

# LEASE AGREEMENT

between

**CITY OF ANN ARBOR**

and

**AVFUEL CORPORATION  
903 AIRPORT DRIVE**

This contract is between the CITY OF ANN ARBOR, a Michigan municipal corporation (City), and AVFUEL CORPORATION., a Michigan corporation, hereby known as Lessee.

In consideration of the mutual promises below, City and Lessee agree as follows:

- (1) **PREMISES:** The City agrees to lease to the Lessee property in Pittsfield Township, Washtenaw County, Michigan, consisting of parts of Lots 12, 13, 14, 15 and 16, Western Section, North Lot Development, Ann Arbor Municipal Airport, described in Exhibit A (attached) hereby known as Premises. Premises shall mean the building described in Exhibit A and any fixtures placed upon the land or upon the exterior or interior of the building. The total area of the Premises is approximately 20,592 square feet for the building and an additional 19,548 square feet of land.
- (2) **LEASE DURATION:** The term of this lease shall commence on July 1, 2000 and terminate June 30, 2005. The Lessee shall have three (3) additional options to renew the lease for five (5) year periods in accordance with paragraph 6. This agreement may only be changed in writing, and signed, by the City and the Lessee. At the end of the lease, the Premises and any improvements shall be the sole property of the City of Ann Arbor.
- (3) **RENT:** The rent for the period July 1, 2000 and ending June 30, 2005, the first full five (5) year term, the rent will be \$ 4.30 per square foot per year for the building, the building being 20,592 square feet, plus \$0.258 per square foot per year for 19,548 square feet of land. (the total land area is calculated by adding together the 10,440 square feet of hangar space plus the 2,592 square feet of showroom space for a total of 13,032 square feet, times a multiplier of 1.5). The Lessee shall pay to the City annual rent in advance on or before July 1st. The Lessee shall be permitted to defer 11/12 of the annual rent, payable in monthly installments of 1/12 the annual rent, payable one month in advance on the first day

of each month. The annual land rent will be increased on each July 1 during the term by the percentage increase, if any, in the Consumer Price Index. "Consumer Price Index" means the Consumer Price Index published by the Bureau of National Statistics of the United States Department of Labor, U.S. City Average, All Items and Major Group Figures for Urban Wage Earners and Clerical Workers (1967=100). The Consumer Price Index shall be calculated by using the twelve (12) month period (May to May) preceding each July 1 when the rent adjustment is to take place. If a substantial change is made in the manner of computing the Consumer Price Index, then the Consumer Price Index will be adjusted to the figure that would have been used had the manner of computing the Consumer Price Index in effect at the date of this lease not been altered. If the Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other non-partisan publication evaluating the information used in determining the Consumer Price Index will be used. Delays in computing the Consumer Price Index by either party will not impair the continuing obligation of the Lessee to pay rent adjustments. Hangar, showroom and office rental rates will be adjusted as part of the terms and conditions of any extension granted under paragraph 6. In no circumstance will the hangar and office rental rate adjustment for each five year lease option period be less than five (5) percent or exceed ten (10) percent.

- (4) **HOLDING OVER:** It is agreed that in the event of the Lessee holding over after the expiration of the lease, tenancy shall be on a month-to-month basis in the absence of a written agreement. Acceptance of Rent by the City after the expiration of the lease shall not constitute an extension of the lease. The rental rate for holding-over shall be computed using the following formula:  $(120\%)(\text{most recent annual rent for building and land divided by } 12) = \text{monthly hold-over Rent}$ .
- (5) **LATE PAYMENT:** If the payment is late, in addition to the requirement of immediate payment of all amounts due for the annual rent, a late payment penalty of one (1) percent per month for the unpaid balance of the annual rent will be required of the Lessee should payment not be made by the fifteenth (15th) day of the month. Rent shall be deemed paid when received by the Ann Arbor City Treasurer, provided that, if a check for payment is dishonored for any reason not the fault of the City, rent shall be deemed paid when the check is honored. If check is returned, a fee equal to the rate of the postage plus a fee of twenty five (25) dollars, or as amended by City Council will be assessed to the Lessee's account. Rent more than sixty (60) days past due shall be considered delinquent and in default, and subjects the Lessee to termination and eviction. The Lessee promises not to assign, transfer, encumber or sublet the Premises or any part without the written consent of the City, which consent will not be unreasonably withheld. Any assignment, transfer, encumbrance or subletting without the written consent of the City shall give the City the right to terminate this lease and to re-enter and repossess the Premises.

