

Ordinance No. 2022-____

AN ORDINANCE AUTHORIZING A LEASE WITH GROUND SPEED AVIATION, LLC AT THE MORGANTOWN MUNICIPAL AIRPORT

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached "Commercial Lease & Operating Agreement" with Ground Speed Aviation, LLC for the lease of approximately 47,300 square feet of land and a 10,000 square foot hangar at the Morgantown Municipal Airport.

Adopted this ____ day of _____, 2022

FIRST READING: _____

Mayor

SECOND READING: _____

ADOPTED: _____

City Clerk

FILED: _____

City of Morgantown
Morgantown Municipal Airport
and
Ground Speed Aviation, LLC
Commercial Lease &
Operating Agreement

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**City of Morgantown
Morgantown Municipal Airport
and
Ground Speed Aviation, LLC
Lease Summary**

TYPE OF AGREEMENT	Commercial Hangar Ground Lease
TENANT	Ground Speed Aviation, LLC
REPRESENTATIVE(S)	RJ Wilson
NOTICE ADDRESS	200 8 th Street Fairmont, WV 26554
EFFECTIVE DATE	6/1/2022
INITIAL TERM	15 Years
RENEWAL OPTIONS	One (1) five (5) year option
TERMINATION DATE	5/31/2037
LEASEHOLD/ASSIGNED PREMISES	Lease of 47,300 ft ² land for a 10,000 ft ² hangar
INITIAL RENTAL RATE	\$0.37/ft ² for land lease
RENTAL ADJUSTMENT	Annual CPI-W during the Initial Term; Increase during Renewal Options TBD
OTHER FEES, RATES AND CHARGES	2% gross receipts, due Monthly
AUTHORIZED USE(S)	Commercial aircraft airframe and engine maintenance & repair; Commercial Aircraft storage & personal aircraft storage

NOTE: THIS SUMMARY IS PRESENTED AS A REFERENCE OF THE AGREEMENT INFORMATION AT THE TIME OF EXECUTION. IF THERE IS A DISCREPANCY BETWEEN THE INFORMATION CONTAINED IN THIS SUMMARY AND THE REQUIREMENTS CONTAINED IN THE REMAINDER OF THE AGREEMENT, THE REQUIREMENTS AS STATED IN THE REMAINDER OF THE AGREEMENT WILL PREVAIL.

City of Morgantown
Morgantown Municipal Airport
and
Ground Speed Aviation LLC
Commercial Lease and Operating Agreement

THIS COMMERCIAL OPERATING AGREEMENT AND LEASE FOR HANGAR SITE(S) (the “**Agreement**”), is entered into this **1st day of June, 2022**, by and between the **CITY OF MORGANTOWN**, c/o Morgantown Municipal Airport, Morgantown, West Virginia (the “**City**”), and **Ground Speed Aviation, LLC** (the “**Operator**”) or its assignee(s).

WITNESSETH:

In consideration of the lease of certain real property and the covenants and agreements contained herein, the parties agree as follows:

ARTICLE 1
PREMISES

The City hereby leases to Operator, for its exclusive use as specifically authorized herein, and for no other use except as agreed to, and authorized herein, a tract(s) of land located at **Morgantown Municipal Airport** (the “**Airport**”), as shown on **Exhibit A**, attached hereto and incorporated herein by reference (the “**Premises**”).

Section 1.01 Demised Premises

1. **Hangar Space:** Hangar Space of Approximately 10,000 square feet of space.
2. **Land:** Approximately 47,300 square feet of land on an approximate 170 x 280’ parcel

Section 1.02 Acceptance of Demised Premises

Tenant accepts the office space “AS IS” in its present condition. Operator has had the right to inspect the space for suitability for the purposes it intends. Operator acknowledges that neither the City nor its agents have made any representation or warranty as to the condition and/or suitability of the premises.

Section 1.03 Use of Demised Premises

1. The Operator’s use of the demised premises is limited to the general operation of a professional Airframe & Powerplant Repair business. Any future expansion or change in use of the demised premises will require the prior written approval of the City.
2. The Operator, in addition to the use of the demised premises, shall be entitled to the general use, in common with others, of all non-aviation airport facilities made available for use to the general public except as otherwise hereinafter provided.
3. For the purpose of this Agreement, "airport facilities" available to the Operator and its employees shall include automobile parking areas, roadways, sidewalks, or other areas of the Airport, that have been constructed at City expense for the benefit of Airport tenants and the general public.
4. The use of the above-mentioned airport facilities by Operator shall be subject to their full compliance with such rules and regulations as now exist or may hereafter be enacted by the City. Approved uses of airport facilities are also subject to the payment of such fees and charges, as may be non-discriminatorily established from time to time by the City for the maintenance, operation or replacement of these facilities.

Section 1.04 Prohibited Uses

The following activities are expressly prohibited.

1. The Operator may not use any part of the demised premises for any activity or purpose, other than as expressly set forth and authorized in Section 1.03, unless such use is approved, in writing, by the City.

- 2. The Operator, and its employees, is prohibited access to, or use of, areas and facilities in the Air Operations Areas of the Airport, unless authorized by the Airport Director.
- 3. Operator is prohibited from using or permitting the demised premises to be used for the sale to its employees, or to the public, of any goods or services not directly related to those activities authorized in this Agreement.

ARTICLE 2
OBJECTIVES AND PURPOSE OF LEASE

Section 2.01 Use of Premises.

A. Commercial Activity – Operating Authority.

- 1. The Operator’s commercial use of the Premises, including building[s] and facilities constructed thereon is limited to the following commercial activities and no others, in accordance with the Rules & Regulations and Minimum Standards for the Morgantown Municipal Airport (the “**Rules and Regulations**”) and “**Minimum Standards**”:

Aircraft Airframe and Engine Maintenance and Repair: Per Section 8 Minimum Standards for Specialized Operators (SASAs) of the Morgantown Municipal Airport Minimum standards, an aircraft and airframe engine maintenance and repair operator is a person, persons, firm, or corporation providing one or a combination of airframe and powerplant overhaul and repair services. This category of Aeronautical Service also includes the sale of aircraft parts and accessories.

Aircraft Storage: Per Section 8 of the Minimum Standards, an aircraft storage operation is a business operated by a person, firm, or corporation engaged in the construction and rental of conventional and/or T-type hangars and tie-down areas to the general flying public.

