

LEASE NO. DCRA 2022-01

DANE COUNTY, WISCONSIN
County

AND

DFJ Too, LLC
Lessee

LAND LEASE

Dane County Regional Airport
Madison, Wisconsin

Lease No. DCRA 2022-01

THIS LEASE by and between DFJ Too, LLC ("Lessee"), a Wisconsin limited liability company, and Dane County ("County"), a Wisconsin quasi-municipal corporation, shall be effective as of March 9, 2022 ("Effective Date").

WITNESSETH:

WHEREAS COUNTY, whose address is c/o Director, Dane County Regional Airport, 4000 International Lane, Madison, Wisconsin 53704, is the owner of the Dane County Regional Airport in Madison, Wisconsin (the "Airport"), including the parcel consisting of approximately 64,000 square feet of land located on the Airport and depicted generally on the attached and incorporated Exhibit A as Site A (the "Property"); and

WHEREAS LESSEE, whose address is 210 University Blvd. Suite 650, Denver, Co 80206, desires to enter into a short term lease for the purpose of determining whether the Property is suitable as a location for the construction of an aircraft hangar to be owned by Lessee, and to retain a right of first refusal with respect to the leasing of the property until such determination is completed; and

WHEREAS COUNTY deems it to be in the best interest of the County and the Airport to lease to Lessee the Property and to grant Lessee certain rights upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, County and Lessee agree as follows.

1. Term. This Lease shall have a term of six (6) months, commencing on March 9, 2022 and terminating at midnight on September 9, 2022, unless terminated earlier under the provisions of Section 3 or Section 4 below.

2. Permitted Uses. It is understood that the primary purpose of this Lease is to permit Lessee to determine whether the Property, or a portion thereof to be determined after the Feasibility Study (as defined below), is a suitable site on which to construct an aircraft hangar with approximately eighteen thousand square feet of aircraft storage space and approximately six thousand square feet of aeronautical related office space ("Improvements"), for the use of Lessee and others to whom Lessee may sublease hangar space and office space for aeronautical purposes. County agrees that the foregoing uses are permitted uses of the Property.

When in full compliance with all Airport and Federal Aviation Administration security and safety rules, regulations and policies, including applicable badging and access policies, Lessee's employees, agents, consultants and contractors may access the Property for the limited purpose of conducting surveys, soil sampling, and assessing the environmental condition of the property (including, but not limited to, performing Phase I and Phase II environmental site assessments and other environmental, inspections, tests, sampling, or audits that Lessee in its reasonable discretion deems necessary in order to complete its due diligence), or other activities related to determining the suitability of the Property as a site for the construction of the Improvements contemplated by Lessee ("Feasibility Study"). County shall assist Lessee in obtaining from the Dane County Regional Airport Engineering Director copies of (i) any applicable guidelines related to the development of the Improvements on the Property; and (ii) all reports, investigations,

inspections, audits, testing, sampling, or studies in County's possession or control relating to the environmental condition of the Property or the Airport (including, without limitation, Phase I and Phase II environmental reports, and whether or not performed for or on behalf of the County). Security Sensitive Information as identified by County shall not be provided. No equipment or object of any kind exceeding 25 feet in height shall be used or placed upon the Property without the prior written consent of the County, such consent not to be unreasonably withheld. County shall have the right to enter upon the Property at reasonable times during normal business hours for the purpose of making any inspection it may deem expedient to the proper enforcement of the covenants and conditions of this Lease and all regulations and standards of the Airport. County shall have the right to enter upon the Property without notice at any time to investigate or mitigate emergency conditions.

3. Right of First Refusal. As set forth herein, Lessee shall have a right of first refusal with respect to any third party's offer to lease the Property. In the event County receives, during the term of this Lease, a third party's binding offer to lease the Property for purposes and upon terms acceptable to County (the "Offer"), County shall promptly provide Lessee written notice of the Offer including, with respect to the third party's proposed lease and use of the Property, the anticipated commencement date, the term of the lease, and the rent rate. Lessee shall have until the expiration of this Lease or 60 days after receipt of the written notice of Offer, whichever is later, in which to provide to County a binding agreement to enter into a lease for the Property upon the same or better terms than those set forth in the Offer. Upon County's determination that the agreement to enter into a lease provided by Lessee contains terms that are the same or better than the terms set forth in the Offer, Lessee shall have the right to enter into a lease for the Property on the terms contained in Lessee's agreement to enter into a lease. In the event Lessee fails to timely provide County with an agreement to enter into a lease upon the same or better terms than those set forth in the Offer, as reasonably determined by County, Lessee's right of first refusal as provided herein shall be extinguished and, if it has not expired, this Lease shall terminate without further notice or liability to either party.