- (6) **LEASE EXTENSION:** At least ninety (90) days but not more than one hundred eighty (180) days before the expiration of the initial term or subsequent terms of this lease, Lessee must notify City of its desire to lease the Premises for each of the three, five-year extension periods. After receipt of the notice, City, at least sixty (60) days prior to the expiration of the initial lease term or subsequent terms, shall notify Lessee upon what, if any, terms, rental rates and conditions City would be willing to lease the Premises. If City is willing to lease the Premises, the building and land rental rate offered Lessee shall not exceed that permitted by law and the term shall be at least five years. Lessee may enter into a lease on the offered terms and conditions by making notice of acceptance to City at least fifteen (15) days prior to the expiration of this lease. If the Lessee does not accept the offer, or if no offer is made, City has the right to show the Premises to prospective Lessees and may display in and about the Premises and in the windows of it, the usual and ordinary "TO RENT" signs. The rights and obligations of this paragraph shall not apply if, for any reason, this lease is terminated prior to the termination date provided in paragraph 2 of this lease.
- (7) **DEFAULT PAYMENT:** If the Lessee defaults on any payment(s) or expenditure(s) other than Rent required to be paid or expended by the Lessee under the terms and conditions of the lease, the City may at its option make the payment(s) or expenditure(s). The amount paid shall be payable as Rent to the City by the Lessee on the next ensuing rent day together with interest at fifteen (15) percent per annum from the date of payment by the City, or at the highest rate permitted by law (whichever is lower). On default payment(s), the City shall have the same remedy(ies) as on default in payment for Rent.
- (8) **USE AND OCCUPANCY:** It is understood and agreed between the parties that the Hangar during the continuance of the lease shall be used and occupied for aviation related activities and/or services and for no other purpose(s) without the written consent of the City. The Lessee is granted the right to use or sublease office space for other than aviation related purposes. The Lessee by accepting this lease agrees for itself, its successors, and assigns that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from Ann Arbor Municipal Airport, or otherwise constitute a hazard. The Lessee will not use the Premises in violation of any law, municipal ordinance or regulation. On any breach of this agreement, the City may at its option terminate the lease forthwith and reenter and repossess the Premises. The Lessee also agrees that the Airport Manager, and/or his/her duly authorized representative(s) or agent(s), may at any reasonable time enter upon the Premises for the purposes of making any inspection deemed necessary by the manager in order to determine whether Federal, State or Municipal rules and regulations governing the operation of the airport or the use and occupancy of leasehold interests are being complied

with. It is mutually acknowledged that this agreement does not grant to the Lessee the right to engage in any commercial operation as defined in the Rules and Regulations pertaining to operation of Ann Arbor Municipal Airport, and specifically forbids commercial operations unless that right is granted by the City in an Airport Commercial Use Permit.