- 2. The use of hangars, on Airport property, is primarily for the storage of aircraft and associated equipment, maintenance of aircraft, offices, parts rooms, restrooms and passenger waiting rooms, in support of aircraft / aviation operations. The storage of non-aviation items or materials may not occupy more than approximately 10% of the hangar.
- 3. The Operator, in addition to the use of the Premises, shall be entitled to the general use, in common with others, of all Airport facilities made available for use to the general public except as otherwise hereinafter provided.
- 4. For the purpose of this Agreement, “Airport facilities” shall include runways, taxiways, ramps, aircraft and automobile parking areas, roadways, sidewalks, navigation and navigational aids, lighting facilities, terminal facilities, aircraft fueling facilities or other areas of the Airport, that have been constructed at City’s expense for the benefit of the Operator, Operator’s tenants, and the general public. **Provided, however,** that the use of the above-mentioned airport facilities, by the Operator, and Operator’s tenants, shall be subject to their full compliance with such rules and regulations as now exist, or may hereafter be enacted by the City. Operator understands and agrees that approved uses of Airport facilities are also subject to the payment of such fees and charges, including, but not limited to, landing fees, fuel flowage fees, airfield access charges, commissions on gross receipts, or ground site rents, as may be established from time to time by the City for the maintenance, operation or replacement of these Airport, and Airport related facilities. The City will provide the Operator with notice and an opportunity to comment prior to implementation of any such new fees, charges, or commissions on gross revenues, pursuant to Section 3.07 hereof.

B. Termination or Modification of Commercial Activity Operating Authorization.

- 1. Subject to 30 days’ notice and an opportunity to cure, the City reserves the right to immediately terminate a commercial activity operating authority, reduce the Operator’s operating authority, or declare Operator to be in default of this Agreement, if the Operator discontinues one or more of the required services, or the quality and/or quantity of required services which, in the City’s sole opinion,

deteriorates to a level at which the Operator fails to meet the service needs of the public. Upon notification under this section, the Operator shall show cause as to its ability to perform the requisite service.

- 2. Termination or suspension of authority to conduct one or more of Operator’s commercial activities shall not act as a suspension of Operator’s obligation to pay ground rent, commissions, or fees or constructive eviction by the City and, unless a default of this Agreement is specifically declared as provided above, Operator’s obligation to pay rent and all fees hereunder shall continue.

Section 2.02 Prohibited Uses.

The following activities are expressly prohibited.

- 1. The Operator may not use any part of the Premises or the improvements located thereon for any aviation or non-aviation activity or purpose, other than as expressly set forth and authorized in Section 2.01, unless such use is approved, in writing, by the City.
- 2. The Operator will not block the taxiways, runways or aircraft ramps or store aircraft upon taxiways or grass areas of the Airport.
- 3. The operation of automobiles, trucks, or other vehicles in the air operations areas of the Airport is prohibited.
- 4. The fueling of aircraft, except through the Airport’s approved aircraft fueling facility, is also prohibited.
- 5. Any activity not specifically authorized by this Agreement.

Section 2.03 Conduct of Operations on Premises.

In its exercise and carrying out of the rights, privileges, duties, and obligations granted herein, and in its use of the Premises, Operator hereby obligates itself, and agrees to obligate all of its sub-lessees and/or occupants, to the following requirements and regulations:

- 1. The City intends to confer upon Operator what is commonly referred to as a “concession” to conduct specified commercial aeronautical activities for the public and in behalf of the Airport. Accordingly, Operator covenants and agrees for the entire term hereof to continuously occupy and use the Premises for the purposes established in this Agreement and to make its services available to the public on a fair and equal basis. The City reserves the right pursuant to the Rules and Regulations and minimum standards for commercial operators to set minimum hours, establish maximum tenant fees and rentals, and set quality and service standards for the rendition of commercial aeronautical services by Operator.
- 2. Operator shall not consent to any unlawful use of the Premises, nor permit any such unlawful use thereof.
- 3. Operator agrees that all local, federal and state ordinances and laws will be observed in its use and occupancy of the Premises, including the rules and regulations of the federal and state aeronautical authorities and the local governing authorities.
- 4. Operator shall comply with all Airport rules, regulations and ordinances as they now exist or may hereafter be amended or adopted.
- 5. The operations of Operator, its sub-lessees, employees, invitees and those doing business with it, shall conduct all activities in an orderly and proper manner so as not to annoy, disturb or to be offensive to others at the Airport. The City shall have the right to complain to Operator as to the demeanor, conduct and appearance of Operator’s employees, sub-lessees, invitees and those doing business with it, and as to its and/or their failure to utilize said facilities at times, and in the manner, and according to the standards, mandated by the City, whereupon Operator will take all steps reasonably necessary to remove the cause of the complaint and bring the operations and services into compliance with such standards.

6. Operator shall comply with all rules and regulations of the State Fire Marshall in the conduct of its operations on the Premises.
7. Operator shall abide by all environmental laws, rules and regulations contained in the Rules and Regulations as are applicable to Operator’s activities.
8. Operator shall be responsible for the payment of water, gas and sewer charges and electric current, telephone service and other utilities utilized or consumed on the Premises and shall separately meter same.
9. Operator may have coin-operated telephones in the building[s] on the demises premises and may have any other reasonably appropriate vending machines as Operator deems necessary and appropriate on the Premises without having to secure the written consent of City.
10. Operator shall not use or permit the Premises to be used for the sale to its employees or to the public of any goods or services not directly related to those activities authorized in this Agreement.
11. Operator agrees to return the Premises to the City at the expiration of this Agreement in the same condition as when taken, reasonable wear and tear excepted unless other arrangements are made with the City.

The City reserves the right to further develop its land and to lease the same for any lawful purpose whatsoever or to provide any services it deems necessary or desirable in its sole and absolute discretion, for the public, regardless of the desires or views of Operator, and without interference or hindrance.

ARTICLE 3
TERM, RENT AND ADJUSTMENTS TO RATES AND CHARGES

Section 3.01 Initial Term.

The initial term of this Agreement shall be for a period of Fifteen (15) years, effective **JUNE 1, 2022** (the “**Effective Date**”), and terminating on the **MAY 31, 2037**.

Section 3.02 Options to Renew.

