

RESOLUTION NUMBER 7270

A resolution authorizing the Mayor and City Clerk to enter into a Hangar Lease with Chad Lottman, a single person, for the purpose of leasing the Hangar E-2, located at the Beatrice Municipal Airport.

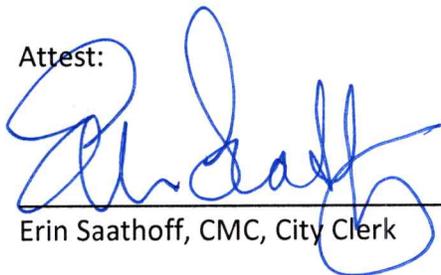
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BEATRICE, NEBRASKA:

SECTION 1. That the Mayor and City Clerk be and hereby are authorized to enter into a lease between the City of Beatrice, Nebraska and Chad Lottman, a single person, for the purpose of leasing the Hangar E-2, located at the Beatrice Municipal Airport. A copy of said Hangar Lease, marked as Exhibit "A", is attached hereto and incorporated by reference.

SECTION 2. That all resolutions or parts of resolutions in conflict are hereby repealed.

RESOLUTION PASSED AND ADOPTED this 15th day of April, 2024.

Attest:



Erin Saathoff, CMC, City Clerk



Mike McLain, Acting Mayor

Exhibit "A"

HANGAR LEASE

This Lease is made and entered into by and between the City of Beatrice, Nebraska, a Municipal Corporation, hereinafter referred to as "Lessor", and Chad Lottman, hereinafter referred to as "Lessee".

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

1. LEASED PREMISES. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, subject to all of the terms and conditions of this Lease, Hangar E-2, located in the Southeast Quarter of Section 21, Township 4, Range 6 East of the P.M., Beatrice, Gage County, Nebraska (hereinafter the "Leased Premises").

2. TERM. The term of this Lease shall be for one (1) year, commencing on January 1, 2024 and ending on December 31, 2024. This Lease shall automatically renew for another one (1) year term beginning on January 1, 2025, hereinafter, unless either party gives a thirty (30) calendar day written notice of its intention to terminate, or the Lease is terminated pursuant to Section 21 or Section 22 of this Lease.

3. PAYMENT. Lessee shall pay to Lessor for annual rent in the amount of One Thousand Eight Hundred Dollars (\$1,800.00) payable in twelve (12) monthly installments of One Hundred Fifty Dollars (\$150.00), which shall be due on or before first day of each month, beginning on January 1, 2024. Thereafter, the annual rental amount shall increase by three percent (3%) each year during the term of this Lease. For example, the annual rental for the lease year beginning on January 1, 2025 and ending on December 31, 2025 shall be One Thousand Eight Hundred Fifty-Four Dollars (\$1,854.00).

4. INTEREST ON LATE PAYMENTS. In the event any rent or any other sum payable by Lessee to Lessor under the provisions of this Lease is not received by Lessor from Lessee within ten (10) calendar days the date it is due and payable, Lessee shall pay to Lessor an additional sum ("Late Charge") in the amount equal to one percent (1%) of the amount of annual rent due for each day such rent is due and not paid. In addition to any other charges permitted herein, if Lessee makes a payment to Lessor by check and said check is returned to Lessor by Lessee's bank for insufficient funds, then an additional charge of Twenty-Five Dollars (\$25.00) per check shall be paid by Lessee to Lessor.

5. NET LEASE. Lessor and Lessee agree that the rent payments due under this Lease are to be net to the Lessor throughout the term, including any renewal thereof. In the event of a fire or other catastrophe that closes the hangar for thirty (30) consecutive calendar days or more, the rent shall be abated at the rate of 1/12 the annual rent for each complete calendar month that the Lessee's business is completely closed so long as Lessee, in the sole discretion of Lessor, diligently pursues repairs and/or rebuilding; provided that the abatement of rent shall not exceed six (6) calendar months.

6. RIGHT TO LEASE. Lessor covenants that Lessor is seised of the Leased Premises in fee simple and has full right to make this Lease and that Lessee shall have quiet and peaceable possession of the Leased Premises during the term hereof.

