

Town of Concrete Town Council Agenda

ADD-ON

01-25-2021

- Mears Field Lease Lot #40

TOWN OF CONCRETE
AIRPORT LEASE AGREEMENT

1. This is a lease made and entered into this 25th day of January 25, 2021, by and between the Town of Concrete, a Washington municipal corporation, hereinafter referred to as "Landlord", and John Densmore, hereinafter referred to as "Tenant."

Description of Property: Landlord and Tenant agree to rent the following described property situated in Concrete, Skagit County, State of Washington:

Lot # 40

of the binding site plan # LU17004 recorded in the office of Skagit County Auditor under File # 201710190004. Subject to: Restriction, easements, encumbrances and reservations of record, if any, as of the date of signing of the lease. Reserving a non-exclusive easement over and across the premises to provide ingress and egress to any and all such buildings and areas and other adjacent properties owned by Landlord, Landlord shall exercise said easement so as not to unreasonably interfere with Tenant's use of the property.

2. Condition of Premises: Tenant accepts the premises in their present condition and is not relying upon any representations by the Landlord.

3. Term: The first term may be prorated. The term of this lease shall begin on January 25, 2021 and end on December 31, 2024 (4 years and 11 months).

4. Option to Extend: Tenant is granted the right to extend this lease for seven (7) consecutive five (5) – year option periods after the initial term, whether said term was prorated or not, subject to rent adjustments, by giving written notice to Landlord not less than ninety (90) days prior to the expiration of the initial term or any extended term. The right to extend the lease is conditioned upon Tenant's full performance of the lease obligations. The Town, at its discretion, may agree to extend the lease for additional five-year terms. Any holding over after the expiration of this Lease without extending the agreement will be construed as a month-to-month tenancy.

5. Deposit: Tenant will make or has a deposit of \$234.94 as security for the performance of this agreement. Any default of the terms of this agreement will result in forfeiture of the deposit and retention of the payment does not prejudice the rights to pursue other remedies.

[] Landlord acknowledges receipt of a deposit in the amount of \$234.94.

6. Rent: Rent is \$234.94 per year, payable annually in payments starting on the 1st day of January. Rent for the first year will be prorated to the end of the calendar year. Rent amounts will be reviewed for each year ending in a five or zero. The base rent will be reviewed and possibly adjusted by the Town of Concrete, to be a market rate rent for similar municipal airports and ground leases, for those years ending in a five or zero and will increase annually thereafter using the most recent Consumer Price Index for All Urban Consumers (CPI-U) not to exceed 3%. If the rent is not paid within 3 months of the due date, this lease agreement may be terminated.

6.1 For the first year, as additional rent, Tenant's reimbursement obligation for insurance is \$72.38. The insurance or assessments will be adjusted in December of each year by dividing the number of lots into the amount paid for the insurance premium or other assessment. The Town of Concrete's airport liability policy does not cover the Tenant.

6.2 The parties agree that this lease is a triple net lease which means that the Tenant pays all additional costs associated with the leasehold premises including but not limited to proportional share of all

other operating costs during the full term of this lease. If the town chooses to exercise this section of the lease and install such items as would be considered additional costs the Town shall notify each leaseholder in writing of its intent and allow for comment and suggestions prior to installation of said facilities.

6.3 If after the initial term of the lease, the parties cannot agree as to the additional rent assessment or the fair rental value of the premises, the fair rental value of the premises shall be determined as though the tract was a separate vacant identifiable tract and such determination shall be made by an MAI appraiser whose selection shall be determined by mutual agreement of the parties; or alternately, by the presiding judge of the Superior Court of Skagit County on petition by either party. The cost for such an appraisal shall be borne equally by both parties. Rental adjustments for the expansion area will be considered at the same time as rental adjustments for the initial leased premises area.

7. Hold Harmless Provisions, Liability and Indemnity: The Town of Concrete, its officers, employees and agents, shall not be liable for any injury (including death) or damage to any persons or to any property sustained or alleged to have been sustained by the Tenant or by others as a result of any condition (including existing or future defects in the premises), or occurrence whatsoever related in any way to the premises or related in any way to the Tenant's use of the premises or Tenant's performance under this lease, except to the extent of such damage caused by the gross negligence of the Town. Tenant agrees to defend and hold and save the Town, its officer, employees and agents, harmless from any and all liability or expense (including expense of litigation) in connection with any such terms of actual or alleged injury or damage.

8. Type of Activity and Construction of Improvements: Tenant has or intends to erect structures and improvements on the premises for the purpose of airport hangar facilities. The tenant may include one apartment/living area in hangar; that area may be occupied by the tenant or guests, and may not be used as a rental. Guests shall only be allowed with the presence of the Leaseholder and stays shall be limited to no more than thirty (30) days in any six (6) month period. The living area is incidental to the operation of the premises which must be used as a hangar. Use as a hangar is the only type of activity to be conducted upon the premises. If the Tenant fails to use the premises as an airport hangar and related activities, the Tenant is in default of this agreement and the lease may be terminated. The hangar is not to be used solely as a storage facility, but rather should be a working hangar. All activities, uses and structures must comply with all Town, County, State and Federal laws and ordinances including but not limited to the Town Zoning Code and International Fire Code.

The Tenant will construct a building or structure on the leased premises within the first five years of the execution of said lease on or before January 24, 2026, or the Landlord, at its option, may refuse to extend the lease beyond the proceeding term, terminate said lease or may declare any further extensions void. Tenant may only construct a hangar. Tenant's buildings, interior construction and other improvements, are at Tenant's expense. All building, interior construction or any other improvement must be built and maintained in compliance with local, county, state and federal codes and laws as they exist or are amended.

Tenant may, at its sole cost and expense, make improvements to the land premises with prior approval from the Landlord, which approval shall not be unreasonably withheld or delayed. Tenant shall make or cause to be made such improvements, in compliance with local, state and federal codes and laws as they exist or are amended. All such land improvements shall become the property of the Landlord at the expiration or termination of the Lease and shall be surrendered with the Leased Premises; provided, however, that Landlord may condition its approval of said improvements upon requiring Tenant to remove any such improvements upon the expiration or termination of the Lease.

Tenant agrees to obtain and comply with all necessary permits for the operation and conduct of Tenant's activities and construction of any leasehold improvements. If Tenant fails to obtain and comply with such permits or approvals, then Tenant accepts full responsibility for any and all costs incurred by the leaseholder and/or the Town of Concrete, including actual attorney's fees.

8.1 Tenant may acquire no more than two (2) vacant leases/lots until Section 8 of said lease has been completed for leases/lots already in the possession of the Tenant. If Tenant currently holds leases/lots that contain a hangar or other structure as approved by the TOWN, these leases/lots shall not be considered part of the two (2) maximum lots as stated above.

8.2 Electronic gates, if installed, shall be operated only by leaseholders, town staff or other town authorized personnel by using either key cards or individual pin # on a key pad. Each leased lot shall be allowed one card per person on the lease. Additional cards or pin #'s may be requested at additional cost to the leaseholder according to the town's most recently approved fee schedule.

9. Disposition of Improvements at End of Lease: At the end of the lease or extension, Tenant has the right to remove all of the buildings, equipment, personal property and trade fixtures placed on the premises by Tenant during the period of this lease, provided the tenant has paid all rent and timely performed all terms of the lease. In the event the Tenant fails to remove any buildings, equipment, personal property and trade fixtures from the premises at the conclusion of the lease, the Landlord shall, at its option, have the right to retain it or in the alternative, remove it at Tenant's expense. Landlord may recover any costs and expenses from the Tenant resulting from the removal.

