NEWPORT MUNICIPAL AIRPORT
T-HANGAR TENANT AGREEMENT

BETWEEN: The City of Newport, an Oregon Municipal Corporation **(City)**

AND: Thomas Knott **(Tenant)**

EFFECTIVE DATE: September ~~6~~ 7, 2013

RECITALS

A. The Newport Municipal Airport (Airport) is operated by and under the jurisdiction of City. In accordance with sound Airport management practices, the Airport rules and regulations and the Airport Plan of Development, as updated and amended from time to time, and other relevant policies of City that apply to Airport usage, certain areas of the Airport are reserved for each of the several types of activities and are restricted to the tenant.

B. City desires to rent T-hangar No. 7.

AGREEMENT

1. Tenant Agreement. For the purpose stated in this Agreement and on the other terms and conditions stated herein, City rents to Tenant T-hangar No. 7.

2. Tenancy Term. The period of the tenancy will be month-to-month.

4. **Basic Rent.**

   4.1 Basic rent is $180.00 per month until January 1, 2014. On January 1, 2014, the basic rent will be $195.00 per month. Basic rent shall be due and payable on a monthly basis unless other arrangements are made; prorated to the first day of the month following signing, and due on the first day of each month thereafter.

   4.2 Any payments or partial payments not made under this Agreement shall bear interest at the rate of twelve percent (12%) per annum until paid.

5. **Adjustments to Basic Rent.**

   5.1 CPI Adjustment. Beginning on January 1, 2015, the basic rent provided in Paragraph 4 shall be increased each year by a percentage equal to the percentage change in the Consumer Price Index statistics published by the United States Bureau of Labor. Comparisons shall be made using the index entitled, "U.S. City Average/All Items and Major Group Figures for all Urban Consumers Portland Area (1982-84 = 100)," or the nearest comparable data

on changes in the cost of living, if such index is no longer published. The change shall be determined by comparison of the figure for the previous January 1, with that of January 1 of the current year. In no event shall this calculation cause a reduction in base rent below that payable during the preceding year. The proposed adjustment shall be presented to the Tenant by the City thirty (30) days prior to the effective date of the assessment.

5.2 Challenge. Tenant may give City notice, within thirty (30) days of the notice of rental adjustment, challenging City's figures. If any such challenge is not made within thirty (30) days, Tenant's challenge to the figures presented by City shall be deemed waived. The challenge shall be restricted to City's calculations of increases relating to Tenant and, if not resolved by the parties, will be referred to arbitration as described in Paragraph 23.

6. **Use of the Premises**. Use of the Premises is limited to aeronautical uses. Use of the premises for commercial or business use is prohibited. The Tenant may use the Premises, at its own risk, for the following purposes and for no other purpose (including commercial use) without the prior written approval of the City Manager:

6.1 Construction of an aircraft for private use by the Tenant in accordance with Airport rules and regulations;

6.2 Storage of aircraft;

6.3 Maintenance and repair of Tenant's aircraft by Tenant or by a person or firm in accordance with current and applicable future Airport rules and regulations.

7. **Tenant's Additional Use Rights**. Tenant shall have the use of Airport facilities and navigational aids for the purpose of landing, taking off, and taxiing of Tenant's aircraft, and related rights of ingress and egress 24 hours a day, subject to the current or any amended laws, rules, regulations, ordinances, and resolutions of applicable governmental bodies, including Lessor.

8. **Specific Obligations of Tenant**. In connection with Tenant's occupancy and use of the Premises, the following specific conditions shall apply:

8.1 Compliance with Laws. Tenant shall comply with all applicable laws, ordinances, rules, and regulations of any governmental bodies having jurisdiction over the Airport with respect to Tenant's activity in relation to the use and occupancy of the Premises, and of the Airport in general. Any act or failure to act by Tenant, employee, invitee, or agent of Tenant in violation of any such laws, ordinances, rules, and regulations shall be deemed a violation of this Agreement.

8.2 Airport Rules and Regulations. Tenant's obligation under Paragraph 8.1 shall include, but not be limited to, the rules and regulations of the Airport.

