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11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR THE COUNTY OF PINAL**

13 Pinal County, a political subdivision of the
14 State of Arizona,

15 Plaintiff,

16 vs.

17 Marana Aerospace Solutions, Inc., a
18 foreign corporation, f/d/b/a Evergreen
19 Maintenance Center, Inc., f/d/b/a Evergreen
20 Air Center, Inc.; John and Jane Does 1-10;
21 ABC Entities 1-10; Black and White
22 Partnerships 1-10;

23 Defendants.

No.

COMPLAINT

(Breach of Contract; Breach of the
Covenant of Good Faith and Fair
Dealing)

24 Plaintiff, Pinal County, for its Complaint alleges:

PARTIES, JURISDICTION & VENUE

25 1. Plaintiff Pinal County is a political subdivision of the State of Arizona. Pinal
26 County is the owner of the Pinal Airpark located just north of the City of Marana.

27 2. Upon information and belief, Defendant Marana Aerospace Solutions, Inc.
28 (“MAS”) is a foreign corporation authorized to and conducting business in Arizona.
Between April 18, 2007 and February 14, 2012, MAS conducted business under the name
Evergreen Maintenance Center, Inc. Prior to April 18, 2007, MAS conducted business
under the name Evergreen Air Center, Inc.

3. Defendants John Does and Jane Does 1-10, inclusive, and ABC Entities 1-

1 10, inclusive, and Black and White Partnerships 1-10, are persons, entities, or partnerships
2 who are or may be liable to Pinal County on the causes of action sued upon herein, or who
3 have otherwise caused or contributed to Pinal County's damages as hereinafter alleged, but
4 whose true names and capacities are presently unknown to Pinal County. Therefore, Pinal
5 County sues said Defendants by such fictitious names. Pinal County will amend this
6 Complaint to set forth the true names and capacities of said Defendants once the same
7 have been ascertained.

8 4. The acts and events giving rise to the claims herein took place wholly or in
9 part in Pinal County, Arizona.

10 5. This Court has jurisdiction over the subject matter of this action pursuant to
11 Article 6, Section 14, Paragraphs 1 and 3 of the Arizona Constitution. Venue is proper in
12 Pinal County pursuant to A.R.S. § 12-401.

13 **FACTUAL BACKGROUND**

14 6. The Pinal Airpark is a county-owned airport located just north of the
15 Pinal/Pima County line along Interstate 10. The airport was constructed in 1942 as a
16 United States Army Airfield. The airbase was closed in 1948. By quit claim deed dated
17 June 17, 1948, the United States conveyed the airbase to Pinal County.

18 7. In 1982, Pinal County and MAS entered into an exclusive lease for Pinal
19 Airpark ("Original Lease"). The lease had a term of twenty-five years ending on August
20 15, 2007.

21 8. On June 12, 1992, Pinal County and MAS entered into an Amended Lease
22 for the Pinal Airpark ("Amended Lease"). The Amended Lease modified and amended the
23 terms, covenants, agreements and conditions of the Original Lease and extended the term
24 of the Original Lease through August 15, 2032.

25 9. Section 4 of the Amended Lease governs the rent owed by MAS during the
26 term of the Amended Lease.

27 10. Pursuant to Section 4.1 of the Amended Lease, MAS agreed to and was
28

1 obligated to pay an initial onetime payment in the amount of no less than \$700,000 due
2 and payable on or before June 30, 1992.

3 11. Pursuant to Section 4.2 of the Amended Lease, the Annual Rent for the 1992
4 Contract Year (each "Contract Year" runs from August 16 of that calendar year through
5 August 15 of the year following, and is identified by the year in which the Contract Year
6 begins) was \$300,000.

7 12. Pursuant to Section 4.3 of the Amended Lease, MAS agreed that for the
8 period from August 16, 1993 through August 15, 2032, the Annual Rent for each Contract
9 Year shall be equal to the product of the Annual Rent for the previous Contract Year times
10 an Inflation Quotient ("IQ").

11 13. Pursuant to Section 4.3.1, MAS agreed that the IQ for each Contract Year
12 shall be computed at the beginning of the calendar year and would be equal to the sum of
13 one (1.0) plus an escalating factor ("EF").

14 14. Pursuant to Section 4.3.1.1 of the Amended Lease, MAS agreed that the EF
15 for Contract Year 1993 and each Contract Year thereafter would be equal to the percentage
16 of change in the applicable CPI index for January of the calendar year as compared with
17 January of the year prior. MAS further agreed that the EF would never be less than zero
18 percent or exceed five percent, except as otherwise specified in Section 4.3.1.2 of the
19 Amended Lease.

