

RESOLUTION NUMBER 12-018

(Ponderosa Aviation, Inc.)

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF SAFFORD, GRAHAM COUNTY,
ARIZONA AUTHORIZING THE MAYOR TO ENTER
AIRPORT HANGAR LEASE AGREEMENT.**

WHEREAS, the City of Safford, Graham County, Arizona, owns real property available for airport hangar purposes; and,

WHEREAS, Ponderosa Aviation, Inc. is in need of hangar space and the City of Safford owns hangar H-4, (Exhibit A); and,

NOW THEREFORE BE IT RESOLVED, by the Mayor and City Council of the City of Safford, pursuant to A.R.S. §§ 9-241, 9-500.05 and 9-500.11, the Mayor is authorized to enter and execute said airport hangar lease between the City of Safford and Ponderosa Aviation, Inc., known as “H-4” airport hangar for a ten (10) year period, the 1st day of July 2012 through the 30th day of June 2022, in accordance with the Airport Hangar Agreement terms and conditions attached and incorporated herein.

PASSED, ADOPTED AND APPROVED by the Mayor and City Council of the City of Safford, Graham County, Arizona this day of 11th day of June, 2012.

Wyn “Chris” Gibbs
City of Safford, Mayor

ATTEST:

APPROVED AS TO FORM:

Georgia Luster, CMC
City Clerk

William J. Sims
Interim City Attorney

CERTIFICATION

I HEREBY CERTIFY, that the foregoing Resolution Number 12-018 was duly passed and adopted by the Mayor and City Council of the City of Safford, Graham County, Arizona, at a regular meeting held June 11, 2012. A quorum of the Council was present at the meeting.

Georgia Luster, MMC
City Clerk

Date:

Recording Information Above

**SAFFORD REGIONAL AIRPORT
COMMERCIAL SITE LEASE AGREEMENT**

THIS LEASE AGREEMENT (“Agreement”) made and entered into this 11th day of June, between the **City of Safford**, an Arizona municipal corporation, hereinafter referred to as **CITY**, and **Ponderosa Aviation, Inc.** hereinafter referred to as **TENANT**.

CITY, for and in consideration of the payments, covenants and agreements of **TENANT** hereinafter contained, does hereby lease the property described below at the Safford Regional Airport (“Premises”) to **TENANT** for purposes of commercial development.

PARCEL H-4. COMMENCING AT A ½” REBAR WITH CAP AT THE NORTHWEST CORNER OF LOT 3 OF SECTION 1, TOWNSHIP 7 SOUTH, RANGE 26 EAST OF THE GILA AND SALT RIVER BASE MERIDIAN IN GRAHAM COUNTY, ARIZONA; THENCE S 00 DEG 01 MIN 13 SEC W ON AND ALONG THE WEST LINE OF THE EAST HALF OF THE WEST HALF OF SAID SECTION 1, 2729.94 FEET; THENCE S 89 DEG 40 MIN 53 SEC E 1551.71 FEET TO THE POINT OF BEGINNING; THENCE S 89 DEG 40 MIN 53 SEC E 75.00 FEET; THENCE S 00 DEG 19 MIN 07 SEC W 75.00 FEET; THENCE 89 DEG 40 MIN 53 SEC E 15.50 FEET; THENCE S 00 DEG 19 MIN 07 SEC W 68.00 FEET; THENCE N 89 DEG 40 MIN 53 SEC W 90.50 FEET; THENCE N 00 DEG 19 MIN 07 SEC E 143.00 FEET TO THE POINT OF BEGINNING. (SEE EXHIBIT “A” ATTACHED).

I.

TERM:

THIS AGREEMENT shall commence on the 1st day of July 2012, and shall terminate on the 30th day of June 2022, unless otherwise terminated by either party prior to the expiration of its full term. This **Agreement** may not be extended unless approved by the City Council.

II.

CONSIDERATION:

Payments are due and payable monthly. In consideration of this **Agreement**, **TENANT** agrees to pay to the **CITY** the following amounts:

See Exhibit "B" – Schedule of Lease Payments, attached.

III.

UTILITIES:

TENANT agrees to secure electrical, water, garbage collection and other utilities services as required, in its own name, and to pay all utility charges when the same become due.

IV.

INSURANCE:

TENANT hereby agrees to defend, indemnify and hold harmless the **CITY** against any and all claims resulting from **TENANT** activities on the property of the City of Safford.

- (1) **TENANT** further agrees to maintain the following minimum types and levels of insurance coverage:
 - (a) Commercial General Liability Insurance in the amount of \$1,000,000 per occurrence and \$1,000,000 annual aggregate. Such insurance shall contain contractual liability insurance coverage applicable leases, licenses, permits, or agreements.
 - (b) Commercial/Business Automobile Liability Insurance for all owned, non-owned and hired vehicles assigned to or used in performance of commercial activities in the amount of at least \$1,000,000 per occurrence.
 - (c) Special Causes of Loss Property Form covering all improvements and fixtures on the **TENANT'S** premises in an amount not less than the full replacement cost thereof, to the extent of the insurable interest in the premises.
 - (d) Worker's Compensation Insurance as required by law.

- (e) Premises medical insurance in the amount of at least \$1000 each person, \$5,000 each occurrence, \$5,000 annual aggregate.
 - (f) All insurance policies cited herein shall contain a waiver of subrogation rights endorsement with respect to **CITY**.
- (2) All policies, except worker's compensation policy, shall name **CITY** "Additionally Insured," and **TENANT** shall furnish certificates of insurances evidencing the required coverage cited herein prior to engaging in any commercial activities. Such certificates shall provide for unequivocal thirty (30) day notice of cancellation or material change of any policy limits or conditions.