At the end of the Initial Term of this Agreement, the Operator shall have the first option to enter into a new agreement for the Premises, referred to in Article 1; **PROVIDED**, that Operator is not then in default of this Agreement.

1. Operator shall have the option to renew this lease for one (1) additional five (5) year (60 month) period.
2. The Operator shall be deemed to have exercised its option to renew this lease for the additional five (5) year (60 month) term unless the Operator shall give the City written notice of Operator’s intention not to renew the term of this lease one hundred eighty (180) days prior to the expiration of the Initial Term. No such automatic renewal may occur with the existence of Events of Default as defined in Article 9. All known Events of Default shall be cured before the City approves a renewal.
3. Should the Operator renew the term of this lease for the five (5) year (60 month) additional term, the Operator shall be deemed to have exercised its option to renew this lease for the second additional five (5) year (60 month) term unless the Operator shall give the City written notice of the Operator’s intention not to renew the term of this lease one hundred eighty (180) days prior to the expiration of the first five (5) year (60 month) renewal term. *No such automatic renewal may occur with the existence of Events of Default as defined in Article 9. All known Events of Default shall be cured before the City approves a renewal.*
4. Prior to the conclusion of the initial and all renewal terms, The Operator and City may initiate discussions regarding a new lease. The Operator may declare its intention to begin negotiations on a new lease agreement, in writing, on or before, the 180th day prior to the expiration of this Agreement. Such 180 day period shall expire at midnight of the last day of the Agreement.
5. During said 180 day period, all of the terms and conditions including the amount of rent to be paid under a new agreement shall be negotiated in good faith by both parties and reduced to writing and

executed. If a written lease agreement is not executed by the Operator prior to the end of the option period as stated above, this option shall expire and this Agreement shall terminate in accordance with Article 11.

- 6. In the event the parties cannot agree, or Operator fails to, or is otherwise unauthorized, to enter into a new lease agreement, ownership of the building and other fixed improvements shall automatically revert to the City upon termination and the Operator shall have no further rights under this Agreement nor shall it have any interest in the Premises, buildings or improvements, constructed thereon.

Section 3.03 Ground Rent.

- 1. Subject to annual increases as set forth in Section 3.05 below, the Operator shall pay an annual ground site rent of \$17,500.00, which is equal to \$.37 per square foot for 47,300 square feet of improved ground site (see Exhibit B). Said agreed rent shall be paid in advance monthly in twelve (12) equal installments of \$1,458.34 on the first day of each month. All payments are to be made at the office of the Morgantown Municipal Airport, 100 Hart Field Road, Morgantown, West Virginia 26505.
- 2. Security for Payment: In the event of a default as defined in Section 9. Paragraphs 1 & 2, it is hereby agreed to herein that the default will be cured and future rent, fees and commission payments will be made through a surety bond as acquired by the Operator as described in Section 3.09 in this section.
- 3. Special Business Startup Incentive: The City shall provide a special incentive while the hangar is being constructed to allow the Operator to establish the aviation business. During the first 180 days after the effective date of this lease, the Operator shall pay zero rent to the City. For the first twenty-four (24) months of this agreement, the Operator shall not pay any Commissions on gross receipts. At the end of this first twenty-four (24) months, the Operator may negotiate with the City on future Commissions based on aviation activity in Operator’s hangar.

Section 3.04 Commission on Gross Receipts.

- 1. Subject to annual increases as set forth in Section 3.05 below, the Operator shall pay a monthly commission of two percent (2%) of gross receipts. Said agreed commission shall be paid monthly by the fifteenth day of the following month. All payments are to be made at the office of the Morgantown Municipal Airport, 100 Hart Field Road, Morgantown, West Virginia 26505.
- 2. Security for Payment: In the event of a default as defined in Section 9. Paragraphs 1 & 2, it is hereby agreed to herein that the default will be cured, and future commission payments will be made through a surety bond as acquired by the Operator as described in Section 3.09 in this section.

Section 3.05 Future Adjustments of Rents and Fees.

The City reserves the right to adjust, or modify existing Airport fees and charges, or to establish additional fees and charges as necessary to maintain the financial integrity of the Airport through cost recovery and to make the Airport as self-sustaining as possible. Except for CPI adjustment of the annual ground site rent as noted below, all fees, rents and charges are subject to adjustment as a part of the City’s annual budget approval process. Airport Tenants and the general public are provided the opportunity to comment on proposed fees, rents and charges changes during the budget approval process.

Commencing on the first anniversary date of this agreement, and for each one (1) year period thereafter, the annual rental payment shall be adjusted by dividing the initial rental rate by the Mid-Atlantic All Urban Items Consumers Index (CPI-W) published immediately preceding the Effective Date of this Lease, **June 1, 2022**, and multiplying the quotient thereof by the last Index (CPI-W) published immediately preceding each such one (1) year lease period $\left(\left(\frac{\text{initial rental rate}}{\text{initial CPI-W}} \right) \times (\text{current CPI-W}) = \text{new rental rate} \right)$. At no time, however, shall said rental be less than the rental paid during the previous year period of this Agreement.

For purposes of this Agreement, the Consumers Price Index means the Index for "All Items" for Urban Wage Earners and Clerical Workers Commodity Groups for the Mid-Atlantic area as determined by the United States Department of Labor, Bureau of Statistics.

Should the United States Government revise its price index at any time, the parties hereto will follow such suggestions as the Government may issue for making an arithmetical changeover from one Index to another. Should the price index be wholly discontinued, then its successor or the most nearly comparable successor index thereof, adjusted back to the anniversary date, shall be used.

Section 3.06 Holding Over.

If Operator holds possession of the Premises after the expiration or termination of the Term, including any renewal term, by lapse of time or otherwise, the building and all improvements having reverted to the ownership of the City, Operator shall become a tenant at sufferance upon all of the terms contained herein, except as to Lease Term and Rent. During such holdover period, Operator shall pay to the City a monthly rental equivalent to one hundred fifty percent (150%) of the Rent payable by Operator to the City with respect to the last month of the Lease Term. The Operator shall also be obligated to pay rent on the building and improvements at a rate to be established by the City at that time. The monthly rent payable for such holdover period shall in no event be construed as a penalty or as liquidated damages for such retention of possession. Without limiting the foregoing, Operator hereby agrees to indemnify, defend and hold harmless the City, its beneficiary, and their respective agents, contractors and employees, from and against any and all claims, liabilities, actions, losses, damages (including without limitation, direct, indirect, incidental and consequential) and expenses (including, without limitation, court costs and reasonable attorneys' fees) asserted against or sustained by any such party and arising from or by reason of such retention of possession, which obligations shall survive the expiration or termination of the Lease Term. Nothing herein shall be construed as requiring City to allow Operator to hold over, and doing so shall not be a waiver of any of City's rights at termination.

