

2/11/16

**NON-COMMERCIAL AIRPORT HANGAR LEASE AGREEMENT**

**THIS AGREEMENT OF LEASE** made and entered into on the 11 day of FEB, 2016, and becoming effective upon the same date, by and between Roosevelt City, a Municipal Corporation of the State of Utah located in Duchesne County, (hereinafter referred to as "City" or "Landlord"), and PBD MANAGEMENT, (hereinafter referred to as "Tenant").

**WHEREAS**, Roosevelt City owns property located at the City's Municipal Airport; and

**WHEREAS**, Roosevelt City has developed a plan in which certain areas have been set aside for the construction of hangars; and

**WHEREAS**, Tenant desires to construct a hangar for aviation related purposes; and

**WHEREAS**, the health, safety and welfare of the residents of and visitors to Roosevelt City, and the surrounding area, are best served by the continued operation and further development of the City's municipal airport; and

**WHEREAS**, Roosevelt City and the Tenant desire to join in the execution of this Lease to formalize the tenant occupancy under the terms and conditions of this agreement.

**NOW THEREFORE, IN CONSIDERATION** of the mutual entry into this Lease by the parties hereto, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by each party hereto, Roosevelt City hereby leases to Tenant and Tenant hereby leases from Roosevelt City, in "**AS IS**" condition, the property currently owned by Roosevelt City which is specifically identified herein.

**UPON THE TERMS AND SUBJECT TO THE CONDITIONS** which are hereinafter set forth:

1. **PREMISES** - The subject leased premises is real estate specifically identified as an area FIFTY feet (50 ') by FIFTY feet (50 '), for a total of 2500 square feet. The 50 ' x 50 ' area being leased shall be defined as follows:

**Airport Hangar Lot 32B, identified on "Exhibit A" attached hereto.**

2. **PURPOSE** – The premises is leased for the sole purpose of erecting, maintaining and using and enjoying thereon, an aircraft hangar for private and not commercial use. Any use of the premises for which compensation is paid in the form of money or other thing of value shall be considered commercial and shall be a material breach of the terms of

this agreement; unless Tenant has obtained the express written consent of the Landlord in advance.

Notwithstanding the provisions herein Tenant may maintain and/or hire individuals and/or entities to perform services for him on the premises related to construction and/or maintenance of a hangar and maintenance of aircraft providing aircraft is/are owned by Tenant and providing that all maintenance is performed as allowed under FAA regulations. Unauthorized use of the property for a commercial purpose, without prior express written consent of the Landlord, may terminate this lease at Landlord's discretion. In the event this lease is terminated pursuant to this section Tenant agrees to remove the hangar and all personal property within sixty (60) days or it will be forfeited to the Landlord and Tenant must vacate the premises.

Tenant may enter into a commercial lease agreement with Landlord at a future date, subject to additional and different terms and conditions, and at the discretion of the Roosevelt City Council or their designee. Violations of this agreement may be considered by Landlord and may be a basis not to enter into a commercial lease agreement with Tenant.

3. **TERM** - This Lease shall become effective upon execution by both parties on the date above for one fifteen (15) year period. Additional terms and/or extensions to this agreement shall be subject to future negotiation between the parties; it is the intent of the city to negotiate an extension with all Tenant's desiring an extension. In the absence of a new agreement Tenant agrees to remove the hangar and all other personal property prior to expiration of this agreement. All remaining property on the premises shall be forfeited to the Landlord upon expiration.
4. **COMPENSATION** - Tenant covenants and agrees to pay Landlord rent for use and occupation of said premises annually. The first year compensation shall be paid at a rate of twenty cents (\$0.20) per square foot (in 2015), totaling Five Hundred Dollars (\$ 500. ) for the first year. Compensation shall increase at a rate of three percent (3%) each year thereafter. All rental payments shall be due on or before July 1<sup>st</sup> of each calendar year, provided that the first year's pro-rated rental shall be due and payable upon the execution of this lease. Landlord may elect to waive an increase on a yearly basis. Electing to waive one year's increase shall not be deemed a waiver for any other year.
5. **RELOCATION** - It is expressly understood and agreed by and between the parties that in the event City finds it necessary to devote the leased property to the betterment of the airport for use other than a private hangar, City shall have the right to require the structure relocated to a location designated by City or at tenants option may be removed

from airport property at the City's expense. Should it become necessary to relocate the private hangar, the Tenant has the opportunity to terminate this lease and be refunded the unused portion of the annual payment.

