

RESOLUTION 13-91

Passed: December 9, 2013

**AUTHORIZING THE MAYOR OF THE CITY
OF DEKALB, ILLINOIS TO SIGN A FIFTY
YEAR LAND LEASE AGREEMENT WITH
WIN AVIATION FOR HIGH TAIL HANGAR
CONSTRUCTION AT THE DEKALB
TAYLOR MUNICIPAL AIRPORT.**

BE IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois as follows:

Section 1. That the Mayor of the City of DeKalb, Illinois is authorized and directed to execute a fifty (50) year land lease agreement with WIN Aviation for high tail hangar construction at the DeKalb Taylor Municipal Airport, a copy of which is attached hereto and made part thereof as Exhibit "A."

Section 2. That the City Clerk of the City of DeKalb is authorized and directed to attest the Mayor's signature.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a regular meeting thereof held on the 9th day of December, 2013 and approved by me as Mayor on the same day. Passed on roll call vote 8-0. Aye: Jacobson, Finucane, Lash, Snow, Naylor, Baker, O'Leary, Rey.

ATTEST:


ELIZABETH E. PEERBOOM, City Clerk


JOHN A. REY, Mayor



Space above for recording information

**LAND LEASE AGREEMENT
Between**

CITY of DEKALB

And

WIN AVIATION

City of DeKalb
ATTN: Tom Cleveland
3232 Pleasant Street
DeKalb, IL 60115

Permanent Index Number:
Part of 09-19-100-013

Common Address:
3210 Pleasant Street
DeKalb Taylor Municipal Airport
DeKalb, IL 60115

THIS LAND LEASE AGREEMENT ("Lease") is entered into as of this 1 day of January, 2014 by and between City of DEKALB, an Illinois municipal corporation ("CITY"), and Win Aviation ("LESSEE"), under the following circumstances:

Recitals:

- A. LESSEE desires to lease the land described on Exhibit "A" attached hereto and made a part hereof, which is presently vacant and unimproved (the "Land") and located at DEKALB TAYLOR MUNICIPAL AIRPORT in DeKalb, Illinois (the "Airport");
- B. LESSEE desires to construct an aviation hangar building on the Land at its sole expense and have CITY own both the Land and the building upon the expiration of the term of this Lease, and
- C. CITY is willing to enter into such a Lease with LESSEE on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

- a) **Demise.** CITY hereby leases to LESSEE, and LESSEE hereby accepts, the Land during the Term (as hereinafter defined) on the terms and conditions contained herein.
- b) **Term.** The term of this Lease shall commence as of the date hereof and continue until the end of FIVE (5) consecutive years after January 1, 2014, which expiration date is December 31, 2019 unless this Lease is terminated prior to that time in accordance with the terms of this Lease (the "Term"). The LESSEE shall have nine successive options to extend this Lease, each for a further term of five (5) years, with the end date of this lease being December 31, 2064 if I such options are exercised. In order to exercise said options, the LESSEE shall give to the CITY written notice of its election to take such extension thirty (30) days prior to the expiration of the then-current term; the failure to provide timely notice of intent to exercise an option shall terminate this Agreement. Should the Lessee fail to begin construction of a hanger building within 24 months of the effective date, this lease shall terminate and the land and all improvements will revert to the City.
- c) **Rent.** Commencing as of January 1, 2014, or occupancy of the building, whichever comes first, and throughout the remainder of the Term of this Lease and any extensions of this Lease, LESSEE shall pay to CITY annual ground rent, defined as the building footprint plus an additional ten (10) feet on all sides of the building, at the rate of \$.22 cents per square foot (dollars) per year for the first year of the Term. First year payment of \$6381.10 will be for 29,005 square feet. Annual ground rent charged by the CITY shall be positively adjusted annually on January 1 of each year during the Term of this Lease and any extensions of this Lease, based on the prior twelve-month period of the

Consumer Price Index for all urban consumers, Chicago, Gary and Kenosha, as released by the Bureau of Labor Statistics (or an equivalent CPI index as determined by the City should this index be discontinued). If there is a positive CPI adjustment, it shall be applied to the ground rent; if there is a neutral or negative CPI adjustment, the ground rent shall remain consistent. However, upon the expiration of each five year term, these rent charges will be re-evaluated to determine if it is within the existing market value. If the parties are unable to agree regarding the existing market value, they agree to follow a mediator's proposal. The mediator shall be chosen and agreed upon by the parties and expenses for the mediator shall be shared equally by the parties. In the event the parties are unable to agree upon a mediator, each party shall provide a list of three proposed mediators who are licensed attorneys practicing in Northern Illinois. Each party shall be able to strike one of the other party's selections, and the mediator utilized shall be drawn at random from the remaining four candidates.

LESSEE shall also be responsible for payment of all Taxes contemplated herein, and for all costs of utility service (water, sewer, gas, electric, telecommunications), all costs of maintaining and upgrading its building, and all expenses associated with its internal operations.

- d) **Improvements.** LESSEE shall, at its sole cost and expense, construct on the Land an aviation hangar building with related infrastructure improvements (the "Improvements") only in accordance with the plans and specifications that have been reviewed and approved in accordance with this section. The City shall provide written notice of its approval of all plans and documents prior to commencement of any construction activities on site.

LESSEE represents and warrants to CITY that the Improvements will be designed by a licensed architect or engineer in accordance with all applicable laws, codes, ordinances, rules and regulations. LESSEE shall cause the Improvements to be constructed in accordance with all applicable laws, codes, ordinances, rules and regulations by a contractor reasonably approved by CITY. In addition to review for review of any plans or designs for purposes of confirming conformance to the applicable codes and regulations, the City shall have the right to review and approve or disapprove the proposed exterior elevations, lighting, signage, landscaping, building design and orientation and building materials to confirm that their proposed aesthetic is compatible with the airport's environment and the City's long-term plans for the airport ("Aesthetic Review"). This Aesthetic Review shall be completed by the City as a component of building plan review, and the City's determination shall be made by the City in its sole and absolute discretion.

LESSEE shall be solely responsible for obtaining, at its expense, any and all construction and building permits, and CITY shall cooperate with LESSEE with respect to such items. LESSEE shall procure hookup of all available water, sanitary sewer, utility and other service to the Improvements at its sole expense.

CITY has installed an access road and moderate parking on the Land for

nonexclusive use by LESSEE hereunder, the preliminary design for which is depicted on the above-referenced plans and specifications as long as state and/or federal funds are provided to CITY for such items. Such road and parking shall not be deemed part of the "Improvements" hereunder. CITY agrees to provide continued access to access road(s) and parking during the entire term of the lease.

LESSEE shall maintain all lighting, signage, landscaping and exterior improvements in the fashion as approved by the City. Any future modifications, improvements, or alterations to these exterior conditions shall be subject to the same Aesthetic Review by the City. All future modifications of any sort, internal or external, shall be done in compliance with this Agreement (i.e. shall be designed by a licensed professional if required by law, shall be done only after acquiring all required permits, etc.).

5. **Use.** LESSEE shall use and occupy the Land and the Improvements for general office use, the storage and operation of aircraft and activities ancillary thereto. LESSEE shall comply with all Rules and Regulations, including but not limited to the Airport Minimum Standards, made and adopted by the CITY from time to time relating to its tenants at the airport. The parties acknowledge that the City may amend those rules at any time without the consent of the LESSEE and without the amendment of this Agreement.

LESSEE shall procure and maintain all licenses and permits legally necessary for the operation of LESSEE's business and send a copy of each said licenses and permits to CITY within fourteen (14) days of obtaining them.

