but reserves the right to withhold approval if LESSOR has legitimate business concerns about performance of the LEASE by LESSEE's designated transferee.

3. LEASE PAYMENTS

The LESSEE agrees to pay the LESSOR as rent or lease payment for said premises the sum of Two Thousand Nine Hundred and FIFTEEN Dollars (\$2,915.00) per year. These annual rent payments shall be subject to increases in accordance with the provisions of Section 4. Rental payments shall be due on the 1st of each anniversary of the Commencement Date, shall be payable to the Treasurer of Cochise County, and shall be mailed to the following:

Cochise County
Development Services
1415 West Melody Lane, Building F
Bisbee, AZ 85603

Any payments not received on or before the tenth day of the month when due shall accrue interest at the rate of one percent (1%) per month or fraction of a month on such unpaid as may be due, and a late payment charge of Ten Dollars, (\$10.00) for each delinquent payment will be assessed. An additional Twenty-Five Dollars (\$25.00) will be assessed on all returned checks.

Rent shall be abated for all periods in which the runway is not open for takeoff or landing by aircraft or during which LESSEE does not have reasonably equivalent access from the Premises to either the airport runway or to the public way.

4. RENT ADJUSTMENT

Following the completion of each three-year period of the term of this lease, including any extension thereto pursuant to Section 2 of this Agreement, the rent will be adjusted for the next three-year period, based upon the percentage of change in the Consumer Price Index during the prior three-year period. The Consumer Price Index shall mean the average for "all items" shown on the "United State City Average for all Urban Consumers," as promulgated by the Bureau of Labor Statistics of the United States Department of Labor, using the year 1982-84 as the base period of 100.

The adjusted monthly rental payment during each successive three-year period, following the expiration of the proceeding three-year period, shall be determined by the following calculation.

$$\text{Adjusted Monthly Rent} = \text{Monthly Rent} + ((I-B / B) \times \text{Monthly Rent})$$

Where these terms have the following definitions:

- Index - the current Consumer Price Index for "all items."
- Monthly Rent - Rental payment amount for preceding period.
- Base Month - the first month of the expiring three-year term.
- B - The index for the Base month.
- I -The Index for the calendar month which is three years after the Base month.

Pending the determination of the adjusted monthly rental for each three-year renewal, the LESSEE shall continue to pay the rent at the rate of the prior period. If the adjusted rent is determined to be higher than the previous period, the LESSEE on the first day of the month immediately following that determination will pay the higher adjusted rent. LESSOR shall provide LESSEE with written notice of the adjusted rent.

If at the time required for the determination of the adjusted rent the Index is no longer published or issued, the parties shall use such other index as is then generally-recognized and accepted for similar determinations of purchasing power. In any event, the monthly rent for any renewal lease period shall not be less than that of the previous term. Monthly rent increases not to exceed three percent (3%) per three (3) year term.

5. INSPECTION OF PREMISES BY LESSOR

The LESSOR's representatives shall, at any reasonable time, have the right to go upon any of the LEASED PREMISES to inspect said premises to protect the LESSOR's rights. LESSOR shall provide at least forty-eight (48) hours advance notice of an inspection unless LESSOR, in its sole discretion, determines that an emergency exists, in which case advance notice shall not be required.

6. CONSTRUCTION OF FACILITY

As conditions of this LEASE, the LESSOR hereby permits, and the LESSEE hereby agrees to undertake construction of an approximately 100 foot by 100-foot box hangar, along with related office area on the LEASED PREMISES to be used for aircraft storage and related purposes. The construction of said hangar