Section 3.07 Late Charges.

The Operator shall pay to the City a late charge equal to 1.5% per month on all rent and fee charges which are 30 days past due. Said late charge shall commence on the past due amount from the date said payment was due and shall be computed to the date the past due amount is paid. This shall be in addition to, and in no way alters, any other rights reserved to the City, or existing in the City by virtue of the laws of the State of West Virginia, or by the terms of the Agreement.

Section 3.08 Future Adjustments of Rents and Fees.

The City reserves the right to adjust, or modify existing Airport fees, commissions, and charges, or to establish additional fees, commissions, and charges as necessary to maintain the financial integrity of the Airport through cost recovery and to make the Airport as self-sustaining as possible. All fees, rents and charges are subject to adjustment as a part of the City's annual budget approval process. Airport Tenants and the general public are provided the opportunity to comment on proposed fees, rents and charges during the budget approval process.

Section 3.09 Financial and Credit History.

On or before the commencement date of this agreement, Operator agrees to provide the with evidence of a good credit history, and information confirming the Operators financial ability to meet the financial obligations of this lease. The Operator should demonstrate that it has the capital improvement funding and the appropriate level of operating capital necessary to initiate the proposed construction and to cover all business operating expenses for at least the initial 12 month start up period of the business. Operator must also demonstrate that it has successfully met its financial obligations during the most recent eighteen (18) month period, without committing any material defaults and without any history of untimely payments for rentals, fees, and charges in its other business dealings.

In the absence of being able to demonstrate a good financial and credit history, the prospective Operator agrees to provided "security for payment" (Contract Security or surety bond) to assure City that Operator's financial obligations will be met. Such Contract Security may be in the form of (1) a personal or corporate guarantee by an individual or corporation having the good credit history mentioned in paragraph 1 above , or (2) a surety bond, letter of credit or other similar security acceptable to City in an amount equal to the

estimate of one (1) year of rentals, fees and charges payable by the Operator in order to guarantee the faithful performance of the Operator's obligations to the City under the agreement and the payment of all rentals, fees, and charges. Operator would be required to maintain such contract security in effect for the first two (2) years of the lease, during which period Operator commits no event default as detailed in the agreement. All forms of Contract Security must be in a form and with a surety company reasonably acceptable to City.

Section 3.10 Monthly Gross Revenue Report.

The Operator shall submit a Monthly Gross Revenues Report (see Exhibit B hereto) accurately reflecting all Gross Revenues and a listing of all customers for the month, by the 10th calendar day of the month following the month in which the services were performed and the Gross Revenues for such services were received or accrued. Such reports shall be signed and attested to by a corporate officer or other authorized representative of the Operator. The Commission of Gross Receipts fee due to the City under Section 3.03 shall be remitted together with this report, either by check drawn on a local bank or in cash. Failure of the Operator to accurately reflect Gross Revenues on the Monthly Report, or failure to remit the Commission of Gross Receipts fee in the correct amount along with the Monthly Report, shall result in the automatic termination of this Agreement. In the event that there are no Gross Revenues from any month, the Operator shall submit a report stating such fact.

Section 3.11 Annual Special Report Audit Required.

The Operator shall, within 90 days following the end of each 12 months of this Agreement, submit to the City's Airport Director a certified report, prepared and attested to by an independent Certified Public Accountant, as to the correct Gross Revenues per month and for the year for the Operator's operations under this Agreement. Said report shall be prepared in accordance with the American Institute of Certified Public Accountants' requirements for special reports. The first such report shall contain 12 full calendar months of operation under the percentage formula and any fraction of the first month. The last such report shall include the last day of operation. City may, upon request of the Operator, allow the Operator in the first year of Operator's operations to provide an audit for that portion of the year reflecting the Operator's fiscal year.

Section 3.12 Waiver of Annual Audit.

Notwithstanding the provisions of Section 3.10 above, if the annual Gross Revenues of the Operator for any year of this Agreement are less than \$250,000, the Operator may, without audit, certify its Gross Revenues for such year to the City's Airport Director. Such certification shall be in a form specified or approved by the City, shall be executed before a notary public, commissioned in the State of West Virginia, and subject to West Virginia code § 3-2-42, by a corporate officer of the Operator. If it is determined by the City as a result of an audit or inspection of the Operator's books and records, that the Operator has understated its Gross Revenues and that the corporate officers certification was therefore a false oath, such shall be considered an uncorrectable default hereunder, pursuant to which the City may terminate this Agreement and assess a 50% surcharge on the percentage fees due on the understated portion of the Gross Revenues. In addition, the City may seek its remedies under the City's False Claims ordinance or else file charges for the false oath, pursuant to Chapter 3 West Virginia statutes, and the annual audit waiver pursuant to the provisions of this Section 310 shall no longer be applicable for the remaining terms of this Agreement or any subsequent agreement between the City and the Operator.

ARTICLE 4
OPERATOR'S IMPROVEMENTS AND FUTURE CONSTRUCTION

Section 4.01 Construction of Improvements for Operator's Commercial Activities.

The Operator shall, at its sole cost and expense, construct on the demised premises, as provided in this Article 4, such buildings, structures, fencing, roadways, utility lines, additions, and improvements in furtherance of the purposes set forth in Article 2, and the Operator shall install herein and thereon such equipment and facilities as the Operator or the City deems necessary or desirable. At a minimum, Operator shall clear the land and construct a 10,000 square foot hangar, including building foundation; floor slabs; building frame; siding; roof; masonry and drywall partitions; hollow metal and wood doors; aluminum windows and doors; floor, wall and ceiling finishes; cabinet work; HVAC; plumbing, fire protection; lighting;

power; parking lots; onsite utilities; apron parking for aircraft and connection to taxiway; and other miscellaneous construction, together with Landscaping, including lawn, shrubbery, trees, bushes, vines and other plantings, and any further landscaping and fencing that may be required for the purposes of airfield security and public screening, and such other facilities necessary to meet the requirements of the Rules and Regulations (the “Operator’s Improvements”). **PROVIDED, HOWEVER**, that no building, structure, fencing, roadway, utility lines, addition or improvement of any nature shall be made or installed by the Operator without the prior written consent of the City as herein provided. Prior to the City giving such consent, the Operator may also be required to provide the City with proof that funds necessary to complete construction of the improvements have been irrevocably dedicated to such construction. All improvements constructed under this Agreement shall be in accordance with the Airport’s Tenant Improvement Manual/Minimum Standards as well as all other applicable laws, rules, regulations and ordinances.

