

## ***LEASE***

### Land Lease at the Richard I. Bong Airport Superior, WI

THIS LEASE, made and entered into this **12th** day of **October, 2015**, by and between the CITY OF SUPERIOR, State of Wisconsin, a municipal corporation existing by and under the authority of the laws of the State of Wisconsin (hereinafter referred to as the "Lessor") and Steven Merrill, 20 Village Drive #212, Proctor, MN 55810 (hereinafter referred to as "Lessee").

The Lessor owns and operates an airport which includes all aeronautical navigation facilities, said airport being known as the Richard I. Bong Airport, 4804 Hammond Avenue, Superior WI 54880 and said Lessor is desirous of leasing to Lessee certain premises hereinafter more fully described, located on said airport.

#### I. PERMITTED USES

A. Lessee, along with rental of hangar space and storage of airplanes, may engage in any aviation related business and activities. Hangars shall be used solely for the storage of aircraft, aircraft equipment, and such items as are typically used by pilots and aircraft owners in the use of aircraft. Hangars shall not be used for the storage of automobiles, trailers, campers RV's, home furnishings, business supplies, wood, building materials, or any other items not typically used in connection with the operation of aircraft. At no time shall the Lessee store any flammable material (except for fuel in the aircraft) nor shall the Lessee store explosives or other dangerous or hazardous materials, in or around the hangar, without the Lessor's prior written consent. Any storage of any other items not typically used in connection with the operation of aircraft will be considered a violation of the Lease.

#### II. LEASE

A. For the consideration set forth below, the Lessor does hereby lease to Lessee the following described premises commonly known as C4 (hereinafter referred to as the leased premises):

**A parcel of land located in the SW 1/4 of Section 35, Town 49 north, Range 14 west, City of Superior, Douglas County Wisconsin, 1419 North 46<sup>th</sup> Street, Superior, WI 54880, comprising of approximately two thousand, three hundred forty eight square feet (2,348), two thousand one hundred sixty (2,160) for the hanger and one hundred eighty-eight (188) square feet for an adjacent concrete pads.**

A map of which is attached hereto as Exhibit I and incorporated herein by reference.

B. Lessee shall maintain an airplane hangar building on the leased premises. Such building or structure shall conform to the Building Code Requirements of the State of Wisconsin and the City of Superior, the Minimum Requirements for Airport Aeronautical Services of the City as now or as may hereafter be amended or adopted, and any other City or County ordinance now or hereafter in effect. Before any construction on the building shall commence, the plans approved by the Wisconsin Department of Public Safety and Professional Service, must also be approved by the Public Works Department of the City of Superior. Lessee must also obtain all necessary permits as required by state law and City ordinance at his sole cost and expense. Lessee shall pay the costs of all utilities and utility connections. Liability for the maintenance of said building shall remain with the Lessee.

C. It shall be the duty of the Lessee to comply with all local, state and federal laws in regard to the construction of a hangar on City property at the Bong Airport.

D. It shall be the duty of the City, unless otherwise mutually agreed between the Common Council of the Lessor and the Lessee, to provide and maintain all ingress and egress to the facility and such roads, taxiways and other items as designated by the Lessor to comply with federal, state or FAA standards and specifications.

E. Ingress to and egress from the demised premises shall be limited to streets, taxiways, driveways or sidewalks designated for such purposes by the Lessor, which right shall extend to Lessee's employees, passengers, guests, invitees and patrons.

F. Lessee is to maintain a twenty-foot (20') space between lessee's hangar and the abutting hangar. This space is not part of the lease and will not be used for any type of storage or usage by the lessee.

### III. RENT

A. The Lessee agrees to pay to the Lessor for use of the leased premises an annual base rent of \$0.096 per square foot, payable in advance on the first day of January each year; rent for 2,348 square feet is two hundred twenty-five dollars and forty-one cents (\$225.41) for the calendar year. First year and last year rent shall be a prorated amount for the number of months and partial months remaining in the year based on the commencement date of the Lease.

B. Cost of Living Adjustments: Effective November 1, 2020 and on the first of November of each fifth (5<sup>th</sup>) year thereafter during the full term of this lease, the annual base rent set forth in paragraph (A) shall be adjusted for the next succeeding five (5) years in proportion to the changes in the "Consumer Price Index" for all Urban Consumers - All Items" of the U.S. Bureau of Labor Statistics or its successor index. The rent shall be adjusted to an amount which bears the same ratio to the base rent as the Consumer Price Index for the adjustment month (and in each fifth

(5<sup>th</sup>) year thereafter) bears to the Consumer Price Index for the month. In no event, however, will the rent as adjusted under this paragraph be less than the base rent set out in paragraph (A). The Consumer Price Index for each adjustment year shall be adjusted, if necessary, to reflect any change in the base period used to compute the Consumer Price Index. Lessor will provide written notice to the Lessor of any rent adjustments.