7. PURPOSE. The purpose of this Lease is for Lessee to use the Leased Premises for purpose of storing Flyable Aircraft, equipment, and products utilized in Lessee's business. Lessee shall not use, or permit the Leased Premises, or any part thereof, to be used for any purpose or purposes other than the purpose or purposes for which the Leased Premises are hereby leased; and no use shall be made or permitted to be made of the premises, or acts done, which would cause a cancellation of any insurance policy covering the premises, or any part thereof. Lessee hereby expressly agrees that Lessor has made no warranty with respect to the project or as to its suitability or usefulness for Lessee's purposes; and Lessee hereby expressly agrees that the Lessor shall not be liable to it for any defect in the Leased Premises.

Lessor understands and agrees that the following activities shall be prohibited from taking place on the Leased Premises:

- A. Fuels, gasoline, or other inflammables shall not be stored in the hangar other than that which is contained in the tank or tanks of aircraft stored on the Leased Premises. Lessee may store aircraft lubricants within the hangar only in a properly marked UL or OSHA-approved container;
- B. Use of area heaters, regardless of the type, is prohibited in the hangar without prior written authorization by Lessee;
- C. Smoking or open flame operations of any kind are strictly prohibited in the hangar; and
- D. No motor or engine may be started or operated in the building.

8. HAZARDOUS WASTE. Lessor is not aware of any hazardous waste or other contaminant located above, upon, under, within or from the Lease Premises and further is not aware of any underground storage tanks containing any contaminant located upon the Leased Premises.

9. FLYABLE AIRCRAFT. Lessee agrees that only Flyable Aircraft is permitted to be stored upon the Leased Premises. For purposes of this Lease, "Flyable Aircraft" shall mean that the aircraft being stored shall meet all of the following conditions:

- A. The aircraft must have a correct and valid Certificate of Registration;
- B. The aircraft must have a correct and valid Certificate of Airworthiness;
- C. The aircraft must have completed an annual, condition, or progressive maintenance inspection, having been released by an appropriate authority that the aircraft is in a condition safe for flight; and
- D. The aircraft must have received a determination by the pilot in command that the aircraft is in a condition safe for flight.

10. ENVIRONMENTAL COVENANTS.

A. Lessee covenants that:

1. No toxic or hazardous substance, including, without limitation, asbestos and the group of organic compounds known as polychlorinated biphenyls, shall be generated, treated, stored or disposed of, or otherwise deposited in or located on or released on or to the Leased Premises, including, without limitation, the surface or subsurface waters of the Leased Premises;
2. Lessee shall not engage in and shall not permit any other party to engage in any activity on the Leased Premises which would cause:
 - a. The Leased Premises to become a hazardous waste treatment storage or disposal facility within the meaning of, or otherwise bring the Leased Premises within the scope of the Resource Conservation and Recovery Act of 1975 ("RCRA"), 42 U.S. C. § 6901, et seq., as amended, or any similar state law or local ordinance or other environmental law,
 - b. A release or threatened release of a hazardous substance from or to the Leased Premises within the meaning of, or otherwise bring the Leased Premises within the scope of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, ("CERCLA"), 42 U.S.C. § 9601-9657, as amended, or any similar state law or local ordinance or any other environmental law, or
 - c. The discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., or the Clean Air Act, 42 § 7401, et seq., or any similar state law or local ordinance or any other environmental law.
3. Lessee shall not permit any substance or condition in or on the Leased Premises which might support a claim or causes of action under RCRA, CERCLA, or other federal, state, or local environmental statutes, regulations, ordinances, or other environmental regulatory requirements; and
4. No other ground storage tank shall be located on or under the Leased Premises.

As used herein, the terms "Hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "Disposed") shall have the meanings specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined herein, such broader meaning shall apply subsequent to the effective date of such amendment, provided further, to the extent that the laws of the State of Nebraska establish a meaning for such terms which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