Section 4.02 Time for Construction of Operator’s Improvements.

Construction of Operator’s Improvements on the site directly associated with effective date of this Agreement shall begin not later than **120 days** from the Effective Date of this Agreement and shall be completed no later than **12 months** from the Effective Date of this Agreement. In the event Operator shall fail to begin construction within the initial 120 day period, City shall have the right to terminate this Agreement through written notice with no further obligations being required of either party. In the event Operator shall fail to complete construction within the 12 month construction period, City shall have the right to terminate this Agreement through written notice, after filing a claim against the performance bond provider in accordance with Section 4.12 in order to fund the completion of the construction. Even if the agreement is terminated for non-performance, Operator shall remain obligated to pay any unpaid rent or other charges.

Section 4.03 Approvals for Operator’s Improvements and All Future Construction.

The Operator covenants and agrees that prior to the preparation of detailed construction plans, specifications and architectural renderings of any such building, structure, roadway, addition or improvement, it shall first submit plans showing the general site plan, design and character of improvements and their locations, including drainage and roadways to the Airport for approval. The Airport agrees to review such plans within 30 days of receipt from the Operator. The Operator covenants and agrees that prior to the installation or construction of any present and future building, roadway, structure, addition or improvement on the demised premises, it shall first submit to the Airport for approval, final detailed construction plans and specifications and architectural renderings stamped and approved by registered architects and engineers, and that all construction will be in accordance with such plans and specifications and the Airport’s Tenant Improvement Manual/Minimum Standards and all other applicable rules, regulations, laws and ordinances. The Airport’s approval of the documents, does not obligate other City departments to the timeline indicated above.

Section 4.04 Extension of Utilities or Special Facilities.

The Operator shall contract, and extend, at its sole expense, all necessary utility, electrical, water, sewer and other lines needed to service any hangars, buildings and facilities constructed as part of Operator’s Improvements or as part of future construction on the demised premises. All utilities installed shall be underground and shall be incased in concrete or other protective means as to prevent inadvertent disruption of utilities when future excavation is conducted in area. The Operator shall construct for the demised premises, at its expense, connecting roadways and taxiways to the existing roadway and taxiway systems. All utility extensions and other construction shall be in accordance with all applicable Codes, ordinances and the Tenant Improvement Manual.

Section 4.05 Construction of Additional or Future Improvements.

The Operator has the right to construct additional buildings or improvements on the demised premises. Prior to such construction, the Operator agrees to submit to the City for approval, final plans, specifications and architectural renderings prepared by registered architects and engineers, and comply with all other requirements of Section 4.03 of this Section 4. The use of additional or future facilities shall also be subject to the terms and conditions hereof.

If any additional building or any improvement, approved by the City, during the remaining term hereof is not substantially completed within 12 months of the date of the City’s approval of the Plans therefore, the City

shall have the right to terminate this Agreement pursuant to Article 9 hereof, and make appropriate claims against required performance bonds to complete construction, unless it is determined by the City, after notice and opportunity for comment, that there were delays beyond the control of the Operator. Causes or conditions of delay that are beyond the control of the Operator (hereinafter referred to as "Force Majeure"), as, by way of example but not limitation, strikes, weather, inability to obtain labor or materials, governmental restriction, enemy action, civil commotion, fire or other casualty, or failure of the City to carry out its obligations, then the period for completion of construction shall be extended by the number of days of delay resulting from the Force Majeure.

Section 4.06 Alterations or Repairs to Premises.

The Operator shall not construct, install, remove and/or modify external or structural portions of the buildings constructed upon the demised premises without the prior written approval of the City. The Operator shall submit for approval by the City, its plans and specifications for any proposed project as well as complying with all applicable code requirements and such other conditions considered by the City to be necessary. The Operator can make internal improvements to the demised premises without the City's consent as long as said changes meet all applicable Code requirements.

Section 4.07 Lien Indemnification.

In the event any person or corporation shall, as a result of construction work being performed by or for the Operator, attempt to assess a lien against the demised premises, the Operator shall hold the City harmless from such claim, including the cost of defense.

Section 4.08 Cost of Construction and Alterations.

Within thirty (30) days of completion of the construction or alterations, the Operator shall present to the City for examination and approval a sworn statement of the construction and/or alteration costs. Construction and/or alteration costs for the purpose of this Section are hereby defined as all money paid by the Operator for actual site preparation, construction or alteration, including architectural and engineering costs plus pertinent fees in connection therewith. In the event that the Operator makes further improvements or alterations on the demised premises, the use thereof shall be enjoyed by the Operator during the term hereof without the additional rental therefore.

Section 4.09 As-built Drawings.

Within ninety (90) days following completion of any construction by the Operator and any subsequent additions, alterations or improvements, the Operator shall present to the City a complete set of "as-built" drawings including, but not limited to, architectural renderings, specifications, plumbing, and electrical plans.

Section 4.10 Security Interest on Leasehold Improvements for Construction.

Operator shall have the right to place a security interest, hereinafter referred to as "the mortgage," upon, and for, improvements financed by the Operator on the Premises only and shall not encumber or be a lien upon the land. All of the Operator rights and obligations under this Agreement shall inure to the benefit of such mortgagee named in said mortgage ("the Lender") and its assignees. The rights granted in this Section 4.10 are contingent upon Operator providing the City with copies of the signed loan documents and security agreements, and the name, address and mailing address of the lender for purposes of providing any notices thereto.