City reserves the right to adopt additional rules and regulations and amend existing and future rules and regulations which govern the Premises and the facilities at the Airport used by the Tenant. Tenant agrees to observe, obey, and abide by all such rules and regulations currently existing or hereafter adopted or amended. Any action or failure to act by Tenant, employee, invitee, or agent of Tenant which is in violation of such rules and regulations shall be deemed a violation by Tenant of this Agreement.

8.3 Environmental Laws. Tenant's obligations under this Agreement specifically include, but are not limited to, strict and timely compliance with all environmental laws. Tenant shall ensure that all operations on the Premises comply with all environmental laws and orders of any governmental authorities having jurisdiction under any environmental laws.

8.3.1 As used in this Agreement, the term "environmental laws" means all state, federal, and local statutes, regulations, and ordinances relating to the protection of human health and the environment.

8.3.2 In this Agreement, the term "hazardous materials" is used in its very broadest sense and refers to materials that, because of their quantity, concentration or physical, chemical, or infectious characteristics, may cause or pose a present or potential hazard to human health and to the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported, or otherwise handled on the Premises. The term includes, without limitation, petroleum products or crude oil or any fraction thereof, and any and all hazardous or toxic substances, materials, or wastes as defined by or listed under the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and any other environmental laws.

8.4 Signs. In addition to complying with any rule(s) or regulation(s) of City pertaining to signs, Tenant shall not be permitted to tamper with any sign at the Airport.

8.5 Aviation Easement. Tenant acknowledges that its rights to use the property shall be secondary and subordinate to the operation of the Airport. City reserves a right of flight for the passage of aircraft in the airspace above the Premises together with the right to cause noise inherent in the operation of aircraft. Tenant shall not take any action or construct any improvements that interfere with the navigational aids of flight operations of the Airport.

8.6 Security. Tenant recognizes its obligation to comply with federal airport security regulations. Tenant shall reimburse City in full for any fines or penalties levied against City for security violations as a result of any actions on the part of Tenant, its agents, guests, or employees.

9. **Liability to Third Parties.**

9.1 Tenant's Indemnification. Tenant shall at all times indemnify, protect, defend, and hold harmless City, its officers, agents, and employees from any claims, demands, losses, actions, or expenses, including attorney's fees, to which City may be subject by reason of any property damage or personal injury arising or alleged to arise from the acts or omissions of Tenant, its agent, or its employees, or in connection with the use, occupancy, or condition of the Premises.

10. **Subordination**. This Agreement shall be subordinate to the provisions of any existing or future agreement between City and the State of Oregon and/or the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of state or federal funds for the development of the Airport, or any amendments thereto.

11. **Cessation of Airport Operation**. City, regardless of the terms of this Agreement, as a result of any orders of the State of Oregon, the United States, or any other governmental instrumentality, may cease airport operations. Tenant acknowledges City's right to cease such operations and releases City from any and all damage claims by Tenant against City as a result of such cessation of operations. This release does not apply to any other party who may be the basis for City's cessation of operations. Subject to the orders of cessation, Tenant shall be granted a period of twelve (12) months free of any rents and fees in which to cause the Premises to be restored to a condition free of all improvements, including hangars and debris. City shall not be liable to Tenant for any damages related to loss in use of the Premises due to action under this paragraph. This provision does not eliminate any obligations of Tenant as a result of liability or indemnification obligations as set forth in other provisions of this Agreement.

12. **Airport Development**. Regardless of the term of this Agreement, City, at City's discretion or as a result of any orders of the State of Oregon, United States, or any other governmental unit having authority over the property may require the cessation of use of the specific Premises for their rented purposes, with 30 days notice to Tenant.

13. **Removal of Personal Property and Fixtures.**

13.1 Tenant shall remove all personal property and return the Premises to proper condition upon the end of the term(s), or other cessation of use by Tenant, as set forth below. Tenant shall remove all of Tenant's property except fixtures permanently or semi-permanently affixed, and restore the grounds to a clean and orderly condition free of all debris.