#### IV. TERM

The term of the Lease for property described in II. A. shall be for a period of twenty (20) years commencing upon November 1, 2015, and terminating on December 31, 2036. Lessee shall have the option of extending this lease for two additional ten (10) year periods, upon written request to the Lessor at least one hundred twenty days (120) days in advance of the end of the first term.

The Lessor shall, within sixty (60) days of receipt of the request, provide the Lessee with written notice of acceptance or rejection of the renewal request.

The Lessor shall have the right to terminate this lease, upon one hundred eighty (180) days written notice to Lessee in the event the land is needed for airport improvements outlined in an Airport Layout Plan (ALP) developed and approved by the Bureau of Aeronautics (BOA) and/or the Federal Aviation Administration (FAA). The Lessor will make every effort with guidance from the BOA to identify a similarly sized parcel should the Lessee desire to continue to lease premises within the airport boundaries. If no other property is identified or if the Lessee does not desire to relocate the hanger, the Lessee shall vacate the premises in accordance with Section VII (E) or other terms that are mutually agreeable to the parties.

#### V. INSURANCE

A. The Lessee agrees that he will deposit with the City Clerk, a policy of comprehensive liability insurance. Such policy shall be issued by a company licensed to do business in Wisconsin and shall insure the Lessee against loss from liability to the amount of \$100,000 for the injury or death of one person in any one accident; and in the amount of \$300,000 for the injury or death of more than one person in any one accident; and in the amount of \$100,000 for damage to property of others for any one accident. The amount and type of insurance required under this section may be reviewed and adjusted at the end of each three (3) year period during this Lease, provided that any increase in insurance coverage shall be reasonable.

B. The policy of insurance shall be approved by the City Attorney as to legal form before it is filed, and shall contain a provision that the same may not be canceled before the expiration of its term except under 30 days' written notice to the Lessor.

C. The Lessee further agrees to notify the Lessor of any commercial operations being conducted on airport property prior to commencement of any such activity, including but not limited

to products and repairs, flight school, training facility, FBO, etc., and obtain aircraft liability, hangar keeper's insurance and products insurance to cover said operations; proof of such coverage must be provided to the Lessor prior to beginning commercial operations. The Lessor may determine the amount of such insurance, which amount shall be reasonable.

D. The cancellation or other termination of any insurance policy issued in compliance with this section shall automatically terminate the Lease, unless another policy has been filed and approved pursuant to this section and shall be in effect at the time of such cancellation or termination. Lessee shall not perform any of their permitted uses described in Section I without the aircraft liability and products insurance or other insurance coverage necessary to provide insurance coverage for such uses.

#### VI. FAA REQUIRED PROVISION

A. The Lessee for oneself, 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: (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied 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 be subjected to discrimination; (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

B. In the event Lessee conducts authorized aeronautical business activities on said leased premises and on said airport, shall furnish good, prompt and efficient service adequate to meet the demands for its services at the airport, and shall furnish such service on a fair, equal and not unjustly discriminatory basis to all users thereof, and shall charge fair, reasonable, and not unjustly discriminatory prices for each unit of sale or service; provided however, the Lessee shall be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

C. This agreement shall not be construed in any manner to grant Lessee or those claiming under it the exclusive right to the use of the premises and facilities of said airport other than those premises leased exclusively to Lessee hereunder.

D. It is clearly understood by the Lessee that no right or privilege has been granted which would operate to prevent any person, firm or corporation operating aircraft or the airport from performing any services on its own aircraft with its own regular employees including, but not limited to, maintenance and repair that it may choose to perform.

## VII. ADDITIONAL LEASE PROVISIONS

A. Lessee may not, at any time during the term of this Lease, assign, sublease, hypothecate or transfer this agreement or any interests or rights under this agreement, without the written consent of the Lessor.

B. The Lessee will maintain its hangar, associated appurtenances, and the surrounding land in a safe, useful, clean, painted, neat and orderly condition, and Lessee shall perform such repairs, maintenance and upkeep as the Lessor shall deem necessary and appropriate to maintain the safety of the Airport and to maintain the attractive, professional appearance of the Airport. In the event of fire or any other casualty, Lessee shall either repair or replace the building or remove the damaged building and restore the leased area to its original condition; such action must be commenced within one hundred twenty (120) days of the date the damage occurred and completed in a reasonable time thereafter. Upon petition by the Lessee, the Lessor may grant an extension of time if it appears such extension is warranted.