6. **USE OF PERMISES** – The property shall be used as a private and not commercial aircraft hangar. Tenant shall not at any time during the Term, use, or permit the use of the property for any other purpose.
  - a. Tenant shall be entitled to store and maintain on the leased premises, fuel, gasoline or other combustible material for Tenant's own use only, provided that such fuel, gasoline, or other combustible material shall be stored and/or maintained under conditions and standards for such storage as provided for by the Uniform Building Code and the Uniform Fire Code. Tenant agrees not to sell or offer to sell fuel, gasoline or other combustible material to any other individual or entity. If the Landlord finds that Tenant is selling fuel to any other person or entity on the airport property including this leased property, the Landlord may terminate this lease and Tenant agrees to remove the hangar and all other personal property within sixty (60) days or it will be forfeited to the Landlord and Tenant must vacate the premises.
  
7. **MAINTENANCE** - Tenant agrees to maintain this facility during the term of this agreement, including utilities, repairs, maintenance, and any other work necessary to keep the facility inhabitable. Tenant further agrees to maintain the exterior of the building in an attractive condition. If at any time during this agreement, the Roosevelt City Council, by majority vote, declares the property to be a hazard or if the property deteriorates to the point that it detracts from the beauty of the surrounding area as determined by a majority vote of the Roosevelt City Council, Tenant agrees to remedy such concerns within sixty (60) days after receiving written notice to do so by Landlord. Tenant agrees to provide his own driveway, taxi ramp, improvements, snow removal, and maintenance to lease premises at his own expense. Upon termination of this lease, Tenant may at his option, remove hangar, initiate negotiations to renew lease or forfeit hangar to the City. Tenant agrees to construct any improvements or buildings in accordance with City regulations and subject to inspection and approval by Landlord. Tenant agrees to purchase all appropriate licenses and permits required by the City for the purpose of constructing the private hangar.
  
8. **HOLD HARMLESS** - Tenant shall defend, indemnify, and hold harmless Landlord from any and all actual or alleged claims, demands, causes of action, liability, loss, damage and/or injury (to property or persons, including without limitation wrongful death), whether brought by an individual or other entity, or imposed by a court of law or

by administrative action of any federal, state, or local governmental body or agency, arising out of Tenant's or Tenant's guests, invitee's or licensee's use of the premises regardless of whether said use is allowed under this agreement or otherwise. This indemnification applies to and includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and any reimbursements to Landlord for all legal expenses and costs incurred by it.

9. **ADDITIONAL RULES AND REGULATIONS** - Tenant shall at all times, abide by all rules and regulations of the Federal Aviation Administration, Roosevelt City Ordinances, and all State and Federal laws while on the leased premises or so far as they relate to or affect the leased premises.

This lease shall be subordinate to any regulation of the Federal Aviation Administration and to provisions of any existing or future agreement between the City and the United States, or any of its agencies, relative to the operation, maintenance or expansion of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the airport. If at any time this agreement is found to conflict with any of the aforementioned rules and/or regulations the conflicting provisions of this agreement shall be stricken and all other terms and conditions shall remain in full force and effect.

10. **DEVELOPMENT OF PROPERTY SURROUNDING LEASED PREMISES** - The City reserves the right to further develop or improve any portion of the airport as it sees fit, regardless of the views and desires of the tenant.

11. **SUBLETTING OR ASSIGNING** - It is expressly covenanted and the Tenant agrees that he may not sale, rent, assign or sub-let this lease, the property, or any part thereof. Tenant may initiate negotiations with the city for a Commercial Lease with the Landlord if he desires to rent, assign or sub-let the premises or any part thereof. Commercial Leases at the Roosevelt City Airport are subject to different and or additional terms as agreed upon by the parties thereto. In the event that the Tenant becomes deceased or disabled his heirs may initiate negotiations for a new agreement for the same premises with Landlord.

12. **CONDITION OF PROPERTY** - Tenant acknowledges that the property has been inspected. Tenant promises to keep the property in a neat and sanitary condition and to immediately reimburse the Landlord for any sums necessary to repair any item, fixture or appurtenances, owned by the Landlord, that needs service due to Tenant's, or Tenant's guests, invitee's or licensee's, misuse or negligence. Tenant acknowledges and agrees

that it shall use its best reasonable efforts to refrain from any operation or practice that will injure the premises.

