

HCA HANGAR AGREEMENT

This Hangar Agreement ("Agreement") is entered into on the dated set forth in Section 1.1, between Hot Creek Aviation Management, LLC, a California Limited Liability Company ("HCA") and the entity identified in Section 1.2 ("TENANT").

The parties agree as follows:

1. BASIC PROVISIONS

- 1.1 Date of Agreement: June 20, 2012
(Primary Reference - Preamble)
- 1.2 Name of Tenant: Town of Mammoth Lakes, a municipal corporation
(Primary Reference - Preamble)
- 1.3 Hangar No: FBO Hangar # 1
(Primary Reference - Article 2)
- 1.4 Floor Area: Approximately 4,940 square feet
(Primary Reference - Article 2)
- 1.5 Use of Premises: Equipment, vehicle and material storage and maintenance, and other activities related to the operation and maintenance of the Mammoth Yosemite Airport.
- 1.6a Initial Term of Agreement Concurrent with that certain Fixed Base Operator's Service Contract dated September 30, 1998 as amended (expiring February 15, 2050, for a term of Thirty-seven years three and one-half months), unless earlier terminated pursuant to 1.6b below.
- 1.6b Option to Terminate Early Tenant shall have the option to terminate this Agreement early by noticing HCA of its exercise of option to terminate early and specifying the date of early termination; said option may be exercised only in writing and not less than nine months prior to the early termination date elected.

Commencement Date: July 1, 2012

Expiration Date: February 15, 2050 unless earlier terminated per 1.6b above.

(Primary Reference - Article 3)

1.7 Initial Monthly Rent: Five thousand dollars (\$5,000.00)
(Primary Reference-Section 5.1)

1.8 Security Deposit: (none)
(Primary Reference - Article 6)

1.9 Tenant to pay for: Water: Yes x No _____
 Electricity: Yes x No _____
 Propane: Yes x No _____
(Primary Reference - Article 8)

1.10 Addresses for Notices and Payments:
(Primary Reference - Sections 5.1 and 22.6)

TO TENANT: Town of Mammoth Lakes
Mammoth Yosemite Airport
1300 Airport Road
Mammoth Lakes, California 93546

TO HCA: Hot Creek Aviation Management, LLC
1334 Airport Road
Mammoth Lakes, California 93546

2. PREMISES

HCA owns and/or manages aircraft hangars at its Fixed Base Operation ("FBO") at the Mammoth Yosemite Airport, on land leased from the Town of Mammoth Lakes pursuant to certain ground leases ("Master Leases"). HCA leases to Tenant, and Tenant leases from HCA, the hangar designated with the hangar number set forth in Section 1.3 above, and it is agreed, for the purposes of this Agreement, that the Premises have a floor area equal to the square footage set forth in Section 1.4 above.

Initial: dw
PT

3. **TERM**

The term of this Agreement (the "Term") shall be for the period set forth in Section 1.6 above, commencing on the "Commencement Date" and ending on the "Expiration Date," unless terminated earlier in accordance with the provisions of this Agreement. If Tenant remains in possession of the Premises after the expiration of the Term, such holding over shall, in the absence of any written agreement, be deemed to be on a month-to-month basis, terminable on thirty (30) days' written notice. Such holding over shall otherwise be subject to the same provisions as contained in this Agreement.

4. **USE OF PREMISES**

4.1 Primary Use. The Premises leased pursuant to this Agreement is for the purpose of Equipment, vehicle and material storage and maintenance, and other activities related to the operation and maintenance of the Mammoth Yosemite Airport as designated in Section 1.5 above. Tenant shall not utilize the space for any other purpose without first notifying HCA in writing, which reserves the right to withhold its consent to such change.

4.2 Rules and Regulations. Tenant acknowledges that Tenant has been provided a copy of "Mammoth Lakes Municipal Code Title 18, Chapter 18.02, Mammoth Lakes Airport Rules and Regulations," and that the use of the Premises and all activities by Tenant in the context of the Mammoth Lakes Airport will be governed and regulated by such rules and regulations. Tenant shall also utilize the Premises at all times in compliance with the general regulations of HCA applicable to the Premises, in the form attached hereto as Exhibit A, as they may be modified by HCA by written notification from time to time. HCA shall not be responsible to Tenant for the nonperformance by any other user, tenant or occupant of the FBO of any laws, ordinances, rules and regulations.

4.3 Prohibited Uses. Tenant shall neither use nor permit the use of any part of the Premises for any purpose other than as set forth in Sections 4.1 above. Tenant shall not use or permit the use of the Premises in any manner that will (A) tend to create any waste or nuisance; (B) unreasonably disturb other users, tenants or occupants of the FBO; (C) invalidate or conflict with the fire and other insurance policies covering the FBO; (D) increase the rate of fire and other insurance on the FBO over the rate that would otherwise be applicable to the FBO, but for such use by Tenant; (E) constitute an improper, unlawful or objectionable purpose; (F) offer services or products for sale to the public or other Airport tenants; or (6) without HCA's prior written consent, which HCA may withhold in its sole discretion, constitute the operation or conduct of a business.