LESSEE shall be entitled to the non-exclusive use in common with CITY and other parties of automobile parking spaces and aircraft apron located adjacent to the Land. Vehicles shall be parked only in designated parking areas.

Notwithstanding anything to the contrary contained herein, LESSEE shall not use all or any portion of the Land and the Improvements for any basic aviation flight training program or operation (as opposed to advanced or continuing training programs or operations), as shall be reasonably determined by CITY, nor shall LESSEE use any portion of the Land in violation of any applicable SASO agreement in effect at any point in the term of this Agreement (and any such violation of a SASO agreement shall be an event of default under this Agreement).

CITY reserves the right to further develop or improve the Airport, Hangar areas, and Airport Property as it deems appropriate, regardless of the desires or opinions of the LESSEE except as such materially interfere with LESSEE's purposes contemplated by this LEASE and the Agreement without interference or hindrance. CITY further reserves the right to permit the use of the Airport from time to time for Special Event(s) during the term of this Lease, i.e., Airshow, etc. LESSEE acknowledges that the CITY may, in its sole and absolute discretion, suspend or terminate operations at the Airport from time to time, either to conduct a public event (e.g. Cornfest), to conduct routine or unscheduled maintenance operations, to accommodate weather conditions, to comply with applicable federal or state laws, or

otherwise as the CITY shall determine. LESSEE's rights under this Agreement are expressly subject to such periodic suspensions of operations at the Airport. In the event that the CITY suspends operations at the Airport for more than five (5) consecutive days at any one time, LESSEE shall be entitled to a pro-rata reduction of the rent required hereunder, as its sole and exclusive remedy. Any closure of the airport, for any duration, outside of the control of the City shall not constitute cause for a rent deduction or proration reimbursement to Lessee for the time the use of the leased Premises Space is unavailable. This shall include, natural or man-made disaster that makes the airport inoperable, or State or federal order to close the airport for any period of time.

6. **Ownership and Reversion.** During the Term of this Lease, the Improvements (other than ramps and taxiways) shall be the property of LESSEE, subject, however, to ownership of the Land by CITY and to the provisions of this Lease. All taxiways, ramps, aprons and other necessary appurtenances installed on or adjacent to the Land shall be the sole property of CITY and use thereof shall be controlled by CITY. LESSEE shall have the right to the nonexclusive use of such appurtenances, subject to the provisions of this Lease. Any other improvements installed on the Land, which are funded by federal, state or CITY funds, shall also be the property of CITY.

Upon the expiration of the Term of this Lease, ownership of all of the Improvements shall revert to CITY free and clear of all security interests, mortgages, liens and encumbrances whereby CITY shall have ownership of, and all right, title and interest in and to, both the Land and the Improvements free and clear of all security interests, mortgages, liens and encumbrances and LESSEE shall have no ownership of, or any other right, title or interest in or to, either the Land or the Improvements. LESSEE shall not encumber, mortgage or otherwise secure any portion of the Improvements in a fashion contrary to this Section 6.

7. **Taxes.** LESSEE shall pay, when due, all Taxes (as hereinafter defined) during the Term of this Lease. The term "Taxes" as used herein shall mean all real estate taxes and assessments, whether they be general or special, sewer rents, rates and charges, transit taxes, taxes based upon Leases or the receipt of rent, and any other federal, state or local governmental charge, general, special, ordinary or extraordinary (but not including income or franchise taxes or any other taxes imposed upon or measured by CITY's income or profits, except as provided herein), levied or assessed upon or with respect to any part of the Land or the Improvements.

Should the State of Illinois, or any political subdivision thereof, or any other governmental authority having jurisdiction over any part of the Land or the Improvements: (a) impose a tax, assessment, charge or fee in place or partly in place of any Taxes or contemplated increase therein, or by way of substitution for any of the foregoing described Taxes, or (b) impose an income or franchise tax (other than an income or franchise tax applicable to businesses generally) or a tax on rents, which income or franchise tax or tax on rents is in substitution for or as a supplement to a tax levied against any part of the Land and the Improvements, all such taxes, assessments, charges or fees shall be deemed to constitute Taxes hereunder.

Notwithstanding the foregoing, Taxes shall not include any inheritance, estate, succession, transfer, gift or capital stock tax or franchise or net income tax applicable to businesses generally. LESSEE shall have the right to contest or appeal the Taxes in good faith and with due diligence, at its sole expense, at no expense to CITY and without any prejudice to CITY's rights, title or interest in the Land or the Improvements. If applicable, at the end of the Term, Taxes shall be prorated as reasonably determined by CITY. LESSEE shall, at its expense, promptly pay all fees, licenses and other taxes due in connection with the Land and the Improvements.

8. Sublease and Assignment.

- a) **CITY Consent Requirements.** Notwithstanding anything to the contrary contained herein, LESSEE shall be permitted to merely store aircraft on behalf of other parties at the Land and the Improvements without the consent of CITY, and such storage of aircraft shall not be subject to the restrictions on assignment and subletting contained herein. Any sublease, assignment or other agreement between LESSEE and another party involving the use or occupancy of any part of the Land and the Improvements for more than merely the storage of aircraft including, without limitation, the conduct of any business or occupation at the Land and the Improvements by such other party or the storage of any item other than aircraft or aircraft parts, as shall be reasonably determined by CITY, shall be subject to the restrictions on assignment and subletting contained herein.

LESSEE shall not be permitted, without the prior written consent of CITY in each instance, which consent shall not be unreasonably withheld, to (i) assign, transfer, mortgage, pledge or encumber this Lease or any interest under it, (ii) Lease the Improvements or sublet the Land and the Improvements or any part thereof, except that LESSEE shall be permitted to Lease or sublease less than five hundred (500) square feet of the office portion of the Improvements without the consent of CITY as long as the term of any such Lease or sublease expires on or before the end of the Term of this Lease, (iii) allow to exist or occur any transfer of or lien upon this Lease or LESSEE's interest herein or (iv) permit the use or occupancy of the Land and the Improvements or any part thereof for any purpose not expressly permitted or by anyone other than LESSEE and LESSEE's employees.

In no event shall this Lease be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, except as provided by law, and in no event shall this Lease or any rights or privileges hereunder be an asset of LESSEE under any bankruptcy, insolvency or reorganization proceedings, except as provided by law. Any of the foregoing performed or attempted in violation of the provisions of this Lease shall be null and void.

- b) **Release of Liability.** Assignment, subletting, use, occupancy, transfer or encumbrance by LESSEE shall operate to relieve LESSEE from any covenant or obligation hereunder.

- c) **Lease Assumption.** Sublessee Attornment. If LESSEE shall assign this Lease, the assignee and the LESSEE shall be jointly and severally liable for the obligations of LESSEE. If LESSEE shall Lease any part of the Improvements or sublease any part of the Land, LESSEE shall obtain and furnish to CITY, not later than ten (10) days prior to the effective date of such Lease or sublease, as the case may be, and in form reasonably satisfactory to CITY, the written agreement of such LESSEE or Sublessee, as the case may be, to the effect that the LESSEE or Sublessee, as the case may be, shall attorn to CITY, at CITY's option and written request. No assignment of this Lease may be undertaken without the consent of the CITY, which consent shall not be unreasonably withheld.

If LESSEE is a partnership or corporation, transfer during the term of this Lease of more than twenty percent (20%) of the general partnership interest in said partnership or more than twenty percent (20%) of the outstanding voting stock in said corporation shall not be made, except to other partners or shareholders or to family members of any partner or shareholder, without the prior written consent of CITY, which consent shall not be unreasonably withheld.