V.

ASSIGNMENT:

No interest in this **Agreement** may be assigned by **TENANT** without the express written consent of the **CITY**.

VI.

MAINTENANCE:

- (1) **TENANT** shall maintain and repair the Premises and any improvements thereon.
- (2) **CITY** reserves the right to inspect the Premises at any time during normal business hours to ascertain that the site and improvements are being properly maintained.
- (3) **CITY** reserves the right to enter onto the Premises to perform maintenance and/or repairs when it is deemed necessary to protect the use and value of property, and to assess **TENANT** for the actual cost of said maintenance and/or repairs.

VII.

INDEMNIFICATION:

TENANT agrees to pay all obligations incurred in the operation of the facilities and

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improvements and to defend, indemnify and hold harmless the **CITY** and its officials from any and all liability there under.

VIII.

TERMINATION:

(1) **TENANT** may terminate this **Agreement** upon giving the **CITY** ninety (90) days written notice. At the election of the **CITY**, at the termination of this **Agreement**, any and all properties and improvements on the Premises more than thirty (30) days after termination shall be the property of and owned by the **CITY** except **TENANT'S** operating equipment and personal property which remain property of **TENANT**. If the **CITY** elects to have any or all of such improvements removed, **TENANT** shall repair any damage caused by removal. If this **Agreement** is terminated at the initiation of **TENANT** or breached under the provisions of Section IX below, **TENANT** will, unless waived by **CITY**, continue to make monthly payments for a period of six (6) months after the date of termination, or until such time as **CITY** has secured another tenant for the Premises and entered a lease agreement with such tenant. This **Agreement** is subject to termination pursuant to A.R.S. § 38-511.

(2) The **CITY** may, at its sole discretion, terminate this **Agreement** under Section IX, part (1) for three (3) violations in any one calendar year, or six (6) violations in any two (2) year period, or for a single violation of Section IX, part (5) or (6). Notice of breach and opportunity to cure is not required for breach under Section IX, parts (1), (5) or (6). **CITY** may terminate this **Agreement** for breach, as defined in paragraph IX, parts (2) through (4) below, provided that **TENANT** is given notice of breach in writing and given thirty (30) days to cure the same or to commence cure if cure cannot be reasonably completed within thirty (30) days. If the breach is not cured or cure commenced within thirty (30) days the **CITY** may terminate this **Agreement** as stated in paragraph X below. **TENANT** is entitled to only one formal notice of breach and opportunity to cure as to parts (3) and (4) collectively below. **TENANT** is entitled to two formal notices of breach and opportunity to cure as to part (2) below within any three calendar year period. Any subsequent breaches may only be cured at the discretion of the **CITY**.

IX.

BREACH:

Each of the following events shall constitute a breach or default of this **Agreement** by **TENANT**:

- (1) If **TENANT** fails to pay **CITY** any rent when the rent is due.
- (2) If **TENANT** fails to perform or comply with any of the conditions of this Lease.
- (3) If **TENANT** vacates or abandons the premises for a continuous period of one hundred twenty (120) days.
- (4) If **TENANT** transfers or assigns this **Agreement** to any other person or party, except in the manner herein permitted.
- (5) If **TENANT** knowingly engages in any other improper conduct or course of action disruptive to the performance of this **Agreement** or to the relationship of the parties.
- (6) If **TENANT** or any partner individually, is convicted of, or if the Safford City Council finds by clear and convincing evidence that the same has committed, a criminal offense anywhere on the property owned by **CITY**.

X.

RIGHTS OF THE CITY IN THE EVENT OF DEFAULT:

In the event of any default or breach hereunder, as set forth above, **CITY** shall have the right to cancel and terminate this **Agreement**, as well as all of the right, title and interest of **TENANT** hereunder, by giving to **TENANT** not less than thirty (30) days notice of the cancellation and termination. On expiration of the time fixed in the notice, this **Agreement** and the right, title and interest of **TENANT** hereunder, shall terminate in the same manner and with the same force and effect except as to **TENANT'S** liability as if the date fixed in the notice of cancellation and termination were the end of the term. **CITY** may also cancel this **Agreement** pursuant to *Arizona Revised Statutes* §38-511.

XI.

AMENDMENT:

This **Agreement** may be amended from time to time upon the mutual agreement of both parties.

XII.

NOTIFICATION

Any notices which are required herein to be made either by the **CITY** or by the **TENANT** shall be made in writing and shall be deemed served upon the other party when personally delivered or when deposited in the U.S. Mail, postage prepaid, return receipt requested, addressed to the other party as follows:

City Manager
City of Safford
808 S. 8th Avenue
PO Box 272
Safford, AZ 85548

Ponderosa Aviation, Inc.
Mikel Hardy
4500 Aviation Way
Safford, AZ 85546

IN WITNESS WHEREOF this **Agreement** has been executed on the date first written above by the parties hereto, who by their signatures affixed hereto do swear and affirm that they are authorized, in accordance with law, to execute this document.

CITY OF SAFFORD

PONDEROSA AVIATION, INC.

Wyn "Chris" Gibbs
City of Safford, Mayor

Mikel Hardy

ATTEST:

APPROVED AS TO FORM:

Georgia Luster, MMC
City Clerk

William J. Sims
Interim City Attorney