13. **NUSANCES, NOISES AND DISRUPTIVE ACTIVITIES** - Tenant shall keep the property free of any and all Nuisances as identified by Roosevelt City Ordinances as amended. Furthermore, Tenant or its guests, invitees, licensee's and its or their equipment shall not unreasonably, **taking into consideration the nature of the use**, disturb, annoy, endanger or inconvenience neighbors, the Landlord or its agents, or workmen nor violate any law, nor commit or permit waste or nuisance in or about the property.

The City reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstructions together with the right to prevent the Tenant from erecting, or permitting to be erected, or maintaining any building or other structure on the airport which, in the opinion of the City, would limit the usefulness of the airport or constitute a hazard to aircraft.

14. **LANDLORD'S RIGHT OF ENTRY** - Landlord may enter and inspect the property at any time with or without notice. Entry into any building or structure will require twenty four (24) hours' notice. Landlord is permitted to make any alteration, repairs and maintenance that in Landlord's judgment is necessary. If the work performed requires that Tenant temporarily vacate the premises, than Tenant shall vacate for this temporary period.
15. **INSURANCE** - Tenant shall at his expense, obtain and maintain during the term of this lease and any extension thereof, an appropriate policy of public liability insurance with minimum limits of \$250,000 per person and \$500,000 total personal injury and \$250,000 and \$500,000 property damage to insure against the liability referred to in this paragraph. Copy of said insurance policy must name the City as additional insured. It is acknowledged that Landlord does not maintain this insurance to cover property damage or loss caused by fire, theft, rain, water overflow/leakage, acts of God, and/or any other cause. It is acknowledged that Landlord is not liable for these occurrences. Tenant's failure to maintain said policy shall be a material breach of this agreement and shall also be a complete waiver of Tenant's right to seek damages against Landlord.
16. **RELEASE AND WAIVER OF SUBROGATION** – Tenant agrees to release Landlord from any and all claims with respect to any loss covered (or which should have been covered) by the insurance outlined in Section fifteen (15) herein. For purposes of this Section, all deductibles shall be considered insured losses. Tenant further agrees that his respective insurance company shall have no right of subrogation against Landlord. Landlord shall have no responsibility or liability for any loss of or damage to

improvements, furniture, fixtures, equipment or other property of Tenant, unless caused by Landlord's negligence or willful misconduct. With the exception of Landlord's negligence or willful misconduct, Tenant agrees that Landlord shall not be liable to Tenant or those claiming under Tenant for injury, death or damage or loss occasioned by the acts or omissions of any third party or the condition of the Facility, the acts or omissions of any other person present at the Facility, whether or not such persons are present with the knowledge or consent of the Landlord. This release and waiver remains effective despite a failure on Tenant's part to acquire or maintain insurance as required by Section fifteen (15) herein.

17. **ABANDONEMENT** – Failure by Tenant to occupy the premises for a period of time sixty (60) days or longer shall be considered a material breach of this agreement. For purposes of this agreement the premises shall be considered “unoccupied” or “abandoned” if there is no aircraft in the hangar for a period of sixty (60) consecutive days.

If at any time during the term of this agreement Landlord believe the property has been unoccupied for a period of time sixty (60) consecutive days or longer then Landlord shall notify Tenant in writing of its intent to terminate this agreement. Notification to Tenant shall specify the sixty (60) consecutive day time period in which Landlord believes the premises was unoccupied/abandoned. Tenant shall then be allowed one hundred eighty (180) days to prove that the hangar was not unoccupied/abandoned during the time period specified in the notice. If Landlord does not find Tenants proof to be reasonable or if no proof is offered by Tenant within one hundred eighty (180) days of the notice then this agreement shall terminate.

Tenant agrees that upon termination of this agreement pursuant to the provisions of this section Tenant shall remove the hangar and all personal property within sixty (60) days of termination. If Tenant has not removed all property within sixty (60) days from said termination, then all remaining property, of any kind, shall be considered abandoned, the hangar and equipment and other property of the Tenant shall then be forfeited to the Landlord and become the property of the Landlord.