The lender named in such a mortgage shall have the following rights and shall be subject to the following duties:

1. The term of the mortgage may not exceed the total twenty (20) year term of this Agreement, including Renewal Term.
2. In the case of a default by the Operator under the terms of the mortgage against Operator's building, the Lender shall have the right to assume the rights, benefits, duties and obligations granted and imposed upon the Operator under the terms of this Agreement, including the obligation to pay all delinquencies in rent or other obligations of the Operator. Such Lender shall have the right to assign its interest in this Agreement to a third party with the City's approval which will not be unreasonably

withheld, **PROVIDED** that such assignee meets all of the requirements of this Agreement and possesses the financial and managerial experience to perform the commercial activities specified in this Agreement.

3. Any Lender acquiring ownership and possession of the building(s) located upon the Premises shall have a reasonable period of time, not to exceed 30 days, to provide or arrange for providing all the services that are required to be provided by the Operator under the terms of this Agreement, or a tenant that is otherwise satisfactory to the City.
4. All notices required by Section 14.14 hereof to be given by City to Operator shall also be given to Lender at the same time and in the same manner. Upon receipt of such notice, Lender shall have the same rights as Operator to correct any default.
5. Within ten (10) days after Operator's request, City shall deliver an Estoppel Certificate, a declaration to any person designated by Operator:
6. ratifying this Agreement;
7. Stating the commencement and termination dated and the rent commencement date; and
8. certifying
9. that this Agreement is in full force and effect has not been, to the knowledge of the City, assigned, modified, supplemented or amended (except by such writings as shall be stated);
10. that all conditions under this Agreement to be performed by Operator have been satisfied (stating exceptions, if any);
11. no defenses or offsets against the enforcement of this Agreement by Operator exist (or stating those claimed);
12. the date to which rent has been paid, and such other information as Operator reasonably requires.

Section 4.11 Ownership of Improvements.

A. Ownership.

1. For the initial term and any extension or renewal term, the building constructed and paid for by the Operator belongs to the Operator and may be encumbered by a security interest for construction funding only as provided for in Section 4.10 hereof. No other lien or encumbrance shall be permitted except as provided for in Section 4.10 hereof other than by lien of the City on account of default by the Operator in payment of sums required to be paid to the City under the terms of this agreement.
2. During the initial term of this Agreement or any renewal term, the Operator is obligated to pay ground rent only and is not obligated to pay rent on the buildings and improvements erected and installed by Operator. If, upon expiration of the initial term or any renewal term, Operator's occupancy is extended by mutual agreement of the parties, it is intended that Operator (*who constructed the original improvements*) will continue to pay only ground rent. However, Operator shall no longer have the right to sell, assign, mortgage or encumber the Premises or the buildings and improvements erected thereon. At the cessation of Operator's possession and occupancy at the conclusion of the term or any extension or renewal, the Premises together with all of the buildings and improvements shall automatically revert to and become the property of the City. Any further lease of the Premises by the City to any other party shall be based upon the fair market rental value of the all land and buildings on the Premises according to the City's then applicable leasing policies.

B. Sale of Building.

1. In the event Operator, its successors and/or assigns, including any lender succeeding to the right of Operator by virtue of foreclosure or repossession proceeding, desires to sell the building(s) owned by the Operator, during the term of this Agreement, including renewal terms, it shall give written notice to the City offering to sell the building(s) to the City for the price and on the terms stated in said written offer. City shall have 30 days from the date of receipt of said written offer to accept the same. If the City accepts said offer, closing shall occur no later than 30 days from the date of acceptance. In the event the City does not accept the offer, the Operator shall then be free to enter into an agreement for sale of the building(s) to any other party meeting the qualification standards of this Agreement for providing required services and who satisfies all of the terms and conditions of this Agreement or is otherwise acceptable to the City subject, however, to a right of first refusal granted to the City as hereinafter described.
2. The Operator, its successors and/or assigns, including any lender acquiring the building(s) by foreclosure or repossession, shall give written notice to the City of a bona fide good faith offer received from a third party which the Operator intends to accept, which written notice shall state the price and terms of sale. The City shall thereafter have a period of 30 days from the date of receipt of said notice in which to give notice to the Operator of the City's intention to purchase Operator's building(s) for the same purchase price and on the same terms as contained in the bona fide good faith offer from the third party. Should the City fail to give such written notice within said 30 days, or should it earlier in writing indicate its intention not to purchase Operator's building, then Operator may thereafter convey the property to the third party on the same terms and conditions as rejected by the City. In the event, however, that the offer by said third party as conveyed to the City does not result in a completed sale, the Operator shall continue to have the obligation to notify the City as provided herein of any subsequent bona fide good faith third party offer.

C. Assignment/New Ground Lease.

1. In the event of a sale of the building to a third party, this Agreement may be assigned to the purchaser of the building(s) as long as the assignee agrees to use the Premises, and meet the operating standards described herein, and in the Airport's Rules and Regulations and Minimum Standards. The proposed assignee must agree to be bound by all of the terms and conditions herein, PROVIDED that the assignee is acceptable and meets all the commercial operating requirements noted in Section 2 above.
2. The City reserves the right to require assignee, as a condition to City's consent to assignment, to enter into a new commercial operating agreement and lease if City determines in its sole discretion that the then legal and operational requirements of the Airport, including Rules and Regulations and Minimum Standards, require changes relating to such items as the commercial operating authority, additional or changes to the uses of leased property, changes in term or conditions of the land lease, or changes in Airport rates and charges.

Section 4.12 Performance Bonds.

Prior to commencement of any construction hereunder, Operator shall furnish a performance bond and a labor and material payment bond ("bonds") to be kept in force throughout the period of construction and for ninety (90) days thereafter, as required by state code outlined in Chapter 5, Article 22, Chapter 38. The bonds shall be in the amount of the construction cost covering faithful performance of the Operator's obligations hereunder and the payment of all obligations arising in connection with the construction, free of liens upon the Premises. The bonds shall name the City as obligee, and shall be written by surety companies qualified to do business in the state of West Virginia, under proper certificate of authority, and in such form and with such sureties as the City may reasonably approve.

ARTICLE 5
OBLIGATIONS OF OPERATOR

Section 5.01 Net Lease.

It is the intention of the parties that this Agreement is what is commonly known as a "net-net-net" lease or "carefree" lease, and the City's obligations are limited to those it has expressly undertaken in this Agreement. Accordingly, Operator shall pay all expenses relating to the Premises during the Term of this

Agreement as and when the same become due and payable, including, but not limited to, all taxes and assessments, insurance premiums, maintenance expenses, expenses of public utilities and any other expense of any type or nature so that the Agreement is absolutely net to the City. It shall be the sole responsibility of the Operator to maintain, repair and operate the entirety of the Premises, and the improvements and facilities constructed thereon, at the Operator's sole cost and expense.