- B. In the event Lessee or Lessor is obligated by any applicable federal, state, or local law, ordinance, or regulation, or otherwise directed by any governmental agency or authority, to clean up, remove or encapsulate or cause the cleanup, removal, or encapsulation of any hazardous waste and/or hazardous material or asbestos or material containing asbestos from the Leased Premises, Lessee hereby guarantees to Lessor that Lessee shall:
1. Promptly undertake to arrange for such cleanup, removal, and/or disposal in accordance with all applicable governmental regulations, ordinances, or laws;
 2. Exercise its best efforts to ensure that such cleanup and/or removal shall be conducted in a timely and diligent manner, as determined solely by Lessor; and
 3. Assume the costs and expenses, including any fines, of such cleanup and/or removal, unless caused by Lessor, its agents, employees, or was located on the Leased Premises prior to Lessee taking possession.
- C. In the event that any lien is recorded or filed against the Leased Premises pursuant to any governmental regulations, ordinances, or laws regarding hazardous materials and/or hazardous waste, or asbestos, Lessee hereby guarantees to Lessor that Lessee shall, not later than thirty (30) calendar days following the filing of such lien, satisfy the claim and cause the lien thereunder to be discharged of record.
- D. In addition to the foregoing, Lessee shall be responsible for all loss (including diminution in the value of the Leased Premises), cost, damage, liability, obligation, causes of action, fine, penalty or expense (including attorneys' fees and expenses for investigation, inspection, removal, clean up, and remedial costs incurred to permit continued or resume normal operation of the Leased Premises), caused by Lessee and due to:
1. The presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any hazardous materials and/or hazardous wastes on, from, or affecting the Leased Premises, or any other property, or the presence of asbestos on the Leased Premises;
 2. Any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous wastes, hazardous materials, or asbestos;
 3. Any lawsuit brought or threatened, settlement reached, or government order relating to such hazardous wastes, hazardous materials, or asbestos; or
 4. Any violation of laws, orders, regulations, requirements or demands of governmental authorities, which are based upon or in any way related to such hazardous wastes, hazardous materials, or asbestos including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses.

11. UTILITIES & LIABILITY. The Lessor makes no guarantees pursuant to this agreement about the availability of water, electric, sewer, garbage, or other utility services to the Leased Premises. Any utility costs will be the sole obligation of the Lessee during the time period of this

Lease. Should utilities later be needed, all water, sewer, electricity utility expenses, and garbage removal shall be the responsibility of and shall be paid by Lessee.

12. COMPLIANCE WITH GOVERNMENTAL REGULATIONS. Lessee shall at all times comply in all respects with all applicable government, health, fire and police requirements and regulations. In addition to the foregoing, the use and building regulations as now or hereafter imposed by the provisions of the zoning and building ordinances of the City of Beatrice shall apply; and Lessee shall save and hold Lessor harmless for from any and all expenses or damages resulting from Lessee's failure to do so.

Lessee covenants and agrees that Lessee will exercise its rights and privileges hereunder in a manner so as to not cause, or permit to cause, interference in or with the use, operation, maintenance, or development of the Beatrice Municipal Airport.

Notwithstanding the above, any change in the provision of the zoning and building ordinances of the City of Beatrice, or in the change in the use, operation, maintenance or development of the Beatrice Municipal Airport or Lessor's adjacent land which such changes cause Lessee to no longer be in compliance with the terms of this Section through no action of its own, then such event shall not be deemed a violation of this section.

13. RELATIONSHIP. The parties intend, understand, and agree that the relationship between them is that of landlord and tenant under a commercial lease, and Lessee specifically acknowledges that all statutory proceedings provided by the law of the State of Nebraska applicable to the relationship of commercial landlord and tenant and the remedies accruing to the landlord on default of the tenant as to collection of rent or repossession of the Leased Premises, accrue to the Lessor hereunder, regardless of the length of the term of this Lease.

14. LIENS. Lessee will not permit any mechanic's or other liens for work, services or materials, to attach to the Leased Premises or to any portion thereof; and if any such liens shall be filed or shall attach, Lessee will pay and satisfy the same or get the liens canceled in such manner as may be prescribed by law at the time of such filing or attachment.

15. CONDITION AND REPAIR. Lessee shall at all times keep the Leased Premises in good condition, order, and repair; Lessee shall commit no waste on the premises and Lessee shall not allow any nuisance to exist on the premises.

16. SAFE CONDITION. Lessee shall at all times keep the Leased Premises in a safe, clean, nuisance-free condition to comply in all respects with all government, health, fire and police requirements and regulations. In addition to the foregoing, the use and building regulations now or hereafter imposed by the provisions of the zoning and building ordinances of the City of Beatrice shall apply except as such may be modified by duly constituted authority.

17. OTHER MAINTENANCE BY LESSEE. Lessee shall be responsible for keeping the Leased Premises, as well as the entrance to said Leased Premises, free and clear of all obstructions of every kind and from snow and ice at Lessee's expenses.