18. **BREACH OF THIS AGREEMENT** - In the event that Tenant shall fail to pay said rent on the date specified herein, or should Tenant fail to comply with any other covenant or agreement upon its part to be kept or performed Landlord shall provide notice to Tenant of breach. After notice of such failure has been given by Landlord Tenant shall have thirty days to cure said breach. If Tenant does not cure said breach within thirty (30) days after said notice then in that event, Landlord shall have the right to declare this agreement terminated and to have Tenant at his own expense remove hangar within Sixty (60) days

of lease termination. The City has the right to retain any and all improvements to the leased premises, including the hangar if not removed within Sixty (60) days. In the event that the Landlord defaults on this lease agreement, Tenant may give the Landlord a written notice of intention to terminate the lease at the end of Sixty (60) calendar days and be refunded the unused portion of the annual payment from date of default.

Sections Two (2), six (6) and sixteen (16) herein contain provisions for termination of this agreement for specifically specified breaches. Those sections are not subject to the provisions of this section. Specifically, the Tenant shall not be given an opportunity to cure the breach in those three (3) limited circumstances. If either of those three (3) sections are breached the termination provisions within those sections shall control.

19. **FRUSTRATION OF PURPOSE** - If the premises are destroyed or rendered uninhabitable/unoccupiable, at either parties election this lease shall terminate as of the date that the remaining debris is removed to a suitable location as deemed appropriate by the City, and the lot is available for use by another party. The current year's rental fee shall then be refunded on a prorated basis.
  
20. **TERMINATION** – Tenant may terminate this agreement at any time and for any reason by providing sixty (60) days advance notice to the Landlord in writing. Tenant must remove all property, of any kind, belonging to him, at his expense, before the end of the sixty (60) day notice period. At the end of the sixty (60) day notice period all property remaining on the premises shall become the property of the Landlord.
  
21. **FIRST RIGHT OF REFUSAL** – If at anytime during the course of this agreement Tenant offers for sale the structure/hangar located on the premises to a third party, Tenant shall first offer the structure/hangar to Landlord on the same terms and conditions as are offered by the third party. Landlord shall have thirty (30) days during which to accept said offer. If Landlord does not accept said offer within said period, Tenant shall be free to accept the third-party offer. If Tenant does not enter into an agreement with the third party on said terms and conditions and close the transaction within ninety (90) days, Tenant's right to sell the structure/hangar to the third party shall expire and the procedure described herein shall again be applicable.

In any and all offers/attempts to sell the structure/hangar Tenant shall be bound by the provisions of Section eleven (11) herein. Specifically, any third party buyer may not assume this agreement in Tenants place. If the structure is to remain on the premises the third party buyer must enter into a separate agreement with Landlord **in advance** or risk forfeiture of the structure/hangar for breach of this agreement.

22. **WAIVER** - Landlord's failure to require compliance with the conditions of this agreement, or to exercise any right provided herein, shall not be deemed a waiver by Landlord of such condition or right.
23. **VALIDITY/SEVERABILITY** - If any provision of this agreement is held to be invalid, such invalidity shall not affect the validity or enforceability of any other provision of this agreement.
24. **ATTORNEY FEES** - In the event action is brought by any party to enforce any terms of this agreement or to recover possession of the property, the prevailing party shall recover from the other party reasonable attorney fees.
25. **NOTICES** - All notices to the Tenant shall be deemed served upon mailing by first class mail, addressed to the tenant at: 2100 W. HWY 40  
ROOSEVELT JT. 84066.  
Whether or not Tenant is actually present at the time of said delivery. All notices to Landlord shall be served upon the Roosevelt City Clerk subject to all Utah State laws and legally recognized procedures.
26. **ENTIRE AGREEMENT** - The foregoing agreement, including any attachments incorporated by reference, constitutes the entire agreement between the parties and supersedes any oral or written representations or agreements that may have been made by either party. Further, Tenant represents that Tenant has relied solely on Tenant's judgment in entering into this agreement. Tenant acknowledges having been advised to consult with independent legal counsel before entering into this agreement and has either followed or decided to waive such representation and advice. Tenant acknowledges that Tenant has read and understood this agreement and has been furnished a duplicate original.

**IN WITNESS WHEREOF**, the parties to this agreement have hereunto set their hands as of the day and year first above written. Executed in duplicate.

Tenant

Signature: 

Print Name: TRAVIS PEATROSS MGR.

Roosevelt City Corporation



*Vaun D. Ryan*

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Vaun D. Ryan, Mayor

ATTEST:

*Carolyn Wilcken*

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Carolyn Wilcken, City Recorder

**EXHIBIT A**

**(Airport Hangar Lot \_\_, Map and/or Legal Description.)**