5. RENT, FEES AND REIMBURSEMENTS

5.1 Rent. Commencing on the Commencement Date, Tenant shall pay to HCA as rent for the Premises, without prior notice, demand, deduction, abatement or set-off, (a) the sum set forth in Section 1.7 above on a monthly basis, payable in advance. All rents shall be paid to HCA at the address set forth in Section 1.10 above, or to such other person or address as HCA may designate in writing.

5.2 Rent Adjustment. Upon the first (1st) day of the month of July next following the Commencement Date and upon the first (1st) day of each succeeding anniversary during the Term, the monthly rent set forth in Section 1.7 above shall be adjusted to reflect any increase in the cost of living. The increase, if any, shall be calculated upon the basis of the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, subgroup "All Items," entitled "Consumer Price Index, U. S. City Average for all Urban Consumers" (1977=100) ("Index") for the Los Angeles, Long Beach and Anaheim Metropolitan Area, or any appropriate successor index. In no event shall the monthly rent be reduced from the monthly rent in effect immediately preceding such adjustment date. The failure of HCA to submit a calculation of any increase in the monthly rent prior to the commencement of any twelve (12) month period shall not be deemed a waiver of the obligation of Tenant to pay such increased monthly rent, including back rent, upon demand from HCA.

6. SECURITY DEPOSIT (waived and intentionally omitted)

7. INTEREST AND LATE CHARGES

If Tenant shall fail to pay, when the same is due, any rent or other charges required to be paid pursuant to this Agreement, such unpaid amounts shall bear interest at the minimum lawful rate (not to exceed twelve percent (12%) per annum) from the due date to the date of payment.

8. UTILITIES

Except as hereafter provided, Tenant shall obtain and pay for all water, electricity, telephone, janitorial services and trash collection services provided to the Premises.

9. REAL AND PERSONAL PROPERTY TAXES

Tenant shall pay, prior to delinquency, all taxes that are levied and assessed against any leasehold improvements constructed by Tenant and other property of Tenant installed or located in the Premises. Tenant agrees to use its best efforts to cause such personal property to be taxed and assessed separately from the Premises. In the event any of Tenant's leasehold improvements, equipment, furniture, fixtures and personal property shall be assessed and taxed with the FBO, Tenant shall pay to HCA

its share of such taxes within ten (10) calendar days after delivery to Tenant by HCA of a statement setting forth the amount of such taxes applicable to Tenant's property.

10. INSURANCE; INDEMNITY; WAIVER

10.1 Indemnity. Tenant shall indemnify and hold HCA and the property of HCA free and harmless from any and all liability, claims, losses, damages or expenses resulting from Tenant's occupancy of the premises, specifically including any such liability, claims, losses, damages or expenses arising by reason of:

A) The death of or injury to any person or property from any cause while that person is in or on the premises or is in any way connected with the premises or any improvements thereon;

B) Any work performed on the premises or materials furnished to the premises at the request of Tenant or any person acting on behalf of Tenant;

C) Tenant's failure to perform any provision of this lease.

10.2 Insurance. Tenant shall, at Tenant's expense, maintain during the term of this lease a broad form comprehensive coverage policy of public liability insurance in a form approved in writing by HCA and issued by an insurance company licensed by the State of California insuring Tenant against loss or liability caused by or connected with Tenant's use of the premises under this lease in amounts not less than five million dollars (\$5,000,000.00) combined single limit bodily injury and property damage for injury to or death of one or more persons or property damage as a result of any one accident or incident. HCA shall be included as additional insured.

10.4 Worker's Compensation Insurance. If Tenant maintains employees on the Premises, Tenant shall, at all times during the Term and at its expense, maintain in effect Worker's Compensation coverage as required by law, together with employer's liability coverage, and waiver by Tenant's insurer of any right of subrogation against HCA by reason of any payment pursuant to such coverage.

10.5 Policy Terms. Each insurance policy required under this lease shall contain a provision that it cannot be canceled for any reason unless at least ten (10) days prior written notice of the cancellation is given to HCA by Tenant or the issuer of the policy.

10.6 Insurance Certificates. Tenant shall, within ten (10) days after the effective date of this lease, and promptly thereafter when any policy is amended, replaced or renewed, deliver to HCA a certificate executed by the appropriate insurance carrier evidencing that policy and naming HCA as additionally insured.