20 15. Pursuant to Section 4.3.1.2 of the Amended Lease, MAS agreed that the
21 applicable CPI index shall be the composite index specified under the Consumer Price
22 Index for All Urban Consumers for the West Region, Size class C, published in the Annual
23 January CPI Detailed Report each year.

24 16. Pursuant to Section 4.3.2 of the Amended Lease, MAS agreed that it would
25 be the Annual Rent, calculated in the manner set forth in Section 4 of the Amended Lease,
26 in four quarterly installments, each installment equal to one quarter of the Annual Rent.

27 17. Despite the rent obligations set forth in the Amended Lease, MAS has failed
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1 to make the Annual Rent payment required under the Amended Lease for each Contract
2 Year beginning with Contract Year 1999.

3 18. Pursuant to Section 4 of the Amended Lease, the EF for 1999 was 1.013.

4 19. The Annual Rent owed by MAS for Contract Year 1999 was \$373,089.56.

5 20. MAS paid rent in the amount of \$368,301.64 for Contract Year 1999.

6 21. MAS owes Pinal County \$4,787.92 for Contract Year 1999.

7 22. Pursuant to Section 4 of the Amended Lease, the EF for 2000 was 1.020.

8 23. The Annual Rent owed by MAS for Contract Year 2000 was \$380,551.35.

9 24. MAS paid rent in the amount of \$368,301.64 for Contract Year 2000.

10 25. MAS owes Pinal County \$12,249.71 for Contract Year 2000.

11 26. Pursuant to Section 4 of the Amended Lease, the EF for Contract Year 2001
12 was 1.039.

13 27. The Annual Rent owed by MAS for Contract Year 2001 was \$395,392.86.

14 28. MAS paid rent in the amount of \$368,301.64 for Contract Year 2001.

15 29. MAS owes Pinal County \$27,091.22 for Contract Year 2001.

16 30. Pursuant to Section 4 of the Amended Lease, the EF for Contract Year 2002
17 was 1.019.

18 31. The Annual Rent owed by MAS for Contract Year 2002 was \$402,905.32.

19 32. MAS paid rent in the amount of \$368,301.64 for Contract Year 2002.

20 33. MAS owes Pinal County \$34,603.68 for Contract Year 2002.

21 34. Pursuant to Section 4 of the Amended Lease, the EF for Contract Year 2003
22 was 1.017.

23 35. The Annual Rent owed by MAS for Contract Year 2003 was \$409,754.71.

24 36. MAS paid rent in the amount of \$368,301.64 for Contract Year 2003.

25 37. MAS owes Pinal County \$41,453.07 for Contract Year 2003.

26 38. Pursuant to Section 4 of the Amended Lease, the EF for Contract Year 2004
27 was 1.019.

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39. The Annual Rent owed by MAS for Contract Year 2004 was \$417,540.05.
40. MAS paid rent in the amount of \$368,301.64 for Contract Year 2004.
41. The past due balance for Contract Year 2004 is \$49,238.41.
42. Pursuant to Section 4 of the Amended Lease, the EF for Contract Year 2005 was 1.030.
43. The Annual Rent owed by MAS for Contract Year 2005 was \$430,066.25.
44. MAS paid rent in the amount of \$368,301.64 for Contract Year 2005.
45. The past due balance for Contract Year 2005 is \$61,764.61.
46. Pursuant to Section 4 of the Amended Lease, the EF for Contract Year 2006 was 1.028.
47. The Annual Rent owed by MAS for Contract Year 2006 was \$442,108.11.
48. MAS paid rent in the amount of \$368,301.64 for Contract Year 2006.
49. The past due balance for Contract Year 2006 is \$73,806.47.
50. Pursuant to Section 4 of the Amended Lease, the EF for Contract Year 2007 was 1.027.
51. The Annual Rent owed by MAS for Contract Year 2007 was \$454,045.02.
52. MAS paid rent in the amount of \$368,301.64 for Contract Year 2007.
53. The past due balance for Contract Year 2007 is \$85,743.38.
54. Pursuant to Section 4 of the Amended Lease, the EF for Contract Year 2008 was 1.040.
55. The Annual Rent owed by MAS for Contract Year 2008 was \$472,206.83.
56. MAS paid rent in the amount of \$368,301.64 for Contract Year 2008.
57. The past due balance for Contract Year 2008 is \$103,905.19.
58. Pursuant to Section 4 of the Amended Lease, the EF for Contract Year 2009 was 1.0.
59. The Annual Rent owed by MAS for Contract Year 2009 was \$472,206.83.
60. MAS paid rent in the amount of \$368,301.64 for Contract Year 2009.

1 61. The past due balance for Contract Year 2009 is \$103,905.19.

2 62. Pursuant to Section 4 of the Amended Lease, the EF for Contract Year 2010
3 was 1.021.

4 63. The Annual Rent owed by MAS for Contract Year 2010 was \$482,123.17.