14. **Default.** Tenant shall be in default under this Agreement upon the occurrence of any one or more of the following events (time of payment and performance being of the essence):

14.1 Failure of Tenant to pay any rent or other charges within thirty (30) days after the same becomes due.

14.2 Abandonment. If Tenant abandons the Premises, City may treat such abandonment as a default under this Agreement, and City may exercise any rights it may have as in the case of default for which Tenant is not entitled to notice. Tenant shall be deemed to have abandoned the Premises if it fails to occupy the same for a period of three (3) months; however, City may consider Tenant to have abandoned the Premises by other acts, words, or conduct evidencing abandonment or intent to abandon the Premises. Any personal property remaining on the Premises sixty (60) days after termination of this Agreement for any reason shall be deemed as abandoned by Tenant and City may make any disposition of such personal property as it deems appropriate. City may charge Tenant for the reasonable costs incurred in disposing of such personal property. Upon abandonment, Tenant loses all rights and options set forth in Paragraph 17.1. Tenant remains responsible for all City' costs.

14.3 Except as otherwise provided in this Paragraph 19, the failure of Tenant to comply with any term or condition, to fulfill any obligation, or to cure any violation of this Agreement within thirty (30) days after written notice by City specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within thirty (30) days, this provision shall be deemed complied with if Tenant begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. City may require, as part of the cure of any violation by Tenant, reimbursement from Tenant for any and all costs and expenses incurred by City by reason of Tenant's violation of this Agreement.

14.4 For immediate cure of violations, the city reserves the right to set a shorter timeline, and if the tenant does not comply within 24 hours, the tenant shall be in immediate default of this Agreement without the requirement of further notice or opportunity to cure.

14.5 If Tenant assigns its interests in this Agreement, except in accordance with the provisions of the Agreement, default shall be automatic without requirement of notice or opportunity to cure.

15. **Remedies on Default.** In the event of a default, the Agreement may be terminated at the option of the City by notice in writing to Tenant. The notice of termination may be included in a notice of failure of compliance given under Paragraph 14. If the Premises are abandoned by Tenant in connection with a default, termination

shall be automatic and without notice. If the Agreement is terminated for any reason, Tenant's liability to City for damages for breach shall survive such termination, and the rights and obligations of the parties shall be as follows:

15.1 Tenant shall vacate the Premises immediately, remove any property of Tenant including any fixtures which Tenant is required to remove at the end of the Agreement term, perform any cleanup, alterations or other work required to leave the Premises in the condition required by this Agreement at the end of the term, and deliver all keys to Lessor. Possession to any structure on the Premises shall immediately revert to City and Tenant shall have no right or claim against City as a result thereof.

15.2 City may re-enter, take possession of the Premises, and remove any persons or property by legal action or self-help with the use of reasonable force and without liability for damages.

15.3 Following re-entry or abandonment, City may rent the Premises.

15.4 The foregoing remedies shall be in addition to and shall not exclude any other remedy available to City under applicable law or as set forth in this Agreement.

16. **Inspections**. City shall have, at all times during normal business hours, the right to enter into, and inspect, the Premises for the purposes of determining Tenant's compliance with its obligations under this Agreement. City shall provide at least 24 hours' notice before any inspection except in cases of emergency. Notice shall be sufficient if prominently posted on the building on the Premises 24 hours prior to the inspection

17. **Attorney Fees and Costs**. In the event any action or claim relating to the enforcement or interpretation of any of the terms of this Agreement is made, except as stated in Paragraph 18, the successful party shall be entitled to recover all costs, fees, and expenses reasonably incurred, whether or not taxable as costs, including without limitation, attorney fees, inspection and investigation costs, copying charges, and all other related expenses.

In the event any litigation is commenced relating to this Agreement, including but not limited to any action or participation by Tenant or City in or connected with a case or proceeding under the Bankruptcy Code or any successor statute, the prevailing party shall be entitled to recover all costs, fees and expenses reasonably incurred, before and after trial, and on appeal and review, whether or not taxable as costs, including without limitation, attorney fees (including estimated fees to collect a judgment entered in favor of the prevailing party), witness fees (expert or otherwise), deposition costs, inspection and investigation costs, copying charges and all other related expenses. Expenses incurred in the event of arbitration shall be treated as if they were expenses incurred in litigation.