Notwithstanding the foregoing, County agrees that it will not solicit any offer to lease the Property from any party or parties other than the Lessee or Cherry Creek Family Offices, until such time that County is informed or can reasonably conclude that the Lessee is no longer interested in entering into a Long Term Lease for the Property or the termination of this Lease, whichever is sooner.

4. Long Term Lease. At any time before or after the expiration of this Lease, Lessee may enter into negotiations with County with respect to the terms and conditions of a long term lease of the Property ("Long Term Lease").

5. Rent. As payment for the rights granted under this Lease, Lessee shall pay to County \$500. Payment shall be by check made payable to Dane County and delivered to the following address within 14 days of the Effective Date of this Lease.

Dane County Regional Airport
ATTN: Accounting Department
4000 International Lane
Madison, WI 53704

6. Restoration. Upon termination or expiration of this Lease, Lessee shall forthwith restore any damage to the Property caused solely and directly by Lessee's Feasibility Study

(provided that such obligation shall not apply to any damages relating to any pre-existing condition of or at the Property).

7. General Indemnification. Lessee is and shall be deemed for all purposes under this Lease to be an independent contractor exclusively responsible for its own acts or omissions. Except as otherwise set forth in Section 8, Lessee shall indemnify, hold harmless and defend County, County's agents, representatives, appointees and employees from and against all claims for losses, costs, attorney fees, expenses, and damages arising out of, resulting from or relating to any loss of or damage to any property or business or any injury to or death of any person, to the extent such loss, damage, injury, or death is caused by (i) any action or omission of Lessee, Lessee's officers, employees, agents, contractors, subcontractors, suppliers or invitees while on Airport property; or (ii) the exercise by Lessee, Lessee's officers employees, agents, contractors, subcontractors, suppliers or invitees of the rights granted herein. Lessee's obligation of indemnification, as set forth herein, shall not apply to damages or liability resulting from the acts or omissions of County, or the acts or omissions of any tenants, occupants, or other parties, occurring prior to the Effective Date of this Lease. The obligations of Lessee under this paragraph shall survive the expiration or termination of this Lease.

8. Environmental Protection and Indemnification.

- a. Lessee covenants and agrees that, except as otherwise provided in this Section 8, it will not use, store, maintain, generate, discharge, or operate any "Hazardous Materials" (hereinafter defined), whether intentionally or unintentionally, on the Property or other areas of the Airport in violation of any applicable federal, state, county, or local statutes, laws, regulations, rules, ordinances, codes, standards, orders, licenses, or permits of any governmental authorities relating to environmental matters (being hereafter collectively referred to as "Environmental Laws") including, by way of illustration and not by way of limitation, the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Toxic Substances Control Act, Wisconsin's Spill Law, and Dane County Ordinances (including any amendments or extensions thereof and any government promulgated rules, regulations, standards, or guidelines issued pursuant to any Environmental Laws). Except in compliance with all Environmental Laws, neither Lessee nor any of its officers, agents, employees, contractors, subcontractors, suppliers or invitees shall discharge "Hazardous Materials" (hereinafter defined) into the sewer and/or stormwater drainage system serving the Property or other areas of the Airport or cause any such "Hazardous Materials" to be placed, held, stored, processed, treated, released, or disposed of on or at the Property or other areas of the Airport. For purposes of this Section 8, "Hazardous Materials" shall mean any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local government authority or authorities having jurisdiction over the Airport to pose a present or potential hazard to human health and/or safety or to the environment. Hazardous Materials include, by way of illustration and not by way of limitation, any substance defined as a "Hazardous Substance" or "Hazardous Waste," "Pollutant" or "Contaminant" pursuant to any Environmental Law; any asbestos and asbestos-containing materials; petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids; flame-retardant chemicals, including but not limited to per- and polyfluoroalkyl

substances; glycol and formulations of glycol and other deicing or anti-icing chemicals addressed under any Wisconsin Pollutant Discharge Elimination System Permit applicable to the Property or other areas of the Airport during the term of this Lease; and any other toxic, dangerous, or hazardous chemicals, materials, or substances or waste(s).