18. WAIVER, RELEASE, & INDEMNIFICATION. Lessee and its successors, heirs, personal representatives, and assigns, shall indemnify Lessor and shall save and hold Lessor and Lessor's employees, officers, elected officials, and agents harmless from all liability, loss, damage, death, injury, cost or expense, including, but not limited to, the cost or expense of defending any legal action, which may be occasioned by, or attributable to, or arise out of or incurred in any activity, operations, acts or omissions of Lessee or any third party on or about the Leased Premises, and the Lessee shall at its own expense defend any such suit or action, which may be brought against the Lessor, its tenants, successors or assigns. Lessee shall also provide and pay for policies of insurance against such liabilities, loss, damage or injury as public liability, landlord/tenant, and others necessary to help fund this indemnification to the extent of not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for claim or damages from any single occurrence and to the extent not less than One Million and 00/100 Dollars (\$1,000,000.00) to cover the aggregate of any occurrences to the policy together with an insurance certificate listing the City of Beatrice as an additional insured prior to the commencement of this Lease. Said policy shall be taken only with the insurance companies that are duly authorized to do business in the State of Nebraska. If Lessee fails to provide that insurance (or proof thereof to Lessor upon request), Lessor may, after five (5) calendar days' written notice to Lessee, at Lessor's option, procure or renew the insurance. The premiums paid by Lessor plus interest on the amount paid at the rate of twelve percent (12%) per annum, shall constitute rent hereunder, and Lessee's failure to make reimbursement within thirty (30) calendar days of demand therefore shall constitute a default under this Lease.

Lessee further releases for itself and for its (if any) officers, shareholders, managers, members, employees, agents, attorneys, and assigns, jointly and severally, hereby absolutely and unconditionally release and forever discharge the City, its elected officials, appointed officials, employees, attorneys and assigns from any and all claims, demands, causes of action, liabilities, obligations and damages of any and every kind or nature whatsoever, in law, in equity or otherwise, known or unknown, suspected or unsuspected, disclosed or undisclosed, which they or any one of them has, has had or may hereafter have arising directly or indirectly out of or in any way connected with Lessee's use of the Leased Premises pursuant to this Lease and/or any interruption or disruption of this Lease, which may be based upon or connected with any of the matters of law or fact raised in regard thereto, including all claims for court costs and attorney's fees arising directly or indirectly out of or in any way connected with Lessee's use of the Leased Premises pursuant to this Lease, any interruption or disruption of this Lease, or other matters related to thereto prior to the date of execution of this agreement or any claim released hereby.

Lessee agrees to provide this waiver of rights and indemnification in consideration of the Lessor's agreement to lease the Leased Premises to Lessee.

19. INSPECTION. Lessee shall permit Lessor to inspect the Leased Premises at a mutually convenient time for both the Lessee and the Lessor during usual business hours for the purposes of inspections which may reasonably be necessary for the protection of the Lessor's interest in the Leased Premises.

20. ENTRY OF PREMISES. Lessor shall have the privilege of entering and occupying any portion of the demised premises which is desired by Lessor for the operation or development of the Beatrice Municipal Airport or any other purposes at any time, whereupon Lessee shall cease to have a leasehold interest in such portion of the demised premises. Lessor shall give Lessee seven (7) calendar days' written notice of such intention. The amount of the rent to be paid to Lessor as provided in Paragraph 3 shall be reduced in the amount of the rental price for square foot in which the Lessee shall cease to have a leasehold interest if Lessor occupies such acres prior to harvest of Lessee's crop planted thereon.

21. BREACH & CURE. Failure of either party to this Lease to abide by any provision set forth herein shall constitute a breach of this Agreement. In such event, the non-breaching party may provide written notice to the breaching party describing the breach. The breaching party shall rectify, cure, or refute within thirty (30) calendar days. If the breaching party fails to rectify, cure, or refute within thirty (30) calendar days, the non-breaching party may terminate this agreement without notice.

22. TERMINATION. In addition to the termination proceedings set forth in Section 21 above, either party shall have the right to terminate this Lease for any reason upon thirty (30) calendar days written notice to the other party. Upon damage to the Leased Premises to such an extent that the premises are no longer usable for the purposes intended, this Lease may be immediately terminated by either party.

22. FEDERAL REQUIREMENTS.

- A. Lessee shall furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided, that Lessee may make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- B. Lessor reserves the right (but shall not be obligated to Lessee) to maintain and keep in good repair the landing area of the airport and all publicly-owned facilities 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.
- C. Lessor reserves the right to further develop and improve the landing area and all publicly-owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of the Lessee, and without interference or hinderance.