facility shall commence within one-hundred eighty (180) days from the effective date of the LEASE and shall be pursued to substantial completion in a commercially reasonable manner. If construction is delayed due to conditions beyond LESSEE's control, including but not limited to delays due to health orders, or delays in issuance of permits by Cochise County, the time for substantial completion of the hangers shall be extended by an amount of time equivalent to the delay. The LESSEE may connect to existing utilities at the airport but shall be solely responsible for providing all such utility connections and related improvements and shall be solely responsible for all expenses associated with any such service. All improvements to the LEASED PREMISES shall be completed in a manner that complies with all applicable building codes and other regulations. The LESSEE shall be solely responsible for all costs and expenses incurred in connection with these improvements and shall promptly pay all such expenses as necessary to prevent any liens on the LEASED PREMISES. Construction of these improvements by the LESSEE is part of the consideration of this LEASE. Said improvements shall not be removed without the consent of LESSOR, which shall not be reasonably withheld. All improvements on the LEASED PREMISES shall become the property of the LESSOR upon the termination of this LEASE. Upon expiration or earlier termination of this LEASE for any reason, LESSEE shall be provided a right of first refusal to rent the LEASED PREMISES at a commercially reasonable rental rate. The right must be exercised by the LESSEE within 30 days of LESSEE'S receipt of notice of LEASE termination.

If it is necessary to file FAA Form 7460 - Notice of Proposed Construction, and if the FAA will accept the Form only from the LESSOR, LESSOR will complete and send in the Form 7460, provided that LESSEE will assist by providing any information that may be needed to complete the Form.

7. TAXES AND ASSESSMENTS

In addition to the rentals set forth herein, the LESSEE shall pay and discharge all taxes, assessments, charges and license fees, including but without limiting the generality of the foregoing, water, gas, waste disposal, electricity, and other utility rates and assessments which may at any time or from time to time during the term of this LEASE, by or according to any law or government order or authority whatsoever, be taxed, charged, levied, assessed or imposed upon or against, or which shall or may be or become a lien against the LEASED PREMISES or upon any building or improvement located thereon as a result of the use of the LEASED PREMISE by the LESSEE under this LEASE.

The LESSEE shall pay or cause to be paid, all taxes on all of its own personal property including structures, tools, equipment, and all other items owned by them that become subject to such taxes during the term of this LEASE.

8. RULES AND REGULATIONS

All operations of the LESSEE shall be conducted in a lawful manner, and the whole area under control of the LESSEE shall be kept in a clean and sanitary condition. All operations shall be conducted in accordance with existing laws, rules and regulations promulgated by the LESSOR, or its assigns for the operation of the Airport Facility as an operating unit, and no nuisance of any kind shall be permitted to be carried on upon the LEASED PREMISES.

9. CONDITIONS AND OPERATIONS OF THE LEASED PREMISES

- a. It is agreed that the LESSEE, during the existence of this LEASE may make alterations and additions and effect erection of signs but shall first receive written approval of the LESSOR for any such alterations, additions, or signs. Such approval shall not be unreasonably withheld.
- b. The LESSEE agrees to abide by all laws and orders governing the operation for the Cochise

County Airport at Willcox, Arizona.

- c. If water is used from LESSOR's well, a charge of One Dollar and Ten Cents (\$1.10) per 1000 gallons will be assessed. The rate charged for water may be changed at the same intervals that the premise rate is adjusted. LESSEE shall pay said charges within thirty (30) days after receipt of the invoice.
- d. The LESSEE is authorized to sublet storage within the hangar without additional written permission of the LESSOR. The LESSEE shall not assign, lease or convey this LEASE to any third party without the written consent of the LESSOR, as more particularly described in paragraph 2 above.

10. RULES AND REGULATIONS REQUIRED UNDER AGREEMENTS AT AIRPORT AFFECTED BY GRANT AGREEMENTS

- a. LESSEE, in the operation to be conducted pursuant to the provisions of this LEASE and otherwise in the use of the airport, will not discriminate or permit discrimination against any person or class of persons by reason of race, color, creed, or national origin in any manner prohibited by Part 15 of the Federal Aviation Regulations or any amendments thereto.
- b. The LESSOR reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desire or view of the LESSEE, and without hindrance or interference.
- c. The LESSOR reserves the right, but shall not be obligated to the LESSEE, except as expressly stated herein, to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of the LESSEE in this regard.
- d. There is hereby reserved to the LESSOR, its successor and assigns, for use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation of the Cochise County Airport at Willcox, Arizona.
- e. In the event future alterations or additions are desired, LESSEE agrees to notify the LESSOR and obtain written approval.

