

AIRPORT GROUND LEASE

This Ground Lease (the Lease) is entered into on the _____ day of _____, 2017, between the City of Ann Arbor, a Michigan municipal corporation (Lessor), with offices at 301 E. Huron Street, Ann Arbor, MI 48104, and _____ [name of lessee], a Michigan _____ [type of entity] (Lessee), at _____ [address], on the terms and conditions set forth below.

RECITALS:

- A. The City of Ann Arbor owns certain real property designated as the Ann Arbor Municipal Airport (“Airport”) for general aviation use by the public and recognized by the Federal Aviation Administration (“FAA”) and the Michigan Department of Transportation (“MDOT”) for such general aviation use.
- B. The City of Ann Arbor seeks to preserve the purpose of general aviation use of the Airport and provide for the prudent stewardship of taxpayer resources in equitable and efficient administration of airport affairs.
- C. Lessee desires to lease ground at the Airport for the purpose of maintaining an approved structure (constructed prior to the date of this Lease) for the storage of Aircraft.

TERMS:

The parties agree to the following terms and conditions:

1. **Premises.** Lessor agrees to lease to Lessee subject to the terms, conditions, covenants and provisions herein certain real property located in Pittsfield Township, Washtenaw County, as legally described on the attached exhibit A which consists of the land area of the total square footage of the hanger described on exhibit A (the “Premises”). The Premises consist of approximately _____ square feet. The address of the Premises is _____. The lease of the Premises is subject to all zoning ordinances, affecting the Premises, building use and other restrictions and matters of record.
2. **Term.** This Lease shall be for an initial term of ten (10) years commencing with the execution of the Lease (“Commencement Date”), unless sooner terminated or extended as herein provided. Lessee shall have the right to renew the term of this Lease for one additional ten (10) year period by giving Lessor notice of Lessee’s intent to renew the Lease in accordance with the conditions as set forth in Paragraph 5 (Renewal Notices) of this Agreement.
3. **Rent.** Lessee agrees to pay Lessor for the Premises basic rent (“Basic Rent”) to be determined as follows:

Land (including paved lead-in taxiway) rent per square foot per year is \$[amount]. Basic Rent is based on the square footage of the actual rectangular footprint of the developed

structural space of the hangar (x,xxx s.f.) times a multiplier of 2.0 or x,xxx s.f. times the annual land rental rate.

Lessee's payment of Basic Rent shall commence on the Commencement Date. The Basic Rent shall be \$[amount] per year in equal installments of \$[amount] per month. Payment shall be in advance, made on the first day of each month during the term of this Lease. Commencing on the first day of December of the first lease year and on the first day of December of each lease year thereafter through the entire term of this Lease, the Basic Rent shall increase 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, Current Series U.S. City Average, All Items and Major Group Figures for Urban Wage Earners (1967=100). The Consumer Price Index shall be calculated by using the twelve (12) month period, September to September 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.

All rent and applicable fees under this Lease shall be paid to the City of Ann Arbor, 301 E. Huron St, Ann Arbor, MI 48104.

Lessor shall require the payment of applicable penalty charges when the Lease Payment is not paid to the City of Ann Arbor by the fifteenth (15th) day of the month. Such penalty charges shall be inclusive of the monthly installment of the annual rent. The penalty charge for the rental payment shall be \$15 per month. Rent more than sixty (60) days past due shall be considered delinquent and in default, and subjects the Lessee to termination of this Lease and eviction from the Premises.

4. Use. The Premises may be used for aviation related purposes only. Lessor hereby grants to Lessee the right to maintain a Hangar on an area at the Airport as herein provided in exhibit A. The use of the Premises must at all times conform to applicable regulation and policies of the City of Ann Arbor regarding the operation and management of the Airport. No uses shall be permitted that will violate any federal or state, law, municipal ordinance, or regulation. The Lessee is authorized to store aircraft owned by others in the Hangar and said aircraft storage is not considered a commercial operation. It is mutually acknowledged that this agreement does not grant to the Lessee the right to engage in any commercial operation unless that right is specifically granted by the City in an Airport Commercial Use Permit.

Lessee shall, during the term of this Lease have the right to use in common with others such public Airport runways, taxiways, and public roads, ways and areas at the Airport (collectively "Common Areas") that are necessary for ingress and egress to and from the Premises subject

to all other terms and conditions of this Lease, and any rules or regulations for the Common Areas establish from time to time by the Airport Manager.

Nothing in this Lease shall, or shall be construed to, limit in any way the right and authority of the City of Ann Arbor to exercise its proprietary or governmental powers in any way over the Airport, Common Areas, the Premises, or any other area of the Airport.

5. Renewal Notices. At least ninety (90) days but not more than one hundred eighty (180) days before the expiration of the initial term of this lease, Lessee must notify City of its intention to lease the Premises for the additional option period as stated in Paragraph 2, Term. For a lease extension beyond that offered in Paragraph 2, Term, and following the above notification period, the City, sixty (60) days prior to the expiration of the lease, shall notify Lessee upon what, if any, terms and conditions City would be willing to lease the Premises. 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 the initial term of this lease. If the Lessee does not accept the offer, or if no offer is made, the Lessee shall remove the Hangar and any other facilities on the Premises and restore the Premises to tenantable condition so that it is substantially the same as before the hangar and/or other facilities were erected and/or placed on the Premises. At the Lessee's option, Lessee may offer to assign said facilities and/or buildings to the City. City has the right to decline the assignment, in whole or in part and require the Lessee to remove the facilities and/or buildings. If the City accepts the assignment of the facilities and determines to release the same, Lessee shall have the first right of refusal for fifteen (15) days, after being given a thirty (30) day of notice of availability to re-let the premises under the same terms and conditions offered to all new tenants.

6. Covenant of quiet enjoyment. As long as Lessee is not in default under this Lease, Lessee shall be entitled to quiet possession of the Premises during the term of this Lease.

7. Government permits and construction of improvements by Lessee. Lessee's obligations under this Lease are contingent on Lessee obtaining all necessary governmental permits and approvals for its proposed use of the Premises. Lessee agrees to proceed in good faith and with diligence to obtain these permits and consents and to develop the Premises in accordance with the plans and specifications submitted to the Airport Manager prior to the commencement of construction/repair and thereafter the Premises must be maintained in accordance with the adopted maintenance standards attached as exhibit B. Lessee is solely responsible to pay for all materials and work to erect and maintain the Hangar and connect any and all approaches necessary for accessing public runways and taxiways. Failure to pay for the costs of the Hangar so constructed shall violate the term of this Lease and shall be cause to terminate the Lease by Lessor. If any necessary permits or approvals cannot be obtained, Lessee or Lessor may elect to terminate this Lease without any further liability to either party.

8. Taxes. During the term of this Lease, Lessee shall pay all real estate taxes and special assessments levied against the Premises, including installment payments for special assessments extending beyond the term of this Lease. Lessee may contest the amount or validity of any taxes or special assessments by appropriate proceedings, provided Lessee shall pay them when all appeals are completed.

9. Casualty insurance. During the term of this Lease, Lessee shall procure fire and extended coverage insurance insuring the Premises, including all leasehold improvements, for their full replacement value. The insurance policy shall show Lessor, regarding the Premises, and Lessee as named insureds. The insurance policy shall carry an endorsement requiring that Lessor shall be given 30 days' written notice before any change in or any cancellation of the policy. Certificates of all insurance policies and evidence of endorsement shall be delivered to Lessor. Lessee shall waive any right of recovery against Lessor for any loss occurring to the Premises or as a result of activities conducted on the Premises, which is covered by insurance, regardless of the cause of the damage or loss. Each insurance policy covering the Premises shall contain an endorsement recognizing this release by Lessee and waiving all rights of subrogation by their respective insurers.

10. Indemnity/Liability insurance. Throughout the term of this Lease, Lessee shall hold harmless and indemnify Lessor, its officers, employees, and agents against any claim, obligation, liability, injury or damage to third parties arising as a result of any act or neglect of Lessee in or about the Premises. Lessee shall, at Lessee's cost, from and after the Commencement Date, and during the entire term hereof, procure and keep in full force and effect (i) liability insurance covering Lessor with public liability insurance and property damage insurance with insurance companies licensed to do business in the state of Michigan, in amounts not less than \$1,000,000 combined single limit for bodily injury and property damage per occurrence; and (ii) with respect to alterations, improvements and the like required or permitted to be made by Lessee hereunder, contractor's protective liability and builder's risk insurance. In addition, Lessee shall secure or cause its contractor to secure during construction with the Premises workmen's compensation insurance – statutory limits; commercial general liability insurance with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. All insurance policies shall show Lessor, regarding the Premises, and Lessee as named insureds. The insurance policy shall carry an endorsement requiring that Lessor shall be given 30 days' written notice before any change in or any cancellation of the policy. Certificates of all insurance policies and evidence of endorsement shall be delivered to Lessor. Lessee shall waive any right of recovery against Lessor for any loss occurring to the Premises or as a result of activities conducted on the Premises, which is covered by insurance, regardless of the cause of the damage or loss. Each insurance policy covering the Premises shall contain an endorsement recognizing this release by Lessee and waiving all rights of subrogation by their respective insurers.

11. Utilities. Lessee acknowledges that Lessor will not provide utility services of any kind to the Premises and Lessee shall be solely responsible for and pay when due all bills for water, gas, electricity, and other utilities and services for the Premises during the term of this Lease.

12. Access to Premises. The Airport Manager, or his designee, shall have the right to enter upon the Premises and Hanger thereon during regular business hours for the purpose of: (i) inspecting the same; (ii) confirming the performance by Lessee of its obligations under this Lease; (iii) doing any other act which Lessor may be obligated or have the right to perform under this Lease, or that is reasonably related thereto; and (iv) for any other lawful purpose. Such entry shall be made only on forty-eight (48) hours advance notice except in cases of

emergency, when only such notice is required as is practicable under the circumstances. Notwithstanding paragraph 21 of this Lease, notice under this section shall be sufficient if provided forty-eight (48) hours prior to the inspection by (i) personal delivery or (ii) prominently posted on the primary building on the Premises.

13. Maintenance by Lessee. Lessee shall, at its expense, keep the Premises and any buildings or improvements on the Premises in good condition and repair. Lessee agrees to operate and keep the Premises in a clean condition, in compliance with applicable laws and ordinances.

In the case of structures constructed prior to the date of this Lease, Lessee agrees to allow the Airport Manager or designee to inspect the interior and exterior of the Hangars and the leased ground to determine required maintenance and repairs to bring the Premises in conformance with the adopted maintenance standards incorporated and attached as exhibit B. A list of required repairs and the timeframe to complete them shall be provided to Lessee, which shall be acknowledged by Lessee and attached hereto as exhibit C. Failure to make the necessary repairs within the timeframe stated, subject to any approved extension by the Airport Manager, shall be cause to terminate the Lease by Lessor.

14. Damage to improvements. In the event of damage to the improvements caused by fire or other casualty, Lessee shall promptly rebuild the premises to the condition it was in before the casualty in accordance with the maintenance standards attached as exhibit B. The insurance proceeds carried by Lessee to cover casualty damage to the Premises shall be available for the reconstruction. If the improvements constructed by Lessee on the Premises are rendered unleaseable by fire or other casualty during the term of the Lease to the extent that the building(s) must be demolished and rebuilt, and the casualty insurance proceeds for the building available for payment by the insurance company and the Premises and insurance proceeds are not subject to any lien, Lessee may, at Lessee's option, to be evidenced by notice given to Lessor within 30 days after the occurrence of the damage or destruction, elect to terminate this Lease as of the date of the damage or destruction. In that event, this lease shall terminate and Lessor shall be entitled to the Lessee's insurance proceeds to ensure that any remaining structure is demolished, debris properly disposed of, utilities appropriately terminated and the site returned to original condition with any remaining unused insurance proceeds returned to the Lessee.

15. Condemnation. If the whole or any part of the Premises shall be taken by any public authority under the power of eminent domain, Lessee shall have the right up to the date of the taking to elect to terminate the Lease by giving notice of the termination to Lessor. If notice has not been received by Lessor as of the date of the taking, the Lease shall be deemed to continue regarding the portion of the Premises not taken by eminent domain. If Lessee does elect to terminate the Lease, Lessee's obligation to pay rent shall end as of the date of the taking and any amount of rent paid in excess of the amount due shall be returned to Lessee. If Lessee does not elect to terminate the Lease, the Lease shall continue in effect on the terms as stated in this document with the exception that the rent shall be reduced in proportion to the nature, value, and extent that the part of the Premises taken by eminent domain bears to the entire Premises. To the extent of any renovation required to the Premises to restore it to use after the taking, Lessee shall be responsible for undertaking and completing that renovation

and paying the cost of the renovation. Each party shall seek its own award for damages for the taking.

16. **Signs.** On Lessor's written approval, Lessee may erect, maintain, and remove signs, in or about the Premises as Lessee may deem necessary or desirable. The signs shall be in compliance with all governmental regulations and be harmonious in size, style, and content with those of Lessor and any adjoining offices of Lessor.

17. **Hazardous Substance.** Lessee will not cause or permit any Hazardous Substance to be brought on, kept, or used in or about the Premises, unless authorized in writing by the Airport Manager. Hazardous Substances that are permitted by Lessor must be used, kept, stored, and disposed of in the manner that complies with federal, state and local laws related to the use, storage and disposition of Hazardous Substances.

18. **Termination.** Lessee may terminate this Lease, at any time, by providing written notice to the City at least ninety (90) days prior to the effective date of such termination. Lessee will not be reimbursed any amount of the Lease Payment should Lessee elect to terminate the Lease. Lessor may elect to terminate this Lease if Lessee is in default of any of the obligations herein, including but not limited to: the provisions of this Lease, applicable airport rules, regulations, or policies as adopted by the City of Ann Arbor. Should Lessor elect to terminate this Lease due to a default of the Lessee of its obligations as herein provided, the Lessee shall have the right to remove the contents of the Hangar and the Hangar provided that the removal shall be completed within ninety (90) days after the Notice of Termination. Should Lessee fail to remove the contents of the Hangar and/or the Hangar within ninety (90) days of either the provision of Notice of Termination by Lessor or receipt by Lessee of Notice of Termination from Lessor, the contents of the Hangar shall become the sole property of Lessor. If not removed by the Lessee on date of termination, the Hangar itself becomes the sole property of the City of Ann Arbor.

If Lessee's Aircraft is so placed on an uncovered portion of the Airport, Lessee shall become obligated to pay the City of Ann Arbor with respect to such Aircraft, all storage rates, when applicable, on the Airport and all reasonable charges imposed and expenses incurred by the City to remove the contents of the Hangar. In addition to the foregoing, the City shall have the right to sell or retain the Aircraft and other personal property; if sold, the City shall use such proceeds as it may choose, including compensation for such costs as may have been incurred by the City as a result of the termination of this Lease.

The City reserves the right to acquire and/or demolish and/or relocate with recourse, the Hangar on the Premises in accordance with this lease; should the removal be required for reasons of safety or airport development. In such event, the City shall give no less than 90 days' written notice of its need and intent regarding the building.

19. **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 between the City and Lessee. Acceptance of rent by the City after the expiration of the lease shall not constitute an extension of the lease beyond the month in which the rent payment was

accepted. The rental rate for holding over shall be computed by the City in accordance with the terms and conditions of this Lease.

20. Assignment and subletting. No interest in this Lease may be assigned by the Lessee. Lessee is expressly prohibited from subletting, licensing or permitting any other party or parties to occupy any portion of the Hangar or the Premises except as otherwise permitted by the Airport Manager in accordance with the rules of the Airport. Any assignment or subletting permitted by the Airport Manager shall not release Lessee from liability without Lessor's prior written approval.

21. Notices. All notices under this Lease shall be in writing and be personally delivered or sent by mail addressed to the respective party at the address indicated above or at such other address as Lessee shall designate in writing. A change in address may be effected by a letter sent by either party to the other. Unless Lessor gives notice to the contrary, all payments to Lessor under the terms of this Lease shall be made to Lessor at the address for Lessor first set forth above. Notice shall be deemed effective on the date of personal delivery, or if mailed, three days after the notice is deposited in the U.S. mail. Where, in this Lease, posted notice is required or permitted, such notice shall be deemed given on the date of posting on the Premises, provided Lessor has mailed a copy of the notice to the address provided by Lessee, no later than the date of posting.

22. Modifications. No modification, alteration, or amendment to this Lease shall be binding unless in writing and signed by both parties to the Lease.

23. Waivers. Failure of the Lessor or Lessee to complain of any act or omission on the party of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Lessor or Lessee at any time express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. No acceptance by the Lessor of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on account.

24. Governing law. This agreement shall be governed by and interpreted in accordance with the laws of the state of Michigan. If any provision of this agreement is in conflict with any statute or rule of any law in the state of Michigan or is otherwise unenforceable for any reason whatsoever, that provision shall be deemed severable from or enforceable to the maximum extent permitted by law, as the case may be, and that provision shall not invalidate any other provision of this agreement. Venue for any action brought under this agreement shall lie in Washtenaw County, Michigan.

25. Authority. Lessee warrant and represent that Lessee has been duly authorized to enter into this Lease and that the undersigned is duly authorized to execute this Lease on behalf of the Lessee respectively. This Lease may require prior approval by the Ann Arbor City Council. This Lease shall not be effective until signed by the Mayor and City Clerk.

26. **No Benefit to Third Parties.** Lessor and Lessee are the only parties to this Lease and are the only parties entitled to enforce its terms. Nothing in this Lease gives, or shall be construed to give, any benefit, direct, indirect or otherwise to third parties.

27. **Whole agreement.** This agreement constitutes the entire agreement between the parties and shall be deemed to supersede and cancel any other agreement between the parties relating to the transaction contemplated in this agreement. None of the prior and contemporaneous negotiations, preliminary drafts, or prior versions of the agreement leading up to its signing and not set forth in this agreement shall be used by any of the parties to construe or affect the validity of this agreement. Each party acknowledges that no representations, inducement, or condition not set forth in this agreement has been made or relied on by either party.

28. **Effective date.** This agreement shall be effective as of the day and year first above written.

LESSOR

LESSEE

CITY OF ANN ARBOR

[Name of lessee]

By: /s/_____

By: /s/_____

[Typed name of authorized signer]

[Typed name of authorized signer]

Its: [Title of authorized signer]

Its: [Title of authorized signer]

By: /s/_____

Its: City Clerk

Approved as to Substance

Airport Manager

Approved as to Form

Stephen K. Postema, City Attorney