Section 5.02 Maintenance and Operation.

The Operator shall maintain the Premises at all times in a safe, neat and clean condition, and shall not permit the accumulation of any trash, paper, or debris on the Airport premises. The Operator shall repair all damage to the Premises caused by its employees, patrons, or its operation thereon; shall maintain and repair all equipment thereon, including any buildings and improvements; and shall repaint the buildings as necessary.

1. Upon occupancy, the Operator shall be responsible for and perform all maintenance, including but not limited to:
 - a. Janitorial services, providing janitorial supplies, window washing, rubbish, and trash removal.
 - b. Supply and replacement of light bulbs in and on all buildings, obstruction lights and replacement of all glass in building, including plate glass.
 - c. Cleaning of stoppages in plumbing fixtures, drain lines and septic system to the first manhole outside the Premises.
 - d. Replacement of floor coverings.
 - e. Maintenance of all building and overhead doors and door operating systems including weather stripping and glass replacement.
 - f. Building interior and exterior maintenance, including painting, repairing and replacement.
 - g. Repair or replacement of equipment and utilities to include electrical, mechanical and plumbing in all buildings, including but not limited to air conditioning and heating equipment. All repairs may be made without the City's consent as long as said changes meet all applicable code requirements.
 - h. The Operator shall be responsible for all snow removal on the Premises and auto parking areas if any in its use. The Operator shall do so in a manner which does not interfere with airport operations or damage property.
 - i. The Operator shall perform all maintenance on Premises or Operator-constructed structures, pavements and equipment and utilities to the point where connected to the main source of supply or the first manhole outside of the Premises or to the utility corridor.
 - j. The Operator shall advise the City and obtain Operator's consent in writing before making changes involving structural changes to buildings or premises, modifications or additions to plumbing, electrical or other utilities. Any penetration of the roof shall be considered a structural change.
 - k. The Operator is responsible for maintaining electric loads within the designed capacity of the system. Prior to any change desired by the Operator in the electrical loading which would exceed such capacity, written consent shall be obtained from the Airport Director of the City.
 - l. The Operator shall maintain and replace all lights in and on the building and on the Premises.
 - m. The Operator shall provide and maintain hand fire extinguishers for the interior of all buildings, shop, parking, storage and ramp areas in accordance with applicable safety codes.
 - n. The Operator shall maintain all landscaping and grounds as originally approved and installed, to include, but not limited to, the mowing of grass, trimming of bushes, and watering of trees.
 - o. The City's Airport Director, at his discretion, shall be the sole judge of the quality of maintenance; and the Operator, upon written notice by the City to the Operator, shall be required to perform whatever maintenance the City deems necessary. If said maintenance is not undertaken by the Operator within thirty (30) days after receipt of written notice, the City shall have the right to enter upon the Premises and the buildings and improvements constructed thereon, and perform the necessary maintenance, the cost of which shall be borne by the Operator as additional rent which shall be paid by the Operator to the City in full within ten (10) days after the same has been billed.

Section 5.03 Utilities.

The Operator shall assume and pay for all costs or charges for utilities services furnished to and used by the Operator during the term hereof and Operator shall have the right to connect to any and all storm and

sanitary sewers and water and utility outlets at its own cost and expense for any future improvements; and the Operator shall pay for any and all service charges incurred therefore.

Section 5.04 Trash, Garbage, Etc.

The Operator shall pick up, and provide for, a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage, hazardous materials and other refuse caused as a result of its operations. The Operator shall provide and use suitable covered metal receptacles (dumpsters) for all such garbage, trash, and other refuse. Receptacles shall not be located on the aviation side of the Operator’s facilities. Piling of boxes, cartons, barrels, pallets, debris, or similar items in an unattractive or unsafe manner, on or about the Premises, shall not be permitted.

Section 5.05 Signs.

The Operator shall not erect, maintain, or display upon the outside of any improvements on the Premises any billboards or advertising signs without prior written approval by the Airport Director.

Section 5.06 Nondiscrimination.

1. The Operator, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (A) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (B) that in the construction of any improvements on, over, or under such land and the furnishing of services thereof no persons the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; (C) that the Operator shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and Transportation, and said Regulations may be amended, to the extent that said requirements are applicable, as a matter of law, to the Operator.
2. With respect to the Premises, the Operator agrees to furnish services on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; **PROVIDED**, that the Operator may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
3. Operator agrees for itself and its subcontractors not to discriminate against any employee or applicant for employment, with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight or marital status or because of a handicap that is unrelated to the individual’s ability to perform the duties of a particular job or position. A breach of this covenant shall be regarded as a material breach of this agreement.
4. Operator assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E (“Subpart E”), to ensure 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 Subpart E. Operator assures that no person shall be excluded on these grounds from participating or receiving the services or benefits of any programs or activity covered by Subpart E. Further, Operator agrees that it will require that its covered sub-organizations provide assurance to the City that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by Subpart E, as to the same effect.
5. If Operator is covered by 49 CFR Part 23, then Operator agrees that this Agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR Part 23, Subpart F. Operator agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F. Operator agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

Operator agrees that it shall insert the above covenants and assurances in any agreement by which Operator grants a right or privilege to any person, firm or corporation to render accommodations or service to the public on the Premises leased or occupied by Operator.

In the event of breach of any of the above covenants, the City shall have the right to terminate the Agreement and to reenter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued. It is further understood and agreed that the City shall have the right to take such action as the Federal Government may lawfully direct to enforce this obligation. In the event further covenants and/or assurances are required of the City by the Department of Transportation or FAA which are applicable to this Agreement, Operator agrees that it will conform with the provisions thereof so long as this Agreement is in effect.

Section 5.07 Observance of Statutes and Regulations.

The granting of this Agreement and its acceptance by the Operator is conditioned upon the right to use the Airport facilities in common with others authorized to do so, **PROVIDED, HOWEVER,** that the Operator shall observe and comply with any and all requirements of the constituted public authorities and with all federal, state, or local statutes, ordinances, regulations and standards applicable to the Operator for its use of the Premises, including but not limited to, rules and regulations or standards promulgated from time to time by the City for the administration of the Airport.