LESSEE by accepting this LEASE agrees for himself, his successors and assigns that he will not make use of the LEASED PREMISES in any manner that will interfere with the landing and taking-off of aircraft from the Cochise County Airport or otherwise create a hazard. In the event the aforesaid covenant is breached, the LESSOR reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expenses of the LESSEE.

11. TAXIWAY AND APRON IMPROVEMENTS

The LESSEE will be responsible for the cost of any taxiway or apron connections associated with the LEASED PREMISES. The County will maintain the taxiway and apron provided that construction of all

taxiways and aprons shall be in conformance with FAA standards to accommodate up to and including Group I aircraft. If LESSOR leases property adjacent to the LEASED PREMISES to someone other than LESSEE, and such person desires to use the taxiway or apron connections improved by LESSEE, then as a condition of such lease, such person shall reimburse LESSEE for use of the taxiway or apron according to the following formula: based upon LESSEE's actual cost of construction, a calculation shall be made of LESSEE's exterior linear cost per foot.

LESSEE shall be reimbursed for fifty percent (50%) per foot of mutual connection adjusted by a ten (10) year straight line depreciation from the date that construction of the taxiway or apron is completed.

12. DEFAULT BY LESSEE

In the event of default of the LESSEE in the payment of rent or in the performance of any other of the covenants, herein contained, and if such default continues for a period of thirty (30) days after written notice thereof of the LESSOR to the LESSEE or, if more than thirty (30) days are required to cure the default, LESSEE commences said cure within the thirty (30) day period and promptly pursues it to completion in a commercially reasonable manner, this LEASE shall, at the option of the LESSOR, be terminated without further notice or demand of any kind whatsoever. All notice shall be by certified mail to LESSEE at the address specified in the first paragraph of this LEASE, or such other address as provided to LESSOR from time to time by LESSEE. In such event, the LESSEE does hereby agree to deliver peaceful possession of the said premises to the LESSOR and does hereby authorize said LESSOR to reenter the said premises and take lawful and peaceful possession thereof, and to pursue any other legal remedy for damages or otherwise growing out of the default by the LESSEE.

13. INDEMNIFICATION

The LESSEE does hereby covenant and agree to indemnify and save the LESSOR harmless of and from all claims for damages or otherwise of any and all kinds whatsoever growing out of the use of leased facilities by the LESSEE, its tenant, assignees, invitees, or guests. The LESSEE further covenants and agrees to maintain an overall single limit insurance policy of One Million Dollars (\$1,000,000.00), which shall provide the equivalent of "Hangars Keepers" liability coverage.

14. UNDERSTANDINGS AND APPLICABLE LAW

- a. Time is of the essence of this Agreement, and the terms hereof shall extend to and be binding upon the successor and assigns of the parties hereto.
- b. This written LEASE agreement incorporates all of the terms and conditions agreed to by the parties. There are no additional contract provisions, verbal or otherwise, that relate to the subject matter of this lease. No modification of these terms and conditions shall be effective unless it is prepared in a written document and formally approved by both parties.
- c. This LEASE shall be governed by the laws of the State of Arizona. All applicable provisions of Arizona law, including the terms of A.R.S. § 38.511 regarding termination for any conflicts of interests, are hereby incorporated by reference.
- d. The parties to this LEASE shall each act in its individual capacity and not as an agent, employee, partner or joint venture with the other. Any employee, agent or contractor of one party shall not be deemed to be an employee, agent or contractor of the other for any purpose whatsoever.

IN WITNESS THEREOF, the LESSOR has caused this instrument to be executed by the Chairman of the Board of Supervisors of Cochise County, Arizona, and attested to by the Clerk of said Board, and the LESSEE has caused this instrument to be executed by its duly authorized agent and represent on the day first herein above written.

LESSOR

Ann English, Chair
Cochise County Board of Supervisors

LESSEE

Vogel Family Properties, LLC

William D. Vogel, Sr. Managing Member

ATTEST:

Kim Lemons, CPCC
Clerk of the Board

APPROVED AS TO FORM:

Paul Correa, Esq.
Civil Deputy County Attorney