C. The parties hereto for themselves, their legal representatives, successors and assigns, further covenant and agree as follows:

1) Lessee agrees to observe and obey during the term of this Lease, all laws, ordinances, rules and regulations promulgated and enforced by the Lessor and by any other proper authority having jurisdiction over the conduct of the operations at the airport. It is understood by the Lessee that the airport is directly regulated by the Lessor through its Airport Manager and, in realizing this, the Lessee agrees to fully cooperate with the Airport Manager, inform the Airport Manager of any such information, within reason, regarding operations as the Manager may request.

2) The Lessor shall not be liable to the Lessee for, and Lessee shall hold the Lessor harmless from, any and all claims, damages or losses caused by the acts or omissions of the Lessee, its family, guests, invitees, employees, agents, representatives or servants, relating to or arising out of Lessee's use and enjoyment of the Airport or the rights and privileges granted by this lease. The Lessor shall not be liable for any loss or damage, not caused by negligent acts or omissions of the Lessor, which Lessee may sustain from:

- a. Theft or burglary in or about the premises;
- b. Delay or interruption in any utility service from any cause whatsoever;
- c. Fire, water, rain, frost, snow, gas, odors or fumes from any source whatsoever;
- d. Any injury to any person or damage to any property; or
- e. Failure to keep the Airport premises, appurtenances, fixtures and/or equipment in repair.

3) Lessee agrees to take full responsibility for any and all environmental or hazardous substance contamination or environmental impact that may be caused directly or indirectly by the Lessee.

4) Except as provided in (6) below, so long as Lessee complies with all other provisions in this Lease, Lessee shall peaceably have and enjoy the leased premises and all the rights and privileges herein granted.

5) Lessee agrees that no signs or advertising matter may be erected without the consent of the Lessor, or that are not suitable to the Lessor.

6) Lessee agrees to permit the Lessor to install, maintain and operate proper obstruction lights on the tops of all buildings or structures to be placed on the premises by the Lessee and agrees to reimburse the Lessor for the cost of such installation.

7) During any period when the airport shall be closed by any lawful authority restricting the use of the airport in such a manner as to interfere with the use of same by Lessee for his business operation, the rent shall abate and the period of such closure shall be added to the term of this Lease so as to extend and postpone the expiration thereof.

8) Failure on the part of the Lessee to pay the rent hereunder, within thirty (30) days after same shall become due, except as provided in the preceding paragraph, shall authorize the Lessor, at its option and without any legal proceedings, to declare this Lease void, cancel the same and re-enter and take possession of the premises, upon giving a ten (10) day notice by registered mail. Lessee shall promptly pay all taxes or assessments that may be levied against the personal property of the Lessee or the building on lands leased to it exclusively under this Lease. For purposes of the assessment of personal property taxes, Lessee acknowledges to be in charge and possession of the building/s located on the leased premises and the contents contained therein and, therefore, accepts personal liability for the assessment of personal property taxes. Failure to timely pay personal property taxes pursuant to Wisconsin Statutes §§74.11(4) shall constitute a breach of this agreement on the part of the Lessee and shall authorize the Lessor to cancel the agreement without initiating a legal proceeding and to re-enter and take possession of the premises upon providing a ten (10) day written notice by registered mail.

9) If Lessee shall violate any of the restrictions of this Lease, or shall fail to keep any of its covenants after written notice to cease such violation and shall fail to correct such violation within thirty (30) days, the Lessor may at once, if it so elects, terminate the same and take possession of the premises, building and improvements thereto.

10) The Lessor, Airport Manager or their assigned representative reserves the

right to enter upon the premises at reasonable times, with reasonable notice for the purpose of making any inspection it may deem expedient to the proper enforcement of any of the covenants or conditions of the Lease. Failure to permit the Lessor or its representative to access the leased premises shall result in termination of the Lease.

11) The Lessor reserves the right, but shall not be obligated to Lessee, 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 Lessee in this regard. In the event the Lessor does not maintain the runways, taxiways and apron to the reasonable satisfaction of the Lessee, Lessee may terminate this Lease on thirty (30) day notice to the Lessor.

12) During the time of war or national emergency, the Lessor shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use, and, if such lease is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended.

13) Force Majeure. Neither Lessee nor the Lessor shall be held liable for any failure to perform the obligations outlined in this agreement where such failure is a result of acts of Nature such as floods, earthquakes or other natural disasters, nor due to acts of war, invasion, hostilities, terrorist activities, etc., nor by government sanction, embargos, nationalization, etc. Lessee or the Lessor may elect to terminate this agreement as a result of these conditions upon mutual consent.