Section 5.08 Hazard Lights.

The Operator shall, at its expense, provide and maintain hazard lights on any future structure erected by the Operator on the Premises, if required by the City and Federal Aviation Administration regulations. Any hazard lights so required shall comply with the specifications and standards established for such installations by the FAA.

Section 5.09 Airport Security.

The Operator recognizes the City's required compliance with Federal Aviation Regulations concerning airport security and agrees to comply with the Airport's Security Plan as it relates to its use of the Premises and the Airport's public facilities.

**ARTICLE 6
OBLIGATIONS OF THE CITY**

Section 6.01 Operation as a Public Airport.

The City covenants and agrees that at all times it will operate and maintain the Airport facilities, as a public airport consistent with, and pursuant to, the "Sponsor's Assurances" given by the City to the United States Government under Federal Airport Act.

Section 6.02 Ingress and Egress.

1. Upon paying the rental prescribed herein, and performing the covenants of this Agreement, the Operator shall have the right of ingress to, and egress from, the Premises for the Operator, its officers, employees, agents, servants, customers, vendors, suppliers, patrons, and invites over the roadway serving the area of the Premises. Airport roadways shall be used jointly with other tenants of the Airport, and the Operator shall not interfere with the rights and privileges of other persons or firms using said facilities and shall be subject to such weight and type use restrictions as the City deems necessary.
2. The City reserves the right to periodically assess the joint users of any such facilities for the maintenance, upkeep or replacement of such facilities on an allocation basis as may be reasonably established by the City in the future after notice and opportunity to comment by all users; **PROVIDED,** the City may not discriminate among the same class of users.

**ARTICLE 7
CITY'S RESERVATIONS**

Section 7.01 Improvement, Relocation or Removal of Structure.

The City, in its sole discretion, reserves the right to further develop or improve the aircraft operating area(s) and other portions of the Airport, including the right to remove or relocate any structure on the Airport, as it sees fit, and to take any action it considers necessary to protect the serial approaches of the Airport against obstructions, together with the right to prevent the Operator from erecting, or permitting to be erected, any buildings or other structure on the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

In the event the City requires the Premises for expansion, improvements, development of the airport, the City reserves the right, on a twelve (12) month notice, to relocate or replace the Operator's improvements, in substantially similar form at another generally comparable location on the Airport. This Agreement shall be amended to include any such new ground site. All other Agreement terms shall remain in full force and effect. In the event of such relocation or replacement, the City agrees to suspend rental during any period such improvements are unusable.

The City also reserves the right to relocate the Operator to a non-aviation ground site in the event the Operator's operations no longer require access to the Airport's ramps, taxiways, runways or other aviation facilities.

Section 7.02 Inspection of Premises.

The City, through its duly authorized agent, shall have at any reasonable time with prior notice, the full and unrestricted right to enter the Premises for the purpose of periodic inspection for fire protection, maintenance and to investigate compliance with Rules and Regulations and the terms of this Agreement.

Section 7.03 Audit Books and Records of Operator.

The City reserves the right to audit Operator's books and records for compliance with this Agreement, Airport Rules and Regulations and the payment of any Airport rates and charges payable to City now or imposed in the future. Operator shall maintain adequate accounting records in accordance with generally accepted accounting principles, generally accepted auditing standards, the requirements of this Agreement, and the requirements of the City's Rates and Charges Schedule, Ordinance or resolution. Operator agrees to cooperate with the City upon request and agrees to allow access to Operator's books and records at its offices, the offices of Operator's accountant or at the City's offices during normal business hours. The operator shall not be required to maintain such books of account and records for more than three years after the end of each 12 months of this Agreement.

**ARTICLE 8
INDEMNITY AND INSURANCE**

Section 8.01 Indemnification.

1. The Operator agrees to indemnify, save, hold harmless and defend the City, its agents and employees, its successors and assigns, individually or collectively, from and against all liability for any claims and actions and all reasonable expenses incidental to the investigation and defense thereof, in any way arising out of or resulting from any acts, omissions or negligence of the Operator, its agents, employees, licensees, successors and assigns, or those under its control; in, on or about Premises or upon Premises; or in connection with its use and occupancy of Premises or use of Airport; **PROVIDED, HOWEVER,** that the Operator shall not be liable for any injury, damage, or loss occasioned by the negligence or willful misconduct of the City, its agents or employees. When knowledge of any action becomes known by the Operator or the City, they shall give prompt written notice to the other party.

2. The Operator shall indemnify, save, hold harmless, and defend the City, its agents and employees, its successors and assigns, individually or collectively, from and against all liability for any claims and actions and all expenses incidental to the investigation and defense thereof, in any way arising from or based upon the violation of any federal, state, or municipal laws, statutes, ordinances or regulations by the Operator's agents, employees, licensees, successors and assigns, or those under its control. The Operator shall not be liable for any claims, actions and expenses incidental to the investigation

and defense thereof, in any way arising from or based upon violation of any federal, state, or municipal laws, statutes, ordinances, or regulations by the City, its agents, employees, licensees, successors and assigns, or those under its control.

Section 8.02 Insurance.

1. Without limiting the Operator’s obligation to indemnify the City, the Operator shall provide, pay for, and maintain in force at all times during the term of this Agreement a policy of comprehensive general liability insurance to protect against bodily injury liability and property damage in an aggregate amount of not less than \$2,000,000.00 per occurrence; a policy of comprehensive automobile liability insurance on Operator’s owned vehicles only in a combined single limit of not less than \$1,000,000.00; statutory Workman’s Compensation insurance; and any other policies of insurance reasonably required by the City.
2. The aforesaid insurance amounts and types of insurance shall be reviewed from time to time by the City and may be adjusted by the City if the City reasonably determines such adjustments are necessary to protect the City’s interests. The Operator shall furnish the City, as evidence that such insurance is in force, a certified copy of the insurance Certificate including the City as an additional named insured within thirty (30) days after the policy(s) is issued. Said policies shall be in a form and content satisfactory to the City and shall provide for thirty (30) days written notice to the City prior to the cancellation of or any material change in such policies.

Section 8.03 Environmental Impairment.

1. The Operator will comply with any environmental regulations affecting its operations throughout the term of this Agreement, including furnishing of insurance or other security against environmental impairment risks as required by the City.
2. Operator shall defend, indemnