

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the “**Agreement**”) is made effective this 20th day of June, 2023 (the “**Effective Date**”) by and among AH Aero Services, LLC dba OK3 AIR (“**OK3 AIR**”) and Paul Boyer (“**Boyer**”) (each a “**Party**” and, collectively, the “**Parties**”).

RECITALS

WHEREAS, Boyer is a former interim manager of the Heber Valley Airport (the “**Airport**”) employed by the City of Heber City, Utah (the “**City**”);

WHEREAS, OK3 AIR is a full-service fixed base operator located on the Airport, providing aircraft maintenance, ramp parking, fueling, de-icing, overnight hangar services, and other services pursuant to that certain Amended Agreement dated January 8, 1995, originally between the City and High County Aviation, Inc., and later assigned to OK3 AIR, and as amended by the Addendum to Amended 1995 Airport Agreement dated May 8, 2012, and the Addendum to 1995 Airport Agreement dated January 26, 2015 (collectively, the “**FBO Lease**”).

WHEREAS, several disputes arose between the Parties and the City regarding the Parties’ and the City’s respective performance under the FBO Lease, other airport leases, an application by OK3 AIR to build a new hangar, OK3 AIR’s planned purchase of a hangar from a third party and the conduct of the Parties’ and the City’s respective business and operations at the Airport, including Boyer’s conduct in his official and individual capacities (all such disputes arising prior to the Effective Date, the “**Disputes**”);

WHEREAS, OK3 AIR filed a lawsuit against Boyer and other defendants entitled, *AH Aero Service, LLC dba OK3 AIR v. Heber City, a municipal corporation; Paul Boyer, an individual, in his individual and official capacity; and Denis Godfrey, an individual, in his individual and official capacity*, in the U.S. District Court for District of Utah, Civil No. 2:17-CV-01118- HCN-DAO (the “**Federal Lawsuit**”), which Federal Lawsuit remains pending;

WHEREAS, OK3 AIR also filed a lawsuit against Boyer entitled, *AH Aero Service, LLC dba OK3 AIR v. Paul Boyer, an individual*, in the Third Judicial District Court in and for Summit County, Utah, Civil No. 170500365 (the “**State Lawsuit**”), which State Lawsuit remains pending;

WHEREAS, except for those Pending Claims in the State Lawsuit (as defined in Section 2), and without admitting any liability or fault, the Parties desire to settle and compromise any and all claims between them, whether known or unknown, whether accrued or unaccrued, arising from, out of, or related to the Federal Lawsuit and the Disputes, whether or not they were brought or could be brought in the State Lawsuit or Federal Lawsuit, now existing or arising in the future, due to any acts, errors, omissions or fault occurring on or before the Effective Date (the “**Claims**”);

WHEREAS, the Claims between OK3 AIR and Denis Godfrey and the City will be addressed through separate agreements between those parties.

NOW THEREFORE, in consideration of the recitals, mutual promises, covenants, releases,

and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties, intending to be bound, hereby agree as follows:

AGREEMENT

1. **Dismissal of Litigation.** Upon the execution of this Agreement the Parties each agree to cause their respective legal counsel to dismiss the Federal Lawsuit with prejudice by filing the pleadings attached hereto as **Exhibit A**.

2. **Mutual Release.** It is understood that the scope of this Agreement does not release any pending claims in the State Lawsuit. For purposes of this Agreement, a pending claim in the State Lawsuits includes any claims that may have been dismissed or otherwise impacted or limited by decisions made by the Court in the State Lawsuit (“Pending Claims”). Except for those Pending Claims in the State Lawsuit, and the rights and obligations created under this Agreement, all of which rights and obligations are reserved and shall not be released hereby, each of the Parties for and on behalf of itself and its successors, assigns, heirs, transferees, affiliates, and all persons and entities claiming by, through or under it, do hereby fully, irrevocably and forever release, acquit and discharge each other, and the past and present owners, members, shareholders, officers, directors, elected officials, employees, agents, representatives, advisors and attorneys of each other of all claims, actions, damages, losses, and liabilities of any kind of description whatsoever, now existing or arising in the future due to any acts, errors, omissions or fault occurring on or before the Effective Date, whether accrued or unaccrued, whether known or unknown. This Agreement does not impact, waive, release, acquit or otherwise discharge either Party’s Pending Claims in the State Lawsuit.

3. **Cooperation of Godfrey and the City.** This Agreement is contingent upon OK3 AIR entering separate settlement agreements with Denis Godfrey, in his individual capacity, and the City, which will be executed prior to or contemporaneous with this Agreement. This Agreement is also contingent on Boyer entering into a separate agreement with the City for the reimbursement of certain out-of-pocket costs associated with the Federal Lawsuit, not to exceed the amount of thirty-five thousand dollars (\$35,000.00).

4. **Compromise of Disputed Claims.** The Parties agree and understand that this Agreement and the releases contained herein are a compromise of doubtful and disputed claims, and the Parties, in compromising, do not admit but specifically deny liability to each other and intend merely to avoid any further dispute or litigation with respect to all claims hereby released.

5. **Non-Circumvent.** The Parties, and their respective successors, assigns, heirs, transferees, and affiliates, agree to not directly or indirectly take any actions, make any attempts, fail to act, act in concert with any person, agent, representative, associate, advisor, and/or entity who takes an action or fails to take any action intended to, or such that the resulting effect is to, materially undermine, frustrate, and/or circumvent the purposes of the effectiveness of the material provisions of this Agreement. The Parties acknowledge that this provision is a material and bargained-for term of this Agreement.