14) Obstructions at Richard I. Bong Airport. The 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. Lessee shall, upon approval by the Lessor and prior to any construction of any nature within the boundaries of the airport, prepare and submit to the Federal Aviation Administration, Great Lakes Regional Office, attention AAGL-530, 2300 E. Devon Avenue, Des Plaines, Illinois 60018, one executed set (four copies) of FAA Form 7460-1, "Notice of Proposed Construction or Alteration", as required by Federal Aviation Regulation Title 14, Chapter I, Subchapter E, Part 77. This notice must be submitted at least thirty (30) days prior to the date of the proposed construction/alteration or the date that an application for a construction permit is filed, whichever is earlier.

15) Non-Appropriation. To the extent that State and/or Federal funds are used for airport operations, the Lessor will not be held liable for any damages incurred due to changes in State or Federal funding, including (but not limited to) a reduction in services offered, or

closure of the airport.

16) The Lessee shall keep the premises clean, neat and in good order, free from garbage, debris, salvage or junk. No junked or non-operating vehicles, airplanes, or parts thereof, shall be kept outside the hangar.

17) Lessee shall comply at all times with all federal and state security and safety regulations and mandates. A hangar shall be locked at all times when an aircraft is stored with the hangar and Lessee, or Lessee's agent, is not present at the hangar. Keys shall not be left in any unattended aircraft whether or not the aircraft is located within a hangar.

18) If the Lessee fails to use the hangar, for the purpose of storing aircraft owned by the Lessee, for a continuous period of 12 months, then the Lessor may, in Lessor's sole discretion, terminate this lease.

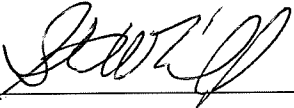
D. This Lease shall be subordinate to the provisions of any existing or future agreement between the Lessor and the United States, relative to the operation or maintenance of the airport, the execution of which has been or may be required as condition precedent to the expenditure of Federal funds for the development of the airport.

E. Upon termination of this Lease, Lessee shall either remove all buildings and improvements constructed by Lessee within ninety (90) days after the Lease termination date and restore the premises described herein to its original condition, free and clear of all debris or all buildings and belongings located on the premises (financed by the Lessee or otherwise) shall revert back to the Lessor regardless of how the lease was terminated, unless otherwise agreed upon by the City. Said removal and restoration shall be subject to the approval and inspection of the Building Inspector of the Lessor of Superior. Prior to commencement of said removal, Lessee shall deposit with the City Clerk of the City of Superior, a bond in the amount of twenty-five thousand dollars (\$25,000.00) to guarantee the performance in accordance with this provision. Said bond shall have a surety herein a corporation licensed by the State of Wisconsin Insurance Commission to act as surety. If said improvements are not removed in said ninety (90) day period, the Lessor shall thereupon obtain title to said improvements or remove them at Lessee's expense at the option of the Lessor.



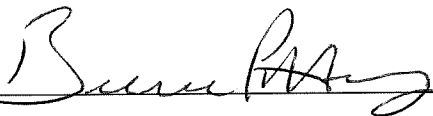
IN WITNESS WHEREOF, the parties have herein set their hands and seals this 6<sup>th</sup>  
day of November, 2015.

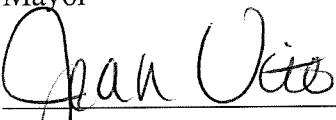
LESSEE: Steve Merrill  
20 Village Drive, #212  
Proctor, MN 54810  
218-390-9432


Signature: 


Subscribed and sworn to before me, this 6<sup>th</sup> day of Nov, 2015.  
Theresa Kalan Notary Public  
Douglas County, WI (state)  
My commission expires: 8/23/2019

CITY OF SUPERIOR, WISCONSIN

  
Mayor

  
Finance Director/Sr Admin Officer

  
City Attorney

  
City Clerk

\*Approved at the November 3, 2015 City Council Meeting.

Exhibit I  
Richard I. Bong  
Memorial Airport

Updated: 10/28/15



City C1

Walenczyk /Johnson C2

White C3

Merrill C4

Kramp C5

City B1

Buhr B2

Meyer B3

Evans B4

Aturaliya B5

Jessen/  
Baldwin B6

Fraley B7

Setter B8

City Hangar A2

City Hangar A1

Amorde A1

Midwest Aviation A3

Civil Air Patrol A4

Breole A5

Foster A6

Skydive Superior A7

E.A.A A8



HAMMOND AV