11. MAINTENANCE AND REPAIRS

Tenant shall, at its expense, maintain the Premises in good order and repair, including without limitation (A) fixtures, interior walls and exterior walls; (B) roofs, ceilings, floors, windows, doors, and glass; and (C) plumbing, heating and electrical facilities and equipment. Tenant shall keep the Premises at all times in a neat and sanitary condition, free from waste or debris. Tenant shall also be responsible for the repair, or cost of repair, of any damage caused to the balance of the exterior of the FBO, by any negligent act or omission of Tenant or its agents, employees or invitees.

12. ALTERATIONS AND RESTORATION

Tenant shall not, without the prior written consent of HCA, make any alterations or improvements (including, but not limited to, signs) to the Premises, and HCA may impose such conditions on such consent as it deems appropriate. Except for personal property and trade fixtures not permanently affixed to the Premises, all improvements, alterations and fixtures made by Tenant shall, upon the expiration or termination of this Agreement, become the property of HCA and shall be surrendered with the Premises, unless HCA shall, not more than ten (10) days after any such expiration or termination, instruct Tenant to remove such improvements, alterations or fixtures and to restore the Premises to its original condition, reasonable wear and tear excepted.

13. LIENS

Tenant agrees to keep the Premises, and the improvements now or hereafter erected on the Premises, free and clear of mechanics' liens and other liens for labor, services or materials furnished at the request of Tenant. Tenant shall pay and discharge and protect and hold harmless HCA and the Premises from all claims which may or do ripen into such liens

14. RETURN OF PREMISES

Upon the termination of this Agreement, Tenant shall surrender the Premises to HCA in broom clean and good condition, ordinary wear and tear excepted; and, except as otherwise provided in this Agreement, Tenant shall remove all of its property and shall promptly repair any damage to the Premises. The provisions of this Article shall survive the termination or expiration of this Agreement.

Initial: 

15. EMINENT DOMAIN

In the event that the Premises, or so much of the Premises as to make the balance not reasonably adequate for Tenant's use, shall be taken under the power of eminent domain, or by inverse condemnation, this Agreement shall, at the option of either party, terminate as of the date of the taking of possession by the condemning entity. In the event of such taking, if neither party elects to terminate this Agreement, the monthly rent shall be reduced by the percentage that the floor area of the Premises taken bears to the floor area prior to the taking. Tenant shall make no claim for any award or compensation paid pursuant to the exercise of such power of eminent domain as to any unexpired Term, nor for the taking of any tenant improvements.

16. DAMAGE OR DESTRUCTION OF LEASED PREMISES

If the Premises are destroyed or damaged in such a way as to render the Premises unfit for their intended use and HCA is required to rebuild the Premises, this Agreement shall not terminate, but rent shall be abated until the Premises have been reconstructed by HCA. If HCA is not required to rebuild the Premises, this Agreement may be terminated by either party within thirty (30) days after the date of such destruction or damage by written notice to the other party. If the Premises are damaged and such damage does not render the Premises unfit for their intended use, HCA shall repair the Premises and this Agreement shall not terminate, but rent shall be abated in proportion to the reduction in utility of the Premises caused by the damage during any repair of the Premises. No event causing an abatement of rent shall extend the Term of this Agreement.

17. ACCESS

HCA and the Town of Mammoth Lakes shall have free access to the Premises in all cases of emergency and during all reasonable hours for the purposes of examining the Premises to ascertain if they are in good repair, inspecting any work in progress on the Premises and making reasonable repairs which may be required or permitted. In the event Tenant is not personally present to open and permit such entry, HCA or the Town of Mammoth Lakes may enter by means of a master key, or may, in case of an emergency, enter forcibly without liability to Tenant, except for any failure to exercise due care of Tenant's property.

18. SUBORDINATION

This Agreement shall be subject and subordinate to all underlying leases, including, without limitation the Master Lease with the Town of Mammoth Lakes, and also to all modifications and extensions of such underlying leases. No act on the part of Tenant shall be necessary to effectuate such subordination.

19. **DEFAULT**

19.1 Default by Tenant. The occurrence of any of the following shall constitute a default by Tenant under this Agreement:

19.1.1 The failure of Tenant to pay any sum when due and payable, when such failure continues for ten (10) or more calendar days after written notice to Tenant;

19.1.2 The vacation or abandonment of the Premises by Tenant;

19.1.3 The failure by Tenant to perform any other provision of this Agreement to be satisfied by Tenant, when such failure continues for thirty (30) calendar days after written notice by HCA to Tenant; provided, however, that if the nature of the default is such that it cannot reasonably be cured within said 30-day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and diligently prosecute such cure to completion; or

19.1.4 The making by Tenant of any general assignment for the benefit of creditors; the filing of a petition to have Tenant adjudged a bankrupt, or of a petition for reorganization under any law relating to bankruptcy; the appointment of a trustee or receiver to take possession of Tenant's interest in this Agreement, or an attachment or other judicial seizure. Tenant agrees that in the event of any of the above, neither this Agreement nor any interest in the Premises shall become an asset in any such proceedings.

19.2 Performance of Tenant's Obligation by HCA. In the event of a failure of Tenant to perform any of its obligations, HCA may perform the same without terminating this Agreement or waiving any of its rights under this Agreement, and Tenant shall promptly reimburse HCA for any costs which HCA may pay or incur in so doing, plus interest as provided in Article 7.

19.3 Remedies of HCA. In the event of any default or breach by Tenant, HCA may, at any time, and without limiting HCA in the exercise of any right or remedy at law or in equity which HCA may have by reason of such default or breach:

19.3.1 Maintain this Agreement in full force and effect and recover all rent and other sums as they become due, without terminating Tenant's right to possession, regardless of whether Tenant shall have abandoned the Premises. If HCA elects not to terminate this Agreement, HCA shall have the right to attempt to re-let the Premises on behalf of Tenant upon such conditions and for such term as HCA deems reasonable and necessary, without being deemed to have elected to terminate this Agreement. Any property of Tenant may be removed and may be disposed of or stored in a public warehouse or elsewhere, at HCA's election, at the cost of and for the account of Tenant. Notwithstanding that HCA fails to elect to terminate this Agreement initially, HCA at any time thereafter may elect to terminate this Agreement as a result of such previous and then existing default of Tenant.

19.3.2 By written notice, terminate Tenant's right to possession, declare the Term ended and reenter and take possession of the Premises and remove all persons and property therefrom, and Tenant shall immediately surrender possession of the Premises to HCA and shall have no further claim. In such event, HCA shall be entitled to recover from Tenant all damages incurred by HCA by reason of Tenant's default

19.3.3 Upon any such reentry, HCA shall have the right to make any repairs or alterations to the Premises which HCA deems reasonable and necessary.

19.3.4 All rights and remedies of HCA contained in this Agreement shall be cumulative and no one of them shall be exclusive of the others, and HCA shall have the right to pursue any one or all of such remedies or any other remedy which may be provided by law. No waiver of any default of Tenant shall be implied from any acceptance by HCA of any rent or other payments or any omission by HCA to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver.

20. **TRANSFER BY HCA** In the event of any transfer of the lease to the Premises by HCA, the HCA named in this Agreement (and in case of any subsequent transfers, the then-grantor) shall be automatically relieved from and after the date of such transfer, of all liability for the performance of any obligations of HCA; provided that any funds in which Tenant has an interest which are in the hands of such HCA or the then-grantor at the time of such transfer shall be turned over to the grantee.

21. **ACCORD AND SATISFACTION**

Notwithstanding any statute to the contrary, no payment or receipt by HCA of a lesser amount than the rent or other charges stipulated in this Agreement shall be deemed to be other than on account of the rent or such charges, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and HCA may accept such check or pact without prejudice to HCA's right to recover the balance of such rent or other charges or pursue any other remedy provided in this Agreement.

22. **MISCELLANEOUS**

22.1 Successors; Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors and permitted assigns. This Agreement may not be assigned, nor the premises subleased, without the consent of HCA, which will not be unreasonably withheld. As a condition of such consent, the parties agree that HCA may require tenant to remit to HCA, any excess in rent which tenant receives, over and above that charged by HCA to tenant.

22.2 Attorneys' Fees. In the event suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover, as an element of its costs of suit and not as damages, reasonable attorneys' fees. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment.

22.3 Interpretation. This Agreement shall be governed by and construed under the laws of the State of California.

22.4 Modification. In order to become effective, any alteration, change or modification of this Agreement, shall be made in writing, and in each instance executed by each party.

22.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes and replaces all prior agreements between the parties related to the subject matter of this Agreement.

22.6 Notices. Any demand or other notice which any party may desire to give must be in writing and may be given by personal delivery or by registered or certified mail, return receipt requested, to the party to whom the notice is directed at the address of the party set forth in Section 1.10 above, or at any other address as either party may from time to time designate in the manner set forth in this Section. Any notice given under this Section 22.6, whether personally or by mail, shall be deemed received when delivered.

22.7 No Waiver. A waiver by any party of a breach of any of the conditions or covenants contained in this Agreement to be performed by any other party shall not be construed as a waiver of any succeeding breach of the same or any other conditions or covenants of this Agreement.

22.8 Severability. If any condition or covenant of this Agreement or its application shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement or the application of the condition or covenant to persons or circumstances other than those as to whom or to which it is held invalid or unenforceable, shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

23. EXECUTION

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date provided in Section 1.1 above.

HCA:

Hot Creek Aviation Management, LLC,
A California limited liability company:

By:


Pat Foster

Its:

General Manager, Sr. V.P.

Date:

6-27-12

Tenant:

Town of Mammoth Lakes,
a Municipal Corporation:

By:



Its:

Town Manager

Date:

June 27, 2012