10. Off Street Parking: Tenant agrees to provide space for the parking of all vehicles necessary to comply with the use as an airport hangar. Tenant will not use any public streets, taxiways, rights of way or other properties not included in this lease for the parking of vehicles.

11. Maintenance of Facilities: Tenant is responsible for all maintenance and/or repair of the leased premises and all improvements. The premises shall be maintained in such condition so as not to create a hazard or be unsightly, and will at all times conform to existing laws. Tenant agrees not to allow conditions of waste and will keep the premises in a neat, clean, and orderly condition. Tenant shall indemnify Landlord for clean-up costs for any waste or nuisance including toxic waste or other contaminants.

12. Taxes and Utilities: Tenant will pay for all license fees and taxes due as a result of the property or activities conducted on the premises by the tenant. Tenant agrees to pay for all public utilities that are used in or charged against the premises, and will hold the Landlord harmless from such charges.

13. Advertising and Signs: No signs or other advertising matter, symbols, canopies or awnings shall be installed, attached to or painted on the premises without the prior written approval of the Town.

14. Liens and Insolvency: Tenant shall keep the leased premises free from any liens arising out of work performed, materials furnished, or obligations incurred by Tenant. In the event Tenant becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of the Tenant, then the Landlord may cancel this lease at Landlord's option.

15. Laws and Regulations: The Tenant agrees to conform to and abide by all laws, rules, codes and regulations of the United States, the State of Washington, the FAA and any municipality or agency. Tenant's use and operation of may not be in violation of any rules, codes, laws, or regulations.

16. Costs and Attorney's Fees: In the event it is necessary for either party herein to bring an action to enforce the terms, conditions or covenants of this lease, then the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements.

17. Equal Opportunity: Tenant agrees that in the conduct of activities on the leased premises it will be an equal opportunity employer in accordance with the 1964 Civil Rights Act and the State of Washington Human Rights Commission.

18. Termination: Upon termination of this lease or any extension, Tenant will surrender the premises to Landlord peaceably and quietly and in the condition required by this agreement.

19. Default and Re-Entry: Time is the essence of this agreement. If the tenant does not pay rent, violates any other terms of this agreement, this lease is terminated unless the Tenant cures the non-complying condition after notice. Notice will be given in accordance with RCW 59.12.030. If the Tenant fails to cure the default, Landlord may at its option, declare this lease forfeited, and may elect to re-enter. Delinquent rent or other payments shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid. In the event of any default the Landlord may elect to remove property from the premises and may sell the property, without notice to Tenant, after it has been stored for a period of thirty (30) days.

20. Assignment: Tenant will not, by operation of law or otherwise, assign any portion of the lease premises without Landlord's prior written consent. The consent of Landlord to any assignment will not relieve Tenant from obtaining Landlord's express written consent to any other or further assignment. Landlord may deny consent to an assignment for any reason. Tenant will pay to the Landlord a non-refundable assignment request fee in the amount set by annual resolution, this amount shall cover the costs of the paperwork to transfer said lease if the request is approved. Tenant and assignee must execute a consent to assignment agreement in a form satisfactory to Landlord. Such consent is subject to approval by the Council of the Town of Concrete.

21. Landlord's Right to Enter Premises: Landlord and/or its authorized representatives shall have the right to enter the premises at all reasonable times for any of the following purposes.

- In case of emergency, as authorized by law or as authorized by this agreement;
- To do what the Landlord has the right or obligation to perform; including but not limited to annual fire inspections of the hangar premises.
- To post "For Rent" or "For Lease" signs during any period that the Tenant is in default; and to repair, maintain or improve the premises, only in event of default;
- To do any other act or thing necessary for the safety or preservation of the premises.

Landlord will not be liable in any manner for any damages arising out of the Landlord's entry onto the premises as provided in this paragraph. Landlord will conduct the entry onto the premises in a manner that causes the least disturbance.