5 64. MAS paid rent in the amount of \$368,301.64 for Contract Year 2010.

6 65. The past due balance for Contract Year 2010 is \$113,821.53.

7 66. Pursuant to Section 4 of the Amended Lease, the EF for Contract Year 2011
8 was 1.012.

9 67. The Annual Rent owed by MAS for Contract Year 2011 was \$487,908.64.

10 68. MAS paid rent in the amount of \$372,721.24 for Contract Year 2011.

11 69. The past due balance for Contract Year 2011 is \$115,187.40.

12 70. The total amount of past due rent owed to Pinal County by MAS is
13 \$827,557.78.

14 71. By letter dated December 2, 2011, Pinal County demanded that MAS pay the
15 accrued balance due under the Amended Lease. MAS failed, refused, and neglected to cure
16 its breach.

17 72. By letter dated March 8, 2012, Pinal County delivered a second notice to
18 MAS stating that MAS is in breach of the Amended Lease as a result of its failure to
19 perform its obligation to pay rent and demanded that MAS cure its breach. MAS failed,
20 refused, and neglected to cure its breach.

21 73. The Amended Lease states that in the event of any action brought by either
22 party against the other under the Amended Lease, the prevailing party shall be entitled to
23 recover for the fees of its attorney in such action, including costs of appeal, if any, in such
24 amount as the court or arbitrator may adjudge reasonable as attorneys' fees.

25 **COUNT ONE**

26 (Breach of Contract)

27 74. Pinal County incorporates by reference the allegations in each of the
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1 preceding paragraphs of this Complaint as though fully set forth herein.

2 75. The Amended Lease is a valid and enforceable agreement, the terms of
3 which, including those terms that govern the rent owed to Pinal County, MAS was
4 obligated to perform.

5 76. By failing to pay the rent required under the Amended Lease, MAS has
6 committed material breaches of the Amended Lease.

7 77. Pinal County performed all of its contractual duties and obligations that it
8 was required to perform under the Amended Lease.

9 78. MAS performance is due and owing and there is no excuse for its failure to
10 perform.

11 79. MAS's failure to pay the rent required under the Amended Lease has caused
12 and proximately caused damage to Pinal County in an amount in excess of this Court's
13 jurisdictional minimum, and in no event less than \$827,557.78, plus reasonable attorneys'
14 fees and expenses incurred enforcing Pinal County's rights under the Amended Lease.

15 80. Under Section 22.20 of the Amended Lease, Pinal County is entitled to
16 recover its reasonable attorneys' fees.

17 81. In the alternative, because this matter arises out of contract, Pinal County is
18 entitled to its reasonable attorneys' fees under A.R.S. § 12-341.01.

19 82. Pinal County is entitled to prejudgment interest on the past due rent.

20 83. Pinal County is entitled to its costs pursuant to A.R.S. § 12-341.

21 **COUNT TWO**

22 **(Breach of the Covenant of Good Faith and Fair Dealing)**

23 84. Pinal County incorporates by reference the allegations in each of the
24 preceding paragraphs of this Complaint as though fully set forth herein.

25 85. Every contract, including the Amended Lease, contains an implied covenant
26 of good faith and fair dealing.

27 86. Through its acts and omissions described above, MAS acted in a manner that
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1 impaired Pinal County's rights to receive the benefits of the Amended Lease, thereby
2 breaching the implied covenant of good faith and fair dealing.

3 87. As a direct and proximate result of MAS's breach of the implied covenant of
4 good faith and fair dealing, Pinal County has suffered damages in an amount to be
5 determined at trial, but in no event are Pinal County's damages less than \$827,557.78, plus
6 reasonable attorneys' fees and expenses incurred enforcing Pinal County's rights under the
7 Amended Lease.

8 88. Under Section 22.20 of the Amended Lease, Pinal County is entitled to
9 recover its reasonable attorneys' fees.

10 89. In the alternative, because this matter arises out of contract, Pinal County is
11 entitled to its reasonable attorneys' fees under A.R.S. § 12-341.01.

12 90. Pinal County is entitled to prejudgment interest on the past due rent.

13 91. Pinal County is entitled to its costs pursuant to A.R.S. § 12-341.

14 **WHEREFORE**, Pinal County demands judgment as follows:

15 A. Awarding Pinal County the full amount of its damages;

16 B. Awarding Pinal County all reasonable attorneys' fees, court costs, costs of
17 investigation and other related expenses incurred by Pinal County in connection with this
18 matter;

19 C. Awarding Pinal County prejudgment and post-judgment interest;

20 D. Awarding such other and further relief as is just and proper.

21 DATED this ___ day of July, 2012.

22 JENNINGS, STROUSS & SALMON, P.L.C.

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24
25 By _____
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