- b. Neither Lessee nor its officers, agents, employees, contractors, subcontractors, suppliers or invitees shall cause any Hazardous Materials to be brought upon, kept, used, stored, generated, or disposed of, from, in, on, or about the Property or other areas of the Airport or transported to or from the Property or other areas of the Airport unless such action is done in compliance with all applicable Environmental Laws. Lessee shall release, indemnify, defend, and hold County harmless from and against any and all losses arising during or after the term of this Lease and resulting or arising from: (i) a breach by Lessee of its covenants or obligations contained in this Section 8; or (ii) any "Release" (hereinafter defined) of Hazardous Materials from, in, on, or about the Property or other areas of the Airport caused by or resulting from any act or omission during the term of this Lease by Lessee, its officers, agents, employees, contractors, subcontractors, suppliers or invitees (a "Lessee Release"). For purposes of this Section 8, "Release" shall mean any release, emission, spill, discharge, disposal, leak, leaching, migration, or dispersal of Hazardous Materials triggering a response action under, or which is in violation of, Environmental Laws.
- c. Notwithstanding the foregoing, Lessee does not undertake any obligation to investigate or remediate, or any liability for the cost of investigating or remediating, any Environmental Conditions (hereinafter defined) at the Property that do not arise as a direct result of a Lessee Release. Without limiting the foregoing, Lessee shall have no obligation to (i) undertake any remedial actions with respect to any Hazardous Materials that are not constituents of a Lessee Release, but which are discovered or identified at the Property in the course of Lessee's investigation or remediation of a Lessee Release; or (ii) remediate a Lessee Release to achieve concentrations of the Hazardous Materials associated with any particular Lessee Release to levels that are more stringent than the levels required as a condition of obtaining a "No Further Action" letter (or similar certification) from the governmental authorities having jurisdiction over the Lessee Release. The foregoing obligates Lessee only to take actions that are consistent with the legal use of any contaminated portion of the Property such that remediation of a Lessee Release to industrial or commercial standards shall be sufficient to satisfy Lessee's obligations hereunder, and Lessee shall not be required to remediate a Lessee Release to more stringent standards than would otherwise be applicable if the planned use of the contaminated portion of the Property was more environmentally sensitive, such as residential use, unless more stringent standards are expressly required in writing by the governmental authorities with jurisdiction as a condition precedent to obtaining a No Further Action letter or similar certification for such Lessee Release. Moreover, if the governmental authorities having jurisdiction over the required remediation of the Lessee Release will reduce the scope of the removal, containment, or other investigative or remedial actions that Lessee must take in order for those authorities to issue a No Further Action letter or similar certification, provided that deed restrictions or other institutional controls that will not impair operation of the Airport as a commercial airport are recorded or otherwise implemented, County shall permit the recordation or implementation of those deed restrictions or other institutional controls and, to the extent required by

the governmental authorities, shall provide reasonable assistance to Lessee in order to implement, execute, or otherwise effectuate such deed restrictions or institutional controls.

- d. Notwithstanding anything to the contrary in this Lease, Lessee shall not have any obligations, responsibilities, or liabilities with respect to, and County shall release, defend, hold harmless, and indemnify Lessee from and against, all losses incurred by Lessee arising from Pre-Existing Contamination on the Property. For the purposes of this Lease, "Pre-Existing Contamination" shall be defined as (i) Environmental Conditions that existed at, upon, or under the Property on or prior to the Effective Date, excluding residual materials derived from Lessee's Feasibility Study; (ii) Environmental Conditions arising at the Property after the Effective Date due to the acts or omissions, whether in whole or in part, of any person other than Lessee or any of Lessee's officers, agents, employees, contractors, subcontractors, suppliers or invitees, including, but not limited to, Environmental Conditions that may have migrated to, from, or under the Property before or after the Effective Date; (iii) any violation of Environmental Laws by the County or any of the County's officers, agents, employees, contractors, subcontractors, or invitees; or (iv) a breach by the County of any of its covenants or obligations in this Lease. For purposes of this Section 8, "Environmental Conditions" means any condition or circumstance arising out of, or related to, the emission, discharge, manufacture, processing, distribution, use, treatment, storage, transport, disposal, handling, release, or threatened release of Hazardous Materials into the environment (I) in violation or alleged violation of Environmental Laws; or (II) in a manner as may require reporting, investigation, study, sampling, testing, or monitoring; or (III) in a manner as may require response, remedial, cleanup, disposal, control, or other corrective or protective measures.
- e. The indemnification obligations set forth in this Section 8 shall survive the expiration or termination of this Lease.