6. **Construction.** This Agreement was drafted with the full participation of all Parties. Accordingly, any ambiguity in this Agreement shall not be resolved against any particular Party, but rather should be resolved by a fair reading of what was intended by the Parties.

7. **Severability.** If any provision in this Agreement is deemed invalid, then the remaining provisions thereof will continue in full force and effect and will be construed as if the invalid provision had not been a part of this Agreement.

8. **No Third-Party Beneficiaries; No Assignment of Claims.** Each of the Parties represents and warrants that it has not assigned or transferred any claim or any interest in any claim released by this Agreement. By executing this Agreement, the Parties do not intend to benefit any person or entity not a party to this Agreement. In event of death or dismemberment of either Party, their heirs may enforce the terms of this Agreement.

9. **Default.** Failure to perform any and all terms of this Agreement constitute a breach of this Agreement, and shall permit the non-breaching Party to seek injunctive relief, actual damages, and attorney's fees and costs in the event of such breach after providing the other Party with written notice and not less than thirty (30) days to cure such Party's default or, if the default is not capable of cure within thirty (30) days, to commence and diligently proceed to completion those actions reasonably necessary to cure such Party's default within a reasonable time.

10. **Non-Disparagement:** With respect solely to each Parties' respective conduct in the Federal Lawsuit, the negotiation of this Agreement, or the terms of this Agreement, the Parties agree not to make any statements (written, oral, verbal or otherwise) or to cause or encourage others to make any statements (written, oral, verbal or otherwise) that defame, disparage, ridicule, or in any way criticize any of the other Parties or their employees, directors, and officers and/or their respective business operations, reputation, practices, or conduct; provided, however, that no Party shall be in violation of this paragraph for statements incident to the State Lawsuit. In addition to foregoing, OK3 AIR and its principals shall remove or redact any statements mentioning Boyer that currently exist on their websites or social media pages, within fifteen (15) days of receiving written notice from Boyer of the existence of such statements.

11. **Attorney's Fees.** Each Party shall bear their own attorney's fees and costs in the Lawsuit, and the negotiation and execution of this Agreement. In any dispute, claim, litigation, arbitration, or mediation arising out of or in any way relating to any Party's failure to fulfill any of its obligations under this Agreement, the prevailing Party shall be entitled to recover all reasonable costs and attorney's fees from the other Party.

12. **Entire Agreement.** This Agreement, including the recitals and any exhibits attached hereto, which are incorporated herein by reference, represents the sole and entire agreement between the Parties and supersedes all prior agreements, negotiations, and discussions between the Parties and/or their respective counsel with respect to the subject matter covered hereby.

13. **Amendment.** This Agreement shall not be amended, altered, revised, modified, terminated or changed in any way except by further written agreement signed by all of the Parties of this Agreement.

14. **Jurisdiction, Venue, and Applicable Law.** With respect to an action to enforce the terms and conditions of this Agreement only, the Parties consent to the exercise of jurisdiction of the U.S. District Court for District of Utah and hereby agree that the venue of any action with respect to the enforcement of the terms and conditions of this Agreement shall be properly placed before this same court. This Agreement shall be interpreted under the laws of the State of Utah.

15. **Successors and Assigns.** All terms, conditions, covenants, and agreements contained herein shall bind and inure to the benefit of the respective successors, assigns, heirs, transferees, and affiliates of the Parties.


16. **Agreement May Be Executed in Counterparts.** This Agreement may be executed in counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together shall constitute one and the same instrument. The Parties agree that facsimile and scanned copies of signatures may be accepted as original copies and are fully binding upon the Parties.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in one or more counterparts as of the date first above written.

AH AERO SERVICES, LLC:

PAUL BOYER

DocuSigned by:

6C4AE81973F245F...
By: Nadim AbuHaidar
Its: Manager
6/30/2023

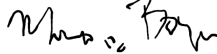
DocuSigned by:

BCB6D78A80AB40E...
6/30/2023

EXHIBIT A

Craig A. Hoggan (8202)
Jonathan W. Gold (15143)
DART ADAMSON & DONOVAN
257 East 200 South, Suite 1050
Salt Lake City, Utah 84111
Telephone: (801) 521-6383
Attorneys for Plaintiff
choggan@dadlaw.net
jgold@dadlaw.net

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

AH Aero Service, LLC dba OK3 AIR,

Plaintiff,

v.

Heber City, a municipal corporation; Paul Boyer, an individual, in his individual and official capacity; and Denis Godfrey, an individual, in his individual and official capacity,

Defendant.

STIPULATED MOTION FOR
DISMISSAL

Civil No. 2:17-CV-01118-HCN-DAO

Judge Howard C. Nielson, Jr.

Pursuant to Rule 41 of the Federal Rules of Civil Procedure, the parties, by and through their counsel, hereby stipulate and request that all claims in the above-referenced matter be dismissed with prejudice, with each party to bear its own attorneys' fees and costs.

DATED this ____ day of June, 2023.

DART ADAMSON & DONOVAN

/s/ Craig A. Hoggan

Craig A. Hoggan

Jonathan W. Gold

Attorneys for Plaintiff

DATED this ____ day of June, 2023.

KAPLAN KIRSCH & ROCKWELL LLP

/s/

Peter J. Kirsch

W. Eric Pilsk

Steven L. Osit

Attorneys for Heber City & Denis Godfrey

DATED this ____ day of June, 2023.

WRONA LAW

/s/

Joseph E. Wrona

Attorneys for Paul Boyer