- D. Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on the airport which in the opinion of the Lessor would limit the usefulness of the airport or constitute a hazard to aircraft.
- E. During time of war or national emergency, Lessor shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas of facilities and/or other areas or facilities of the airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the government, shall be suspended.
- F. This agreement shall be subordinate to the provisions of any outstanding agreement between Lessor and the United States Government or any agency thereof relative to the maintenance, operation, or development of the airport.
- G. It is understood and agreed that the rights granted by this agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the airport.
- H. Lessor reserves for itself, its successors, and assigns, for the use and benefit of the public, a free and unrestricted right for passage of aircraft in the airspace above the surface of the Leased Premises, together with the right to cause in said airspace such noise as may be inherent to the operation of aircraft, now known or hereafter used for navigation of or flight in the air using said airspace or landing at, taking off from, or operation on or about the airport.
- I. Lessee for themselves, their heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Leased Premises for a purpose for which the Department of Transportation program of activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.
- J. Lessee for themselves, their heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agrees as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of

services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the lessee with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.

- K. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of 308 of the Federal Aviation Act of 1958.

23. FILING FEES. Lessee shall pay all filing fees associated with the filing of any notice of this Lease.

24. SUBLEASES. The Leased Premises, in whole nor in part, may not be subleased by the Lessee without written permission from Lessor. The right to receive rents under this Lease shall be freely assignable by the Lessor.

25. ASSIGNMENT. Any sale or mortgage of Lessor's interest in the leased premises shall not be subject to this Lease, and the existence of this Lease. Lessee may not assign or pledge this Lease or any interest thereon without the prior express written approval of the Lessor, which consent shall not be unreasonably withheld.

26. SALE. Any sale or mortgage of Lessor's interest in the Leased Premises shall not be subject to this Lease, and the existence of this Lease. Lessee may not assign or pledge this Lease nor any interest thereon without the express written approval of the Lessor.

27. REMOVAL OF ALTERATIONS OR IMPROVEMENTS UPON TERMINATION. On the expiration of this Lease, or sooner termination thereof Lessee shall, at its own expense, remove all alterations and other improvements and to restore the Leased Premises to the condition they were in prior to the making or installation of the alterations and other improvements unless Lessor waives this requirement in writing.

28. NOTICES. Any Notice provided for or concerning this Lease shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth below:

Lessor: City of Beatrice ATTN: City Attorney 400 Ella Street Beatrice, NE 68310	Lessee: Chad Lottman 2006 Wildwood Circle Beatrice, NE 68310
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29. SIGNAGE. Lessee agrees that no signs or advertising material shall be placed or erected upon the Leased Premises without the prior written consent of Lessor.

30. TAXES. Lessee shall be responsible for and pay directly to any applicable tax authority, any and all real estate and personal property taxes assessed to the Leased Premises.

31. SUBJECT TO APPROVAL. It is understood and agreed that this agreement is subject to the approval of the Nebraska Department of Aeronautics.

32. COVENANTS. The terms, promises and conditions of this Lease are covenants running with the land leased herein and shall inure to the benefit of and shall bind and be obligatory upon the successors and assigns of the Lessor and the Lessee.

33. WAIVER. No forbearance to enforce the breach of any of the promises or covenants of this Lease shall be construed as a waiver of any succeeding breach of the same or any other covenant hereof.

34. WRITTEN MODIFICATION, RELEASE, DISCHARGE, OR WAIVER REQUIRED. No modification, release, discharge, or waiver of any provision hereof shall be of any force or effect unless signed by the party against whom it is claimed or that party's duly authorized agent.

35. SAVINGS CLAUSE. If any paragraph or part thereof of this Lease shall be invalid, illegal or inoperative for any reason, the remaining parts, so far as possible, shall be effective and fully operative.

36. ENTIRE AGREEMENT. This instrument contains the entire agreement of the parties as of this date, and the execution hereof has not been induced by either party by any representations, promises or understandings not expressed herein. There are no collateral agreements, stipulations, promises or undertakings that are not expressly contained herein or incorporated herein by specific reference.

37. SUPERSEDE. This Agreement shall supersede and terminate all previous agreements between the parties, or their predecessors.

38. CAPTIONS. The captions or headings of paragraphs in this Lease are inserted for convenience only, and shall not be considered in construing the provisions hereof if any question of intent should arise.

39. GOVERNING LAW. The laws of the State of Nebraska shall govern this Lease.

Dated this 15th day of April, 2024.

(Signatures on the following page.)