9. Insurance. Lessee shall maintain during the term of this Lease, General Liability Insurance providing coverage for bodily injury, death and property damage with a limit of liability of not less than \$1,000,000 each occurrence and \$3,000,000 in the annual aggregate. Insurance provided shall be primary. Lessee shall maintain said insurance with an insurer that is authorized to do business in the State of Wisconsin and has an A-AM Best rating or better. All insurance policies required hereunder shall name County as an additional insured. Lessee shall, upon County's request, furnish County with a certificate(s) of insurance evidencing that the insurance required hereunder is in full force and effect. All insurance policies required under this Lease shall contain a provision that the insurer shall send to County written notice of cancellation or any material change in the coverage provided thereunder at least 10 days in advance of the effective date of the cancellation or change.

10. Discrimination Prohibited. Lessee shall not deny any person the opportunity to engage in activities permitted under this Lease due to such person's age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record, conviction record, political beliefs, military participation, or membership in the national guard, state defense force or any other reserve component of the military forces of the United States. Lessee shall provide access to the Property for the physically disabled as required by all applicable federal, state and local laws and regulations. The foregoing prohibition of discrimination based on arrest or conviction record is subject to the exceptions and

special cases set forth in Section 111.335 of the Wisconsin Statutes and Chapter 19 of the Dane County Ordinances, as such provisions may be amended from time to time.

11. Notices. Notices provided under the terms of this Lease shall be sufficient and effective as of the date of delivery by certified or registered mail, unless otherwise approved by both parties.

12. No Unauthorized Use. The Property is not to be used in any manner other than that expressly authorized herein without the written consent of County.

13. Counterparts and Copies. The parties may evidence their agreement to be bound by the terms of this Lease upon counterparts of this document, which together shall constitute a single instrument. A photocopy, facsimile, or electronic copy of this Lease shall have the same effect for all purposes as an original.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF County and Lessee, each by its authorized agent, have executed this Lease on the dates indicated below.

FOR DANE COUNTY:

Kimberly Jones, Director
Dane County Regional Airport

Date: _____

FOR DFJ Too, LLC:

By:  _____

Chris McPartlan

Its: General Manager

Date: 3/3/2022

EXHIBIT A

CHERRY CREEK HANGAR LEASE DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NW1/4 - NE1/4 OF SECTION 29, T8N, R10E, CITY OF MADISON, DANE COUNTY, WISCONSIN, MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 29. THENCE CONTINUING S88°31'26"E, 1449.45 FEET ALONG THE NORTH LINE OF SAID SECTION 29. THENCE S1°36'42"W, 614.77 FEET TO THE POINT OF BEGINNING; THENCE S88°23'18"E, 310.73 FEET; THENCE S1°31'52"W 29.95 FEET; THENCE S21°51'13"E, 38.94 FEET; THENCE S1°25'42"W, 62.38 FEET; THENCE S35°11'10"E, 20.40 FEET; THENCE S0°31'52"W, 80.52 FEET; THENCE N88°23'18"W, 308.96 FEET; THENCE N10°31'36"W, 147.53 FEET; THENCE N0°31'52"E, 80.76 FEET TO THE POINT OF BEGINNING.

THIS PARCEL CONTAINS 71,055 SQUARE FEET, MORE OR LESS.

NOTE: DESCRIPTION WRITTEN FROM EXISTING MAPPING, NO FIELD VERIFICATION HAS BEEN DONE.