- (9) **ASSIGNMENT:** The Lessee promises not to assign, transfer, encumber or sublet the Premises or any part without the written consent of the City, (which consent will not be unreasonably withheld). Any assignment, transfer, encumbrance or subletting without the written consent, shall give the City the right to terminate the lease and to re-enter and repossess the Premises.
- (10) **BANKRUPTCY AND INSOLVENCY:** The Lessee agrees that (a) if the estate created by this lease is taken in execution or by other process of law, (b) if the Lessee is declared bankrupt or insolvent according to law or any receiver be appointed for the business and property of the Lessee, or © if any assignment is made of the Lessee's property for the benefit of creditors, then this lease may be canceled at the option of the City.
- (11) **RIGHT TO MORTGAGE/SUBORDINATE:**
- (A) The City reserves the right to subject and subordinate this lease at all times to the lien of any mortgage or mortgages now or later placed upon the City's interest in the land which the Premises is a part or upon any encumbrance later placed on the land which the Premises forms a part. The Lessee promises and agrees to execute and deliver upon demand any further instrument(s) subordinating this lease to the lien of any mortgage or mortgages as shall be desired by the City and hereby irrevocably appoints the City the attorney-in-fact of the Lessee to execute and deliver any such instrument or instruments for and in the name of the Lessee.
- (B) This lease shall be subordinate to the provisions of any existing or future agreement between the City and 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 the federal funds for the development of the airport.
- (C) The lessee shall have the right to mortgage the leasehold interest in the Premises and the Lessor agrees to consent to the mortgage.
- (12) **TENANT TO INDEMNIFY:** The Lessee agrees to indemnify and hold harmless the City from any liability for damages to any person or property in or on the Premises from Lessee's use and occupation of the premises. The Lessee will

procure and keep in effect during the Lease duration, public liability and property damage insurance for the benefit of the City in the sum of \$500,000 for damages resulting to one (1) person and \$1,000,000 for damages resulting from any one (1) occurrence and \$500,000 or premise replacement value, whichever is greater, property damage insurance resulting from fire or any other casualty from any one occurrence. The Lessee shall deliver certificates of the policies to the City and shall name the City of Ann Arbor as an additional insured party. Upon the Lessee's failure to provide proof of insurance by providing a copy of the policy(ies) within five (5) business days after being notified of the Lessee's failure to file the documents, the City may at its option obtain the insurance and the cost shall be paid as additional Rent due and payable upon the next ensuing rent due day. In addition to the Rent, Lessee agrees to pay as additional Rent, any increase in insurance premiums against loss by fire that may be charged during the Lease Duration on the amount that is now carried by the City for the Premises.

- (13) **CASUALTY LOSS:** It is understood and agreed between the parties that if the Premises hereby leased be damaged or destroyed in whole or in part by fire or other casualty during the Lease Duration, the City may repair and restore the Premises to reasonable tenantable condition with reasonable dispatch. The Rent shall be abated entirely, if the entire Premises is untenable, and pro rata if the Premises is partially tenantable. This provision is void, if the Lessee fails to adjust its insurance or to remove his/her/its damaged goods, wares, equipment or property within a reasonable time, thereby causing the delay of the restoration. There shall be no abatement of rent during the period for delays caused by the Lessee or its agents. Furthermore, there shall be no abatement of Rent if the fire which caused the destruction of or damage to the Premises resulted from the negligence or willful act of the Lessee, its employees or agents or sub-Lessee, said repairs shall be the sole responsibility of the Lessee. If the Lessee use any part of the Premises for storage during the period of repair, a reasonable charge shall be made against the Lessee. If the building is destroyed to the extent of more than one-half of the value thereof, the City may at its option terminate the lease by providing ninety (90) days written notice to the Lessee.
- (14) **IMPROVEMENTS/REPAIRS/ALTERATIONS:** The Lessor is responsible for all expenses related to the maintenance and repair of the exterior roof, walls, doors and floors (with exception of floor coverings and painted surfaces), structure of the building including repairs, maintenance or replacement of the heating and air conditioning system. The Lessor will also be responsible for the maintenance and repair exterior pavement areas. The City agrees to make the improvements to the hangar and facilities in accordance with the schedule as depicted in Exhibit "B". With exception as stated above the Lessee is responsible for maintenance, replacement, repair or improvement of all interior facilities and fixtures, whether leasee-owned or leased. The Lessee shall not make any alteration, additions, or

structure improvements to the Premises without the City's advance written approval, which shall not be unreasonably withheld. All additions, alterations or structural improvements to the Premises made by the Lessee during the Lease Duration shall be the property of the City and shall remain on the parcel and be surrendered with the Premises upon expiration or termination of the lease without molestation or injury.

(15) **RESERVATIONS:**

- (A) The City reserves the right of free access at all times to the exterior, interior, the roof of building, and the ramp area.
- (B) The City reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Lessee, and without interference or hindrance.
- (C) The City reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of Lessee in this regard. It is clearly understood by the Lessee that no right or privilege has been granted which would operate to prevent any person, firm or corporation operating aircraft on the airport from performing any services on its own aircraft with its own regular employees (including but not limited to, maintenance and repair) that it may choose to perform.
- (D) The Lessee by accepting this expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object on the land leased hereunder above a mean sea level elevation of 845 feet. In the event the aforesaid covenants are breached, the City reserves the right to enter upon the Premises and to remove the offending structure or object, all of which shall be at the expense of the Lessee.
- (E) The City reserves the right to require the demolition without recourse of buildings and ramp rented according to the terms of this lease; should the demolition be required for reasons of safety, aeronautical, or airport construction. In such event, the City shall give 90 days notice of requirement to vacate the building.
- (F) There is hereby reserved to the City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall

include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Ann Arbor Municipal Airport.

- (G) The City reserves the right to use the airspace above the Premises for the operation of aircraft taking off or landing, at the Ann Arbor Municipal Airport. The Lessee by accepting this lease, agrees for itself, its successors, and assigns that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from Ann Arbor Municipal Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of the Lessee.
- (16) **SERVICES NOT EXCLUSIVE:** It is understood by the Lessee that no right or privilege has been granted which would operate to prevent any person, firm, or corporation on the airport from performing any services or maintenance it may choose to perform.
- (17) **ACCESS TO PREMISES:** The City shall have the right to enter upon the Premises and into any buildings at all reasonable hours for the purpose of inspecting them. If the City deems any repairs necessary, that are the responsibility of the Lessee, it may demand that the Lessee make them, and if the Lessee refuses or neglects forthwith to commence the repairs and complete them with reasonable dispatch, the City may make or cause to be made the repairs. If the City makes or causes the repairs, the Lessee agrees that he/she/it will pay on demand to the City the cost of the repairs with interest at ten (10) percent per annum or the highest rank permitted by law (whichever is lower). The City will not be responsible for any loss or damage which may accrue to their stock or business by reason of the repairs or the lack of repairs. If Lessee is in default in the payments, the City shall have the remedies provided in paragraph seven (7).
- (18) **CARE OF PREMISES:** The Lessee shall not perform any acts or carry on any practices which may injure the Premises or be a nuisance or menace to other Lessees and shall keep the Premises under its control (including adjoining drives ramps and grounds) clean and free from rubbish and dirt, snow and ice, and the grass mowed at all times. In the event the Lessee shall not comply with these provisions, after seven (7) days written notice of required remedies, the City may enter upon the Premises and have rubbish and dirt removed, snow and ice plowed and the grass mowed in which event the Lessee agrees to pay all charges that the City shall pay for the cleaning and hauling of rubbish or dirt, plowing of snow or ice and the mowing of grass. The charges shall be paid to the City by the Lessee

within fifteen (15) days of presentation of the bill. Failure to comply shall give the City the same remedy(ies) as provided in paragraph seven (7).

(19) **COMPLIANCE WITH LAWS, ORDERS, REGULATIONS, OR ORDINANCES:**

(A) The Lessee shall at its own expense promptly comply with all laws, orders, regulations, or ordinances of all Municipal, County, State, and Federal authorities affecting the Premises and the cleanliness, safety, occupation, and use of the Premises.

(B) The Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.

(C) This lease shall be subordinate to the provisions of and requirements of any existing or future agreement between the City and the United States, relative to the development, operation or maintenance of the airport.

(20) **CONDITION OF PREMISES AT TIME OF LEASE:** The Premises, with improvements depicted in Exhibit "B", is leased "as is". The Lessee acknowledges that he/she/it has examined Premises prior to the making of this lease, and knows the condition of land herein described as Exhibit A, and that no representations as to its condition or state of repairs have been made by the City, or its agent(s). The Lessee accepts the Premises in its present condition at the date of the execution of this lease. The City shall not be responsible or liable to the Lessee for any loss or damage from the acts or omissions of persons occupying any part of adjoining buildings or any part of the Premises or for any loss or damage resulting to the Lessee or its property from bursting, stoppage, or leaking of water, gas, sewer or steam pipes.

(21) **GAS, WATER, HEAT, ELECTRICITY AND TAXES:** The Lessee will pay all charges made against the Premises for gas, water, heat, and electricity during the continuance of this lease, as the same shall become due. Lessee shall be responsible for and pay all taxes assessed against the Premises. Failure to pay all charges and taxes shall be subject the Lessee the same remedy as provided in paragraph 7 of this lease. The Lessee will apply to Pittsfield Charter Township to eliminate the current real property tax that has been previously paid by the past tenants. Due to the nature of Lessee's business activities which are primarily aviation services, the building should be exempt from any and all real property tax per the state aeronautics code. During the period that the real property tax is not



reduced or eliminated, City will reduce the building rent by an annual amount equal to the real property tax on the hangar only (not office complex), but not by more than ten thousand dollars. If Pittsfield Township reduces the annual real property tax on the premises by ten thousand dollars (\$10,000.00) or more, the City rent will be the full contract amount without the tax rent abatement.

- (22) **ADVERTISING DISPLAY:** All signs and advertising displayed in and about the Premises shall only advertise the business carried on upon the Premises. All signs shall conform to the standards of Chapter 61 of the Ann Arbor City Code and shall have prior written approval of the City. No awning or signs shall be installed or used on the exterior of the building on the Premises unless awning, signs, and wording is approved in writing by the City. Consent shall not be unreasonably withheld.
- (23) **RE-ENTRY:** If any rent is due and unpaid more than sixty (60) days, or if there is default in any promise in this lease, or if the Premises are deserted or vacated, then it shall be lawful for the City, its certain attorneys, representatives and assigns, to re-enter into, repossess the Premises and remove and put out each and every occupant including Lessee. The City will endeavor to provide written notice to any Lessee and any sub-Lessee authorized in paragraph 9 of this lease. No third party rights are implied.
- (24) **EXPENSES-DAMAGES RE-ENTRY:** In the event the City shall, during the period covered by this lease, obtain possession of the Premises by re-entry, summary proceedings, or otherwise, the Lessee agrees to pay the City the expense incurred in obtaining possession of the Premises, and all expenses and commissions which may be paid in and about the letting of the same, and all other damages.
- (25) **QUIET ENJOYMENT:** The City promises that the Lessee, on payment of all the required payments and performing all the Lessee's promises and obligation under the lease, shall and may peacefully and quietly have, hold and enjoy the Premises for the Lease Duration.
- (26) **REMEDIES NOT EXCLUSIVE:** It is agreed that each of the rights, remedies and benefits provided by this lease shall be cumulative, and shall not be exclusive of any other right, remedy and benefit, or of any other rights, remedies and benefits allowed by law.
- (27) **DELAY OF POSSESSION:** It is understood that if the Lessee shall be unable to enter into and occupy the Premises at the time above provided, by reason of the Premises not being ready for occupancy, or by reason of the holding over of any previous occupant of the Premises, or as a result of any cause or reason beyond the direct control of the City, the City shall not be liable in damages to the Lessee, but

during the period the Lessee shall be unable to occupy the Premises, the rental amount shall be abated prorata. The City is to be the sole judge as to when the Premises are ready for occupancy.

- (28) **DISCRIMINATION:** Lessee, its agents and employees, shall not discriminate against any person or class of persons by reason of race, color, creed, national origin, marital status, age, condition of pregnancy, religion, physical limitations, source of income, family responsibilities, educational association, or sexual orientation or sex shall be bound by the non-discriminatory provisions as required by the Code of Federal Aviation Regulations, and as Regulations may be amended.
- (29) **NOTICES:** Whenever under this lease a provision is made for notice of any kind it is sufficient notice and service if the notice to the Lessee is in writing addressed to the Lessee at its last known post office address or at the Premises and deposited in the mail with postage prepaid. If the notice is to the City, it is sufficient if it is in writing addressed to the last known post office address of the City and deposited in the mail with postage prepaid. The promises, conditions and agreements made and entered into by the parties are declared binding on their respective heirs, successors, representatives and assigns.

**Avfuel Corporation  
47 West Ellsworth Road  
Ann Arbor, MI 48108**

Notices to City shall be sufficient if sent by mail, postage prepaid, addressed to the:

**Ann Arbor Municipal Airport  
City of Ann Arbor  
801 Airport Drive  
Ann Arbor, MI 48108  
Attn: Airport Manager**

- (30) **OWNERSHIP OF FIXTURES AND IMPROVEMENTS:** Notwithstanding any other provisions in this lease, any improvement, fixture, building or leasehold interest becomes the sole property of the City upon expiration or termination of this lease. Lessee shall not encumber the applicable property in any way beyond the lease term.
- (31) **CONSENT:** In all cases requiring written consent from the City, consent shall not be unreasonably withheld, and in all cases in which the repairs are necessitated by the willful or negligent conduct of the Lessee, its employees, customers or agents, the repairs shall be the responsibility of the Lessee.

- (32) **WAIVER:** One or more waivers of any promises or conditions by the City shall not be construed as a waiver of a further breach of the same promise or condition.
- (33) **AMENDMENTS:** This is the full and complete understanding of the lease, all prior or future verbal or written agreement(s) are null and void. This agreement may only be changed, in writing, signed by both parties. The promises, conditions and agreements made and entered into by the parties are declared binding on their respective heirs, successors, representatives and assigns, or sub-Lessee.
- (34) **HEADINGS:** The numbering and headings are not a part of this lease and are intended only to assist in locating the relevant lease terms.

WITNESSETH our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

CITY OF ANN ARBOR, a Michigan  
Municipal Corporation

AVFUEL CORPORATION, a Michigan  
Corporation

By \_\_\_\_\_  
Ingrid B. Sheldon  
Mayor

BY James A. Wiese  
Title: James A. Wiese, C.O.O.

By \_\_\_\_\_  
Winifred W. Northcross  
City Clerk

By \_\_\_\_\_  
Title

Approved as to Substance:

Approved as to Form:

By \_\_\_\_\_  
Neal G. Berlin  
City Administrator

By \_\_\_\_\_  
Abigail Elias  
City Attorney

## EXHIBIT A

### DESCRIPTION:

Commencing at the NE corner of Section 17, T3S, R6E, Pittsfield Township, Washtenaw County, Michigan; thence S 18° 15' E 1022.96 feet along the centerline of South State road; thence S 55° 39' W 675.0 feet in the range of the centerline of an existing runway; thence N 34° 21' W 350.0 feet; thence S 55° 39' W 714.74 feet; thence S 88° 24' W 1111.32 feet for a Place of Beginning; thence S 1° 36' E 30.0 feet; thence S 88° 24' W 330.0 feet; thence N 1° 36' W 110.0 feet; thence N 88° 24' E 45.0 feet; thence N 1° 36' W 160.0 feet; thence N 88° 24' E 285.0 feet; thence S 1° 36' E 240.0 feet to the Place of Beginning, being a part of the North ½ of said Section 17.

## ATTACHMENT "B"

### CITY IMPROVEMENTS TO PREMISES

The following improvements to be accomplished by City within the stated term of each item:

- Clean all carpeting within office area of hangar complex and replace one office carpet by September 30, 2000
- Repair/clean damaged or soiled office area wall paper by September 30, 2000
- Remove unusable electrical equipment and wiring in office area by September 30, 2000
- Replace or repair interior and exterior light fixtures and bulbs that are inoperable by September 30, 2000
- Repair rear hangar aircraft door by December 31, 2000
- Repair main hangar aircraft door seals and holes by December 31, 2000
- Repair or replace hangar area insulation by December 31, 2001
- Repair holes in west hangar exterior wall section by December 31, 2000
- Paint exterior hangar wall in the area of the Discount Tire Sign by December 31, 2000
- Repair hangar roof leaks by December 31, 2000