22. Right of Quiet Enjoyment: Tenant's right of occupancy will not be disturbed during the term of this lease except as allowed by this lease, the law or in case of emergency.

23. Time is of the Essence: It is mutually agreed and understood that time is of the essence of this lease and that a waiver of any default of Tenant shall not be construed as a waiver of any subsequent default, and that any notice required to be given under this lease may be given by United States Mail addressed to the party identified in this lease.

24. Waiver of Subrogation: Landlord hereby releases Tenant from any and all right, claim and demand that Landlord may hereafter have against Tenant, or Tenant's successors or assigns, arising out of or in connection with any loss or losses occasioned by fire and such items as are included under the normal extended coverage clauses of fire insurance policies, and does hereby waive all rights of subrogation in favor of insurance carriers against Tenant arising out of any Losses occasioned by fire and such items as are included under the normal extended coverage clauses of fire insurance policies and sustained by Landlord in or around the premises. Tenant hereby releases Landlord from any and all right, claim and demand that Tenant may hereafter have against Landlord or Landlord's successors or assigns, arising out of or in connection with any loss or losses occasioned by fire and such items as are included under the normal extended coverage clauses of fire insurance policies. The waivers provided for in this paragraph shall be applicable and effective only in the event such waivers are obtained from the insurance carriers concerned.

25. Condemnation: In the event that the premises are condemned in whole, or that such portion is condemned that the remainder is not susceptible for use consistent with the operation of an airport hangar, this

Lease shall terminate. Tenant is entitled to any sums payable by the condemnor for their personal property, trade fixtures or moving expenses.

26. Federal Aviation Administration Requirements: Tenant agrees:

26.1 To prevent any operation of the leased premises that would produce electromagnetic radiations of a nature which would cause interference with any existing or future navigational aid or communication aid serving Concrete Airport; to prevent any operation that would create any interfering or confusing light or in any way restrict visibility at the airport.

26.2 To prevent any use of the leased premises which would interfere with landing or taking off of airport at Concrete Airport, or otherwise constitute an aircraft hazard; and

26.3 To comply with all applicable FAA or other governmental regulations.

27. Retention Of Airspace Rights By Landlord: Landlord retains the public and private right of flight for passage of aircraft in the airspace above the surface of the premises and the right to cause such noise as may be inherent in the operation of aircraft. These rights apply to current or future use for takeoff, landing, navigation, flight or any other operation at the Concrete Airport.

28. Notices: All notices or payments may be delivered or mailed. If mailed, they should be sent to the following respective addresses:

Landlord: Town of Concrete
P. O. Box 39
Concrete, WA 98237
Phone (360) 853-8401

Tenant: John Densmore
PO Box 523
Conway, WA 98238

Phone (360)424-3373

29. Personal guarantee: As additional consideration for this Lease, the Tenant, if a corporation or other legal entity, personally guarantees for themselves and their heirs, successors and assigns, the terms and conditions of this agreement.

30. Validation: In witness whereof, Landlord has caused this instrument to be signed by its Mayor and Clerk by the authority of the Town of Concrete, and this instrument was signed and executed by Landlord the day and year first above written.

Landlord:
Town of Concrete,
a Municipal Corporation

Tenant:

Mayor, Town of Concrete

Clerk Treasurer, Town of Concrete

State of Washington)
) ss.
County of Skagit)

On this day personally appeared before me **Jason Miller** known to be the individual(s) described in and who executed the within and foregoing instrument and that he/she/they signed the same as his/her/their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of _____, 20__.

Notary Public for the State of Washington
Residing at _____
My Commission Expires: _____
Print Name: _____

State of Washington)
) ss.
County of Skagit)

On this day personally appeared before me **John Densmore** known to be the individual(s) described in and who executed the within and foregoing instrument and that he/she/they signed the same as his/her/their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of _____, 20__.

Notary Public for the State of Washington
Residing at _____
My Commission Expires: _____
Print Name: _____