9. **Default.** LESSEE shall be in default under this Lease ("Default") under the following circumstances:

- a) Failure by LESSEE to pay any rent or other charge to the City when due, if such failure continues for five (5) days after written notice to LESSEE of such failure; provided, however, in the event that LESSEE Defaults in the payment of rent two (2) times during any thirty-six (36) month period during the Term, LESSEE shall be deemed in Default hereunder for any subsequent failures to pay rent during such thirty-six (36) month period immediately upon the due date for such payment without written notice thereof from CITY or a cure period; or
- b) LESSEE fails to fulfill any other obligation hereunder and such failure continues for thirty (30) days after written notice thereof by CITY to LESSEE; or
- c) LESSEE falls into default on any other obligation to or agreement with the City and such default continues for five (5) days after written notice to LESSEE of such failure.
- d) Any lender of LESSEE shall have the right to cure any default of LESSEE hereunder as provided in Section 21 herein.

10. **Remedies.** In the event of a Default, CITY shall have the right to pursue any and all legal and equitable remedies against LESSEE available under applicable law without any additional notice to LESSEE, except for termination of this Lease.

CITY shall have the right to terminate this Lease in the event of a Default if CITY gives LESSEE a second (2nd) written notice of such Default (the first written notice being the one given under Section 9 above) and LESSEE fails to cure such Default within an additional thirty (30) day period. LESSEE shall have no additional rights to cure its Default after the expiration of such additional thirty (30) day period.

In the event that LESSEE fails to cure such Default within such additional thirty (30) day period, CITY may exercise its right to terminate this Lease by giving a third (3rd) written notice to LESSEE at any time within ninety (90) days after the expiration of such additional thirty (30) day period and such termination of this Lease shall be deemed effective immediately upon such third (3rd) written notice.

Upon such termination of this Lease, the Term shall be deemed expired and ownership of all of the Improvements shall revert to CITY free and clear of all security interests, mortgages, liens and encumbrances whereby CITY shall have ownership of, and all right, title and interest in and to, both the Land and the Improvements free and clear of all security interests, mortgages, liens and encumbrances and LESSEE shall have no ownership of, or any other right, title or interest in or to, either the Land or the Improvements. In the event of such termination of this Lease, CITY shall remain entitled to pursue any and all legal and equitable remedies against LESSEE available under applicable law.

Any real or personal property of LESSEE remaining upon the Land at the time that the Improvements revert to ownership of the City shall become the property of the City, free and clear of any liens or encumbrances, without exception.

11. **Interest and Late Charge.** Except as otherwise specifically provided in this Lease, all amounts owed by LESSEE to CITY pursuant to any provision of this Lease shall be paid by LESSEE within five (5) days after CITY's written demand, and all such amounts (including, without limitation, all rent) shall bear interest from the date due until paid at the annual rate equal to five (5) percentage points in excess of the rate of interest announced from time to time by the Wall Street Journal as the "prime rate," changing as and when such rate changes.

In the event of a failure to pay rent when due hereunder and the continuation of such failure for five (5) days after written notice thereof from the CITY, LESSEE shall pay a late charge to CITY together with such payment of rent in an amount equal to five percent (5.00%) of the amount of the rent payment. Such late charge shall be in addition to the interest charge provided above and any remedies of the CITY provided hereunder or under applicable law and shall not constitute liquidated damages.

12. **Maintenance and Repairs.** Except for the CITY maintenance Items (as hereinafter defined), LESSEE shall, at its expense, keep, maintain, repair and replace, as reasonably determined by CITY, the entire Land and all of the Improvements including building exterior improvements, landscaping, lighting and signage, in good, clean, sightly and safe condition during the Term of this Lease, including any extensions, including, without limitation, keeping (i) all heating, ventilating, air conditioning and other mechanical equipment, all fixtures and appliances and all sanitary sewer and water lines located on the Land and from the City main to the point of use on the Land in good operating condition, (ii) the roof, exterior walls, foundation, window and doors structurally sound and free of leaks and (iii) the Land and the Improvements in compliance with all applicable laws, codes and ordinances.

If LESSEE does not perform any of the foregoing maintenance or repairs, and such failure continues for thirty (30) days after written notice thereof is given by CITY to LESSEE, CITY shall have the right, but not the obligation, to make such repairs and LESSEE shall pay CITY the cost thereof upon CITY's written demand, unless such maintenance or repairs cannot be completed within such thirty (30) day period of time, if LESSEE has commenced such maintenance or repair within such thirty (30) day period of time and proceeds diligently to complete it as soon as practicable, in which case such thirty (30) day period shall be extended to a reasonable time not to exceed ninety (90) days as reasonably determined by CITY.

Upon giving at least one (1) day's prior notice, except in the event of an emergency, in which case no prior notice shall be required, CITY and its agents, representatives, contractors and consultants shall have the right to enter and inspect the Land and the Improvements from time to time in its sole and absolute discretion to determine whether LESSEE is fulfilling its maintenance, repair and replacement obligations and other obligations hereunder.

This Lease does not grant any rights to light, air or view over or about the real property of CITY or any other real property.

CITY shall be responsible for the repair and maintenance of only the exterior **pavement** portion of the Land and the Improvements (i.e., the aircraft apron, parking lot, parking lot lighting and roadways), as it reasonably deems necessary and for damage caused directly by CITY, CITY's contractors or their respective agents and employees (the "CITY Maintenance Items"). CITY shall have no responsibility or liability for any maintenance, repair or replacement of any part of the Land and the Improvements, except for the CITY Maintenance Items.

13. **Surrender of Land and Improvements.** Upon the termination of this Lease by lapse of time or otherwise or upon the earlier termination of LESSEE's right of possession, LESSEE shall surrender possession of the Land and the Improvements to CITY and deliver all keys and other entry devices to the Improvements to CITY and make known to CITY the combinations of all locks of vaults then remaining in the Improvements, and shall, subject to the following subparagraphs, return the Land and the Improvements and all to CITY in as good a condition as when LESSEE originally took possession, except for ordinary wear and tear and except for CITY maintenance items failing, which CITY may restore the Land and the improvements to such condition, and LESSEE shall pay the cost thereof to CITY on demand.

All installations, additions, partitions, hardware, fixtures and improvements, temporary or permanent, except movable furniture and equipment and other personal property belonging to LESSEE and LESSEE's trade-fixtures, in or upon the Land and the Improvements, whether placed there by LESSEE or CITY, shall, upon the termination of this Lease by lapse of time or otherwise or upon the earlier termination of LESSEE's right of possession, become CITY's property and shall remain upon the Land and the Improvements, all without compensation, allowance or credit to LESSEE.

On or before the termination of this Lease by lapse of time or otherwise or upon the earlier termination of LESSEE's right of possession, LESSEE shall remove from and shall be responsible for the removal from the Land and the Improvements LESSEE's furniture, machinery, safes and other items of movable personal property of every kind and description and LESSEE's trade fixtures. Lessee will incur all costs associated with this removal. LESSEE shall restore any damage to the Land and the Improvements caused thereby. Such removal and restoration to be performed prior to the expiration of the Term.

Without limitation of any other obligations of LESSEE, which shall survive the expiration, or termination of this Lease, all obligations of LESSEE under this section 13 shall survive the expiration or earlier termination of this Lease.

- 14. Holding Over.** If LESSEE retains possession of the Land and the improvements or any part thereof after the termination of the Lease by lapse of time or otherwise or after the earlier termination of LESSEE's right of possession, at the option of CITY, which option shall be exercisable by giving written notice to LESSEE within thirty (30) days after the date of such termination, the Term of this Lease shall be automatically renewed for one (1) year and this Lease shall remain in full force and effect, except that LESSEE shall pay to CITY as Rent during such automatic renewal term an amount equal to two hundred percent (200%) of the annual rent then in effect for the Land and two hundred percent (200%) of the then-fair market rent for the Improvements as shall be reasonably determined by CITY.

In the event that CITY does not exercise such option, LESSEE shall be deemed to be a tenant at sufferance, LESSEE shall pay to CITY 1/12th of two hundred percent (200%) of the annual rent then in effect and 1/12th of two hundred percent (200%) of the then-fair market annual rent for the Improvements as shall be reasonably determined by CITY for each portion of any month during which LESSEE shall retain possession of the Land and the Improvements or any portion thereof after such termination.

In addition to and without limiting any other rights and remedies which CITY may have on account of such holding over by LESSEE, LESSEE shall pay to CITY all direct and consequential damages suffered by CITY on account of such holding over by LESSEE. The provisions of this Section 14 shall not be deemed to limit or constitute a waiver of the right of CITY to evict LESSEE as provided herein or at law.

15. Insurance.

- a) LESSEE's Insurance. LESSEE shall carry insurance during the entire Term, and any extensions, (and prior thereto, to the extent hereinafter provided) insuring LESSEE and insuring as additional primary insured (without right of subrogation), CITY, and its officers, Mayor, aldermen, agents, consultants, contractors or employees, as their interests may appear (except that CITY need not be named as an additional insured under the coverages required pursuant to clause (a)(iii) hereof), with terms and in companies reasonably satisfactory to CITY and from a company with a BEST rating of at least A-

which is licensed to do business in the State of Illinois, and with such coverages and in such amounts as CITY may from time to time reasonably request, but initially LESSEE shall maintain the following coverages in the following amounts, provided that any changes required by CITY in the following coverages or amounts shall be consistent with the coverages and/or amounts of insurance required of LESSEEs of other similar Land and Improvements in greater metropolitan Chicago, Illinois.

- i) During the Term, and any extensions, and at any time prior to the Term when LESSEE is causing any work to be done on the Land, public liability insurance with the broad form comprehensive liability endorsement, including contractual liability insurance covering LESSEE's indemnity obligations hereunder, and comprehensive automobile liability insurance covering all owned, non-owned and hired automobiles of LESSEE, including the loading and unloading of any automobile, and including environmental contamination insurance coverage in a format acceptable to the CITY, each in an amount not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence;
- ii) During the Term, and any extensions, and at any time prior to the Term when LESSEE is causing any work to be done on the Land, "all risk" physical damage insurance, including fire, sprinkler leakage, vandalism and extended coverage, for the full replacement cost of and all office furniture, office equipment, merchandise, trade fixtures and all other items of LESSEE's personal property in the Improvements;
- iii) During the Term, and any extensions, business interruption and extra expense insurance with amounts not less than those carried by a prudent LESSEE of similar size to LESSEE and engaged in a business similar to LESSEE's, and also all insurance not expressly required under another section of this Lease but which is required by applicable law (e.g. Worker's Compensation);
- iv) Comprehensive builder's risk insurance, but only at any time and from time to time during the Term, and any extensions, when LESSEE is causing any work or alterations to be done, for the full replacement cost of such work or alterations and all raw materials stored on-site;
- v) Airport Liability Insurance in compliance with the City's Minimum Standards (as such standards may be updated from time to time); and
- vi) Hangar Keeper Insurance in compliance with the City's Minimum Standards (as such standards may be updated from time to time).

LESSEE shall, prior to the commencement of the Term and from time-to-time during the Term, and any extensions, (and in the case of the aforesaid public liability insurance, "all risk" physical damage insurance and builder's risk insurance, prior to commencement of construction of the subject work), furnish to CITY, copies of policies or certificates

evidencing the foregoing insurance coverages. LESSEE's policies and certificates shall state that such insurance coverage may not be reduced, canceled or renewed without at least thirty (30) days' prior written notice to CITY and LESSEE. The failure of the City to require such certificates shall not operate to waive the LESSEE's obligations to maintain the insurance required.

CITY agrees to indicate to LESSEE in writing the names of the parties required under this Clause (a) (other than that required pursuant to Clause (a)(iii) hereof) to be named as additional named insured on insurance policies carried by LESSEE. LESSEE shall not be in default under this Lease for failure to name as an additional named insured on any insurance policy carried by LESSEE a party required to be so named under this Section 15(a), if CITY has not indicated such party's name in writing to LESSEE, except for CITY.

- b) CITY's Insurance. CITY shall not be required to maintain any insurance with respect to the Land or the Improvements hereunder. In the event the Lessee shall fail to procure said insurance, the OWNER may, but shall be under no obligation to, procure such insurance in which event the Lessee agrees to pay to the Lessor, as additional rent, the amount of premium therefore on the first day of the month following the month in which the Lessor notifies the Lessee of the amount of premium due hereunder. In the event that OWNER procures such insurance at TENANT's expense, OWNER shall be entitled to only procure insurance to protect and insure OWNER's interests.

16. Waiver and Indemnity.

- a) General Waiver. In addition to and without limiting or being limited by any other releases or waivers of claims in this Lease, to the extent not prohibited by law, CITY, or any of its officers, Mayor, aldermen, agents, consultants, contractors or employees, shall not be liable, and LESSEE hereby waives and releases them from any liability, for any injury to or death of any person or injury or damage to or theft, robbery, pilferage, loss or loss of the use of any property, sustained by LESSEE or by other persons arising out of or relating to the Land or the improvements becoming out of repair, or due to the happening of any accident or event in or about any part of the Land or the Improvements, or due to any act or neglect of any other person.
- b) Special Waivers. In addition to and without limiting or being limited by any other releases or waivers of claims in this Lease, to the extent not prohibited by law, and also notwithstanding that CITY may or does establish security controls or regulations from time to time, LESSEE further agrees that all personal property in or upon the Land or the Improvements shall be at the risk of LESSEE only, and that CITY, or any of its officers, Mayor, aldermen, agents, consultants, contractors or employees, shall not be liable, and LESSEE hereby waives and releases them from any liability, for any injury or damage thereto or theft, robbery, pilferage, loss or loss of the use thereof.

LESSEE acknowledges and agrees that the terms and conditions of this Lease are fair and reasonable, that this Lease represents an arm's length transaction between CITY and LESSEE, that CITY has not favored LESSEE over other tenants of DeKalb Taylor Municipal Airport nor discriminated against LESSEE with respect to other tenants of DeKalb Taylor Municipal Airport and that LESSEE has been represented by competent legal counsel in connection with this Lease. LESSEE hereby waives and forever releases and discharges CITY from and against any and all of its claims, actions, liabilities, damages, losses and expenses arising or accruing prior to the date hereof with respect to this Lease.

- c) Indemnity. In addition to and without limiting or being limited by any other indemnity in this Lease, but rather in confirmation and furtherance thereof, LESSEE agrees to indemnify, defend by counsel reasonably acceptable to CITY and hold CITY, and its officers, Mayor, aldermen, agents, consultants, contractors and employees, harmless of, from and against any and all losses, damages, liabilities, claims, liens, costs and expenses including court costs and reasonable attorneys' fees and expenses, in connection with injury to or death of any person or injury or damage to or theft, robbery, pilferage, loss or loss of the use of any property not owned by CITY occurring in or about the Land or the Improvements arising from LESSEE's occupancy of the Land and the Improvements, or the conduct of its business or from any activity, work, or thing done, permitted or suffered by LESSEE in or about the Land and the Improvements, or from any breach or default on the part of LESSEE in the performance of any covenant or agreement on the part of LESSEE to be performed pursuant to the terms of this Lease, or due to any other act or omission of LESSEE, or any of its employees, agents, licensees, invitees or contractors.

17. **Damage and Destruction.** In the event that the Land or the Improvements are damaged or destroyed by fire or other casualty, LESSEE shall, at its sole expense, promptly repair, restore and rebuild them to their original condition, except for modifications required to comply with the applicable laws, codes and ordinances then in effect, as shall be reasonably determined by CITY; provided, however, that in the event that such damage or destruction occurs during the last twelve (12) months of the Term of this Lease or renders all or a substantial portion [more than forty percent (40%)] of the Improvements untenable, as shall be reasonably determined by CITY, LESSEE shall, in its sole discretion, either

- i) Repair, restore and rebuild the Land and the Improvements to their original condition, with a time limit determined by the CITY and agreed to by the Lessee to complete repairs, except for modifications required to comply with the applicable laws, codes and ordinances then in effect, as shall be reasonably determined by CITY, or
- ii) If acceptable to the City at said time, transfer and assign to CITY the full amount of the insurance proceeds for such damage or destruction or, if such proceeds are not paid because such insurance was not maintained as required hereunder or for any other reason, LESSEE shall pay to CITY an

amount equal to the full cost of repairing, restoring or rebuilding the Land and the Improvements as shall be reasonably determined by CITY, and this Lease shall be deemed terminated as of the date of such damage or destruction.

Upon such termination of this Lease, the Term shall be deemed expired and ownership of all of the Improvements shall revert to CITY free and clear of all security interests, mortgages, liens and encumbrances whereby CITY shall have ownership of, and all right, title and interest in and to, both the Land and the Improvements free and clear of all security interests, mortgages, liens and encumbrances and LESSEE shall have no ownership of, or any other right, title or interest in or to, either the Land or the Improvements.

- iii) Lessee shall pay for the cost to remove and dispose of remaining improvements on City-leased property, and to restore the property to a clean, unimproved, finish graded site suitable for new construction and/or seeding.

18. **Alterations.** LESSEE may make any alterations to the Improvements costing less than Twenty-Five Thousand Dollars (\$25,000) that do not affect structural components, exterior windows of the Improvements or the mechanical, electrical, heating, ventilation or air conditioning systems of the Improvements (the "Minor LESSEE Alterations") without obtaining CITY's consent, but LESSEE shall give CITY written notice of its intention to perform such Minor LESSEE Alterations at least five (5) business days prior to the commencement of such alterations. Such notice shall include a reasonably detailed description of the Minor LESSEE Alterations.

LESSEE shall not perform any alterations to the Improvements other than the Minor LESSEE Alterations without first obtaining the prior written consent of CITY, which consent shall not be unreasonably withheld or delayed (unless such improvements are governed by the City's Aesthetic Review as described above). If CITY consents to Major LESSEE Alterations, greater than Twenty-Five Thousand Dollars (25,000.00), it may impose such reasonable conditions with respect thereto as CITY deems appropriate including, without limitation, requiring LESSEE to furnish to CITY for its approval prior to commencement of any work or entry by LESSEE's contractors into the Land and the Improvements, security for the payment of all costs to be incurred in connection with any such Major LESSEE Alterations, insurance against liabilities which may arise out of the Major LESSEE Alterations and plans and specifications and permits necessary for the Major LESSEE Alterations.

Upon completion of any Major LESSEE Alterations, LESSEE shall deliver to CITY, if payment is made directly to contractors, evidence of payment, contractors' affidavits and full and final waivers of all liens for labor, services and materials sufficient to waive all rights to liens under the Illinois Mechanic's Lien law arising from the work done.

LESSEE agrees to indemnify, defend by counsel reasonably acceptable to CITY and hold CITY, or any of its officers, aldermen, agents, consultants, contractors or employees, harmless from and against any and all losses, damages, liabilities,

claims, liens, costs and expenses including, without limitation, court costs and reasonable attorneys' fees and expenses, arising in connection with any Major LESSEE Alterations or Minor LESSEE Alterations.

All Minor LESSEE Alterations and all Major LESSEE Alterations done by LESSEE or its contractors shall be done in a first-class, skilful manner using only good grades of materials and shall comply with all insurance requirements of CITY and all applicable governmental laws, ordinances, codes, rules and regulations. Within thirty (30) days after substantial completion of any Minor LESSEE Alterations or Major LESSEE Alterations by or on behalf of LESSEE, LESSEE shall furnish to CITY "as built" drawings of such work.

19. **Security Deposit.** LESSEE shall, at its sole expense, deposit with CITY on or before and thereafter keep on deposit with CITY throughout the entire Term, and any extensions, of this Lease, an amount equal to the Rent hereunder for one (1) year (without abatement) as collateral to secure its obligations to pay Rent hereunder as further described below (the "Security Deposit").

CITY shall deposit the Security Deposit in a federally insured bank or other account in CITY's name only and invest the Security Deposit in an interest-bearing instrument. The selection of such account and investment instrument by CITY shall be with a bank with a branch location within the corporate limits of the City of DeKalb. Interest earned on the Security Deposit shall be paid to LESSEE no less frequently than annually and any bank charges or investment fees shall be paid by LESSEE at its sole expense.

The Security Deposit shall provide security to CITY for the full and faithful performance of the obligations of LESSEE to pay Rent. If LESSEE defaults on any financial obligation to the City arising under this or any other agreement or relationship between the CITY and LESSEE, the CITY may use, apply or retain all or any part of the Security Deposit for the payment of any Rent and any other sum in default, or for the payment of any other amount which CITY may spend or become obligated to spend by reason of LESSEE's default or to compensate CITY for payment of Rent.

If any portion of the Security Deposit is so used or applied, LESSEE shall, within five (5) days after written demand therefore, restore and replenish the Security Deposit to its original amount, and LESSEE's failure to do so shall be a material default under this Lease entitling CITY to pursue any and all remedies against LESSEE permitted under this Lease and applicable law.

20. **Environmental Provisions.** Hazardous Substances. LESSEE shall not cause or permit any Hazardous Substance (hereinafter defined) to be used, stored, generated or disposed of on or in the Land or the Improvements without first obtaining CITY's prior written consent, except for the following: (i) as expressly permitted under the SASO agreement so long as LESSEE complies with all applicable laws and (ii) the storage and use of such materials and cleaning products as are reasonably incidental to LESSEE's use, so long as such storage and use is in minor amounts and is in accordance with applicable law and LESSEE

shall not store any such materials in bulk.

LESSEE shall indemnify, defend by counsel reasonably acceptable to CITY and hold CITY, and its officers, Mayor, aldermen, employees, agents and representatives and the Land and the Improvements harmless of, from and against any and all claims, damages, fines, judgments, clean up, removal or restoration costs, investigation expenses, penalties, costs, liens, liabilities or losses (including without limitation, decrease in the value of the Land or the Improvements, loss or restriction of usable area, adverse impact on the marketability of the Land and the Improvements, and any and all sums paid for settlement of claims, court costs and reasonable attorneys', consultants' and experts' fees and expenses) arising from the presence of any Hazardous Substance on or in the Land or the Improvements (whether or not the use thereof is otherwise permitted hereunder) caused by LESSEE or its directors, officers, employees, agents, shareholders, partners, contractors, licensees or invitees or by LESSEE's use of the Land and the Improvements, whether during or after the Term, and any extensions, or permitted or suffered to exist during the Term, and any extensions, provided, however that LESSEE shall not be liable for Hazardous Substances existing at the Land prior to the Term, and any extensions.

Without limiting the foregoing, if LESSEE causes or permits the presence of any Hazardous Substance on or in the Land or the Improvements, LESSEE, at its sole cost and expense, shall promptly take any and all actions necessary or required to return the Land and the Improvements to the condition existing prior to the presence of any Hazardous Substances as reasonably determined by CITY. LESSEE shall obtain CITY's written consent prior to commencing any such remedial action. Without limitation of any other obligations of LESSEE, which shall survive the expiration, or earlier termination of this Lease, the covenants and obligations of LESSEE under this Section shall survive the expiration or earlier termination of this Lease.

"Hazardous Substance(s)" means any substance that is toxic, ignitable, reactive or corrosive or that is regulated by any federal, state or local governmental agency, law, rule or ordinance, and includes without limitation any and all material or substances defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance" pursuant to any federal, state or local governmental agency, law, rule or ordinance, asbestos and asbestos containing materials, PCB's (polychlorinated biphenyls), petroleum and petroleum products, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants and substances which are or may be toxic to humans, animals, plants or the environment.

*Not restricted to those listed.

21. **Leasehold Mortgage.** The parties acknowledge that LESSEE intends to obtain a mortgage loan on its Leasehold interest created hereunder. The parties further acknowledge that LESSEE intends to sell hangar units to individual owners and transfer its leasehold interest in that portion of this Master Lease and that the individual owners also intend to obtain a mortgage loan on their Leasehold interest created hereunder. Notwithstanding anything to the contrary contained in this

Lease, with respect to any such Leasehold mortgage and the mortgagee thereunder or its assignee ("Mortgagee" or collectively, the "Mortgagees"), CITY and LESSEE agree that:

- a) CITY hereby consents to LESSEE granting one or more Leasehold mortgages on any interest it may have under this Lease. For any such Leasehold mortgage, the parties hereto shall both execute a Memorandum of Lease in recordable form, which shall be recorded in the Office of the Recorder of DeKalb County.
- b) CITY shall send to each Mortgagee a copy of any notice of Default it sends to LESSEE hereunder, provided that such Mortgagee has first submitted Mortgagee's address to CITY in writing.
- c) LESSEE shall have no right to amend, modify, cancel or terminate this Lease without each affected Mortgagee's prior written consent thereto.
- d) CITY shall give each Mortgagee an opportunity to cure a Default of LESSEE hereunder.
- e) The cure periods for Defaults set forth in both Section 9 and Section 10 hereof shall be double the length of time stated herein. Thus, for example, the five (5) day cure period for failure to pay Rent under Section 9(a) herein shall, in the event of a mortgage loan, be doubled to a total of ten (10) days in the aggregate for both LESSEE and Mortgagee to cure the Default and the additional cure period allowed prior to CITY terminating the Lease under Section 10 shall, in the event of a mortgage loan, be doubled to a total of sixty (60) days in the aggregate for both LESSEE and Mortgagee to cure the Default.
- f) Any Mortgagee (or assignee of a Mortgagee) shall have any right it may otherwise have, to acquire the Leasehold interest in which it held its mortgage, by foreclosure, assignment or otherwise as permitted by applicable law. If such Mortgagee shall take possession of LESSEE's Leasehold estate, then (i) Mortgagee shall not be liable for any Defaults of LESSEE occurring prior to the time Mortgagee takes possession, but CITY shall have the right to pursue its remedies hereunder in the event that any Defaults of LESSEE are not cured by Mortgagee; and (ii) Mortgagee shall have the rights of the LESSEE to assign or sublet all or any portion of the Improvements on the terms and conditions set forth herein.
- g) If the Leasehold interest of LESSEE is condemned by CITY, each Mortgagee or its assignee shall have the first right to share in condemnation proceeds for that portion of the Leasehold interest in which it holds its mortgage, as its interest may appear.
- h) LESSEE shall be permitted to exercise the rights and privileges of acting as a Specialized Aviation Service Operator ("SASO") on the Airport, with prior approval by CITY. In case of a foreclosure of any Leasehold mortgage

hereunder or thereunder, it is agreed that the rights and privileges of LESSEE as an SASO on the Airport are attached and run with this Lease. However, the City shall have the right, in its sole and absolute discretion, to review, approve and/or reject of any proposed tenant, SASO or other proposed use or occupier of the Improvements following such a foreclosure or following a Mortgagee's acquiring the LESSEE's rights for any reason whatsoever.

- i) Mortgagee may have a security interest in any rents and other proceeds due and payable to the LESSEE in connection with the Improvements, subject to the following conditions and limitations:
 - i) The right of the Mortgagee to said rents and proceeds shall be subordinate to the right of CITY to the payment of Rent hereunder.
 - ii) Mortgagee shall not have any right to operate any business on the Land or the Improvements, enter into possession of the Land or the Improvements or to sell or transfer any interest under this Lease without further written consent of CITY, which consent shall not be unreasonably withheld.
 - iii) The Mortgagee shall not have the power to transfer said security interest in said rents and proceeds, without prior written consent of CITY, which consent shall not be unreasonably withheld.

In order to secure payment of the Rent due and payable hereunder by LESSEE to CITY, LESSEE hereby assigns to CITY the right to collect all rentals and proceeds due LESSEE in connection with the Improvements. Said assignment shall be superior to all other claims against and assignments of rents and other proceeds from the Improvements. CITY may exercise said assignment by written notice to LESSEE or other obligors of LESSEE after a default in payment of the Rent by LESSEE which continues for more than thirty (30) days without cure.

22. Exclusivity. LESSEE shall have the exclusive right to lease premises and construct hangars for private aviation on the portion of the Airport land subject to this Lease for so long as this lease shall remain in full force and effect.

23. Miscellaneous.

- a) Eminent Domain. Notwithstanding any other provisions of this Lease, LESSEE acknowledges that CITY shall have the power to take the interest of LESSEE under this Lease by eminent domain or condemnation proceedings.
- b) Nondiscrimination. LESSEE agrees that it will not, on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of the regulations of the Office of the Secretary of Transportation and Title VI of the Civil Rights Act 1964, Illinois Law and Chapter 49 of the City of DeKalb Municipal Code. CITY reserves the right to take such action as the United States Government may

direct to enforce this covenant.

- c) **Affirmative Action.** LESSEE agrees that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall, on the grounds of race, creed, color, national origin or sex, be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. LESSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefit of any program or activity covered by this subpart.
- d) **Disclaimer of Exclusive Airport Use.** This Lease shall in no way convey the exclusive use of any part of the DeKalb Taylor Municipal Airport ("Airport"), except with respect to the Land and the Improvements as described herein and in the LFBO, and shall not be construed as providing any special privilege for any public portion of the Airport. CITY reserves the rights to Lease to other parties any portion of the Airport not described herein for any purpose deemed suitable for the Airport by CITY.
- e) **Agreement of CITY with the United States.** The terms and conditions hereof shall not be construed to prevent CITY from making commitments it desires to the Federal Government, or to the State of Illinois to qualify for the expenditure of State or Federal funds upon the Airport. This Lease is subject to all articles and conditions of the War Assets Administration Grant of the Facilities of the Airport and the Deed issued under said Grant to the County of DeKalb, which said deed is recorded in the Recorder's Office of DeKalb County as Document
- f) **Lights: Signs.** LESSEE shall not post, install, erect or operate any light, sign, placard or poster on any part of the Land and the Improvements without the express written consent of CITY in CITY's absolute discretion. Such lighting shall not be confusing, blinding, or inhibiting to aircraft landing at the Airport as determined by the FAA and CITY in their sole discretion. If after installing such lighting, either the FAA or CITY determines that such lights are confusing, blinding, or inhibiting to aircraft landing at the Airport, then LESSEE shall take such actions as are necessary to correct such problem, including redesigning, replacing or removing of such lighting, at LESSEE's sole cost.
- g) **Covenant Not to Erect.** LESSEE shall not hereafter cause or permit the erection or location of any structure or object upon the Land and the Improvements to a height, which would penetrate the imaginary surfaces, described in Part 77a of the Federal Aviation Regulations.
- h) **Grant of Easement and Rights to Public.** LESSEE further grants unto CITY, its successors, and assigns, for the benefit of the general public at large, an easement and a continuing right of way for the free and unobstructed passage of aircraft, by whomsoever owned or operated, in and through the air space over and across the Land and the Improvements.
- i) **Covenant to Prevent Electronic Interference.** LESSEE shall not hereafter use or permit or suffer use of the Land and the Improvements in such manner as to

create electrical or electronic interference with radio transmission and reception between radio-communications and air-navigation installations on or in the Airport and aircraft, or as to make it difficult for flyers to distinguish between Airport lights and others, or as to result in the glare in the eyes of flyers using the Airport, or as to impair the visibility in the vicinity of the Airport (e.g., by discharge of particular matter), or as otherwise to endanger the landing, takeoff, or maneuvering of aircraft.

- j) **Aerial Approach.** CITY reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent the LESSEE from erecting or permitting to be erected any building or other structure on the Land which, in the opinion of the CITY, would limit the usefulness of the Airport or constitute a hazard to aircraft.
- k) **Airport Rules. Regulations and Standards.** LESSEE agrees not to operate in any manner that would interfere with the operation of the airport and to comply with and be subject to each of the following:

 - i) The Airport Rules and Regulations adopted by the Airport Advisory Board and the DeKalb City Council, which are now in effect and which may be reasonably amended from time to time regarding the management, use and operation of the Airport.
 - ii) The minimum requirements for land, buildings, facilities and parking which are now in effect and which may be reasonably adopted by CITY from time to time for the types of operations conducted on the Land and the Improvements.
 - iii) All ordinances, rules, regulations and executive and administrative orders and directives, promulgated by CITY, or by any authorized federal, state or local government agency or official which relate to abatement, control or regulation of noise emissions by aircraft using the Airport, as such apply to aircraft owned by, operated by, under the control of and/or doing business with LESSEE.
 - iv) The airport minimum standards for commercial operations (SASO).
- l) **Binding on Successors.** This Lease shall be binding on and inure to the benefit of the lawful assigns, the successors, heirs, legatees and personal representatives of the respective parties.
- m) **Severability.** It is the intention of both of the parties hereto that the provisions of this Lease shall be severable in respect to a declaration of invalidity of any provisions hereof. If any provision hereof is declared invalid, then this Lease shall be construed by the parties to provide for the intent of such provision in a form, which shall be valid.
- n) **Waiver of Terms.** The waiver by the CITY of any breach of the terms, covenants or conditions herein shall not be deemed a waiver of any

subsequent breach.

- o)** Recording. This Lease may be recorded with the Recorder of Deeds of DeKalb County by CITY or LESSEE.
- p)** Compliance with Applicable Laws. The LESSEE shall comply with all laws, regulations, ordinances or other legal requirements applicable to its conduct at all times. In the event that LESSEE completes any work funded in whole or in part by public funds which is required to be subject to the provisions of the Illinois Prevailing Wage Act, LESSEE shall comply with all such applicable requirements.
- q)** Survival. Without limitation on any other obligations of LESSEE or CITY, which shall survive the expiration or termination of this Lease, the parties' respective obligations to indemnify, defend and hold harmless the other party and others pursuant to any provisions of this Lease shall survive the expiration or termination of this Lease.
- r)** Cumulative Remedies: Illinois Law. The rights and remedies of CITY under this Lease are cumulative and none shall exclude any other rights or remedies allowed by law or equity. This Lease is declared to be an Illinois contract, and all of its terms shall be construed according to the internal laws of the State of Illinois.
- s)** Venue. Any litigation related to the terms of this Agreement or arising out of the performance of this Agreement or the relationship of CITY and LESSEE shall be exclusively conducted in the Twenty-Third Judicial Circuit, DeKalb County, Illinois, and the parties expressly and intentionally waive the right to pursue claims in any other Court or venue.
- t)** Relationship. CITY and LESSEE disclaim any intention to create a joint venture, partnership, agency or lender/borrower relationship.
- u)** Estoppel Certificate. LESSEE agrees that from time to time upon not less than ten (10) days' prior written request by CITY, and LESSEE agrees to use commercially reasonable efforts to cause any Sublessee, licensee, concessionaire or other occupant of the Land and the Improvements claiming by, through or under LESSEE, to complete, execute and deliver to CITY or CITY's designee a written Estoppel certificate certifying (a) that this Lease is unmodified and is in full force and effect (or if there have been modifications, that this Lease, as modified, is in full force and effect and setting forth the modifications); (b) the amounts of the monthly installments of Rent then required to be paid under this Lease; (c) the date to which Rent has been paid; (d) that to the best of LESSEE's knowledge, CITY is not in default under any of the provisions of this Lease, or if in default, the nature thereof in detail and what is required to cure same; and (e) such other information concerning the status of this Lease or the parties' performance hereunder reasonably requested by CITY or the party to whom such Estoppel certificate is to be addressed.

- v) **LESSEE Authorization.** LESSEE represents and warrants that this Lease has been duly authorized, executed and delivered by and on behalf of LESSEE and constitutes the valid and binding agreement of LESSEE in accordance with the terms hereof.

- w) **Covenant of Quiet Enjoyment.** LESSEE's quiet and peaceful enjoyment of the Land and the Improvements shall not be disturbed or interfered with by CITY during the Term as long as LESSEE is not in default hereunder, subject to the use of the Airport as permitted by applicable law and CITY's other rights hereunder and under applicable law.

- x) **Notices.** All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (a) if delivered by messenger, when delivered, (b) if mailed, on the fifth (5th) business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested, or (c) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier, in every case addressed to the party to be notified as follows:

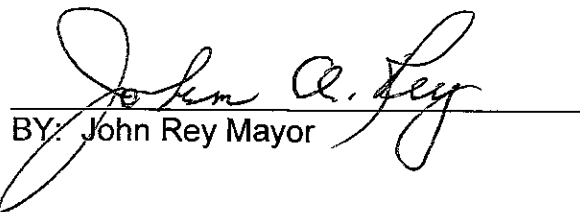
If to CITY:
Airport Manager
DeKalb Taylor Municipal Airport
3232 Pleasant Street
DeKalb, IL 60115

If to Lessee:

with a copy to LESSEE's lender, if the name and address of such lender have been previously furnished to CITY in writing in the manner required hereunder; or to such other address (es) or addressee(s) as any party entitled to receive notice hereunder shall designate to the others in the manner provided herein for the service of notices. Rejection, refusal to accept, or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed receipt.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as of the date first written above.

LESSOR:
CITY OF DEKALB
DEKALB TAYLOR MUNICIPAL AIRPORT


 BY: John Rey Mayor

ATTEST:



Elizabeth E. Peerboom
Elizabeth Peerboom, City Clerk

LESSEE:

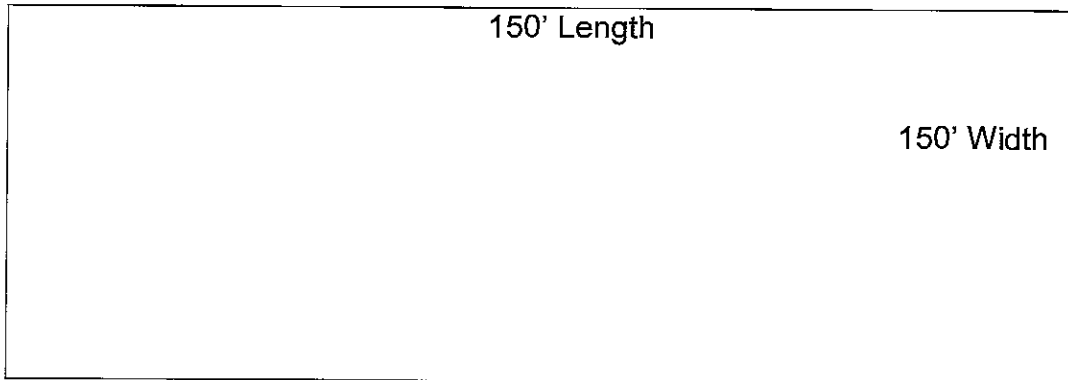
BY: 

Andre Wiess, Owner, Win Aviation
2890 Pleasant Street
DeKalb, Illinois 60115

Date:

**Exhibit "A" to Land Lease Agreement
DESCRIPTION OF LAND**

Land Leased shall include the building footprint plus an additional ten (10) feet on all sides of the building. Thus, based upon the length of approximately 150 feet and width of 150 feet, the footprint of the structure will be approximately 170' by 170', resulting in a calculated lease area of 29,005 square feet.



Approximately $(L\ 150' + 20') \times (W\ 150 + 20')$ = (Calculated from floor plan) 29,005 square feet of Total Leased Area.

EXHIBIT "B" to Land Lease Agreement

Land Location — Actual Location and Description of Leased Property

(SEE ATTACHED)

CONSENT TO LEASEHOLD MORTGAGE
AND AGREEMENT WITH MORTGAGEE

The Small Business Growth Corporation, an Illinois not for profit corporation and a Certified Development Company (SBGC) has been authorized by the U. S. Small Business Administration (SBA) to make a loan to Hangar Right under its 504 Loan Program to be secured in part by a Leasehold Mortgage. In order to facilitate this loan, City of DeKalb, and the lawful holder of title to certain property which has been encumbered by a Ground Lease, makes the following representations of fact:

1. City of DeKalb is the lawful holder of title to certain property which has been encumbered by a Ground Lease originally entered into with Hangar Right, dated 12/9/2013;
2. Hangar Right, is the current Lessee under the Ground Lease;
3. The term of the Ground Lease will continue at least until 12-31-2064 unless there is a default under the terms of said Ground Lease.
4. Hangar Right is not currently in default under the terms of the Ground Lease.
5. Hangar Right has the right under the Ground Lease to enter into a Leasehold Mortgage on the property.

Further, City of DeKalb agrees as follows:

- A. The lessor consents to the Leasehold Mortgage from Hangar Right as Mortgagor to SBGC as Mortgagee and consents to the assignment of the Leasehold Mortgage by SBGC to SBA.
- B. No cancellation or modification of the Ground Lease will be permitted without the written approval of SBGC or SBA.
- C. SBGC or SBA has the right to acquire the Leasehold at foreclosure sale or by assignment and the right of reassignment of the Leasehold Estate and may sublease consistent with their lien position.
- D. SBGC or SBA has the right to receive hazard insurance proceeds in the event of damage to the improvements and the right to share in the proceeds of any condemnation of the property in proportion to the value the improvements bears to the value of the land consistent with their lien position.

Further, City of DeKalb agrees that it will give SBGC or SBA notice of any default under the Ground Lease, at least 60 days to cure the default and in the event or default under its Leasehold Mortgage adequate time for foreclosure.

Lessor: City of DeKalb
By: [Signature]
Its: City manager
Date: 10/29/14



200 South Fourth Street
DeKalb, Illinois 60115
815.748.2000 • cityofdekalb.com

PW Memo #040-13

DATE: 12/4/2013

TO: Mayor
City Council

FROM: Rudy Espiritu, City Manager
T. J. Moore, Director of Public Works
Tom Cleveland – Airport Manager - ADPW

SUBJECT: WIN Aviation Land Lease for High Tail Hangar Construction

STRATEGIC GOAL: Increase Economic Growth and Further Diversify the Tax Base

I. Summary:

Win Aviation is one of the largest leasers of parachuting aircraft in the country, and has been based on DeKalb Taylor Municipal Airport, (DTMA), since 2004. They also have an agreement with the City of DeKalb to do aircraft maintenance on small aircraft for the general public.

Win Aviation has outgrown their privately owned hangar. Construction plans for a large high tail hangar were brought to the City Engineering and Planning Departments. They were reviewed and approved. The footprint of the hangar will be approximately 27,000 sq.ft. with a 100' wide door and a 25' high hangar door to allow large aircraft to be put inside. An artist's drawing of the proposed hangar is attached.

At the November 19, 2013 Airport Advisory Board meeting, the President and owner of Win Aviation, Andre Weiss, came to discuss and layout the project to the Board. The DTMA Airport Advisory Board unanimously voted to approve the land lease for the new hangar and send it on to the DeKalb City Council for full City approval. When approved, construction should start in the spring of 2014.

II. Background:

Win Aviation has been a tenant on DTMA since 2004. They built the first privately owned hangar on the Airport. Win Aviation is one of the largest leaser's of parachuting aircraft in the country. They also maintain and own "jump" aircraft around the world. Win Aviation has run out of room with their existing hangar and need to build a new hangar with additional space. The new high tail hangar will have approximately 27,000 sq. ft. It will have a 2 floor office area on

the south side of the hangar. The new hangar will be built west of the existing concrete Jet Ramp. (See map)

III. Community Groups/Interested Parties Contacted:

The Airport Advisory Board was consulted and approved the attached lease agreement.

IV. Legal Impact:

The Win Aviation Land Lease was drafted and reviewed by the DeKalb City Attorney. This land lease is for 50 years with a 5 year term initially and 9 - 5 year terms to follow. Illinois Division of Aeronautics has given approval for the construction of this hangar through environmental approvals and by FAA airspace / FAA 7460 construction/alteration form.

V. Financial Impact:

Win Aviation will pay a land lease of \$0.22/sq.ft. for their new hangar. Our land lease states that Win Aviation will pay for an additional 10' outside the building footprint, which is consistent with other airport land leases. The total sq. ft. of the project adds up to 29,005 sq.ft. The total revenue from the Win Aviation high tail hangar land lease will be an annual \$6,381.00. The land lease rate does increase with a Consumer Price Index, (CPI) multiplier annually. Win Aviation will also be able to store additional aircraft in the new hangar which would increase DTMA's fuel sales. Win Aviation will be selling their existing hangar. DTMA/City of DeKalb will assist with promoting the sale and occupancy of this hangar along with Win Aviation.

VI. Alternatives:

The City Council can choose to approve this land lease agreement to continue to support the economic growth of DeKalb Airport. We would also be abiding by our FAA Grant Assurances by increasing revenue and be following our FAA approved Airport Layout Plan for airport improvements.

The City Council could choose not to approve this land lease. This alternative is not recommended.

VII. Recommendation:

The DeKalb Taylor Municipal Airport Advisory Board unanimously approved the Win Aviation Land Lease. Staff recommends the approval of the proposed Land Lease with Win Aviation to further develop the DeKalb Taylor Municipal Airport.