18. **Arbitration**. If any contract dispute arises between the parties, it shall be decided by arbitration unless both parties agree to waive arbitration and proceed with litigation. Upon request for arbitration, the party requesting arbitration shall submit to the other party a list of the names of five independent arbitrators. The other party may select any one of the five. If the parties cannot decide on an arbitrator with qualifications that relate to the dispute at hand within fifteen (15) days, then either party may apply to the presiding judge of the Lincoln County Circuit Court to appoint the required arbitrator.

The Arbitrator shall proceed according to Oregon statutes governing arbitration, and any rules specifically adopted by the parties. If the parties do not agree upon rules for the arbitration, the Arbitrator shall establish rules and advise each respective party. The award of the Arbitrator shall have the effect provided in the Oregon Revised Statutes. The arbitration shall take place in Lincoln County. Costs of arbitration and attorney fees and costs may be awarded to a party at the discretion of the Arbitrator.

19. **Discrimination Prohibited**. In connection with Tenant's use and occupancy of the Premises and the conduct of its operations at the Airport, Tenant shall be bound by the following non-discrimination requirements:

19.1 FAA required terms. As required by the FAA, the following clauses are made part of Tenant's obligations under this Agreement:

1. Tenant for itself, and its 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 said property described in this lease for a purpose for with a US Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Tenant 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.

2. Tenant for itself, and its 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: (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 or 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;

(3) that the Tenant shall use the premises in compliance with all 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.

20. **Insurance Requirement**. The Tenant shall be responsible to provide sufficient insurance coverage for the contents of the hangar.

21. **Non-Waiver**. Waiver by either party of strict performances of any provisions of this Agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provisions in the future or of any other provision. No act or omission shall constitute a waiver of this non-waiver clause.

22. **Notices**. Any notice required or permitted under this Agreement shall be considered given when actually delivered in person or when deposited with postage prepaid in the United States mail as registered or certified mail:

To City: Newport Municipal Airport
C/o City of Newport
169 SW Coast Highway
Newport, Oregon 97365

To Tenant: Thomas Knott

Or to such other address as may be specified from time to time by either of the parties in writing.

23. **Interpretation and Liability**. In interpreting this Agreement, the singular shall include the plural. If Tenant consists of more than one individual or entity, each such individual and entity shall be jointly and severally liable for Tenant's obligations under this Agreement.

23. **Inconveniences During Construction**. Tenant recognizes that from time to time during the term of this Agreement, it will be necessary for City to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance, and repair in order that the Airport and its facilities may be suitable for the volume and character of air traffic and flight activity requiring accommodation, and that such construction, reconstruction, expansion, relocation, maintenance, and repair may inconvenience or temporarily interrupt Tenant's operations at the Airport. Tenant agrees that no liability shall attach to City, its officers, agents, employees, contractors, and representatives by reason of such inconveniences or interruptions and, for and in further consideration of this Agreement, Tenant waives any right to claim, damages or other considerations

therefore, except that rent payable under this Agreement shall be abated proportionately during and for such period of that access to the Premises by aircraft of Tenant and its invitees is denied by reason of such interruptions.

24. **Rights Not Exclusive**. Except for Tenant's exclusive right to use and occupy the Premises, nothing in this Agreement shall be construed as granting an exclusive right to Tenant.

25. **Entire Agreement**. This Agreement contains the entire Agreement between the parties concerning the Premises and supersedes all prior agreements, oral and written. This Agreement may be modified only in writing and signed by the parties.

The individuals executing this Agreement warrant that they have full authority to execute this Agreement and that they have thoroughly read this Agreement and received legal advice regarding this Agreement.

City:	Tenant:
City of Newport Municipal Airport	Thomas Knott
Ted Smith Interim City Manager	
Ted Smith Signature	Signature
9-13-2013 Date	Sept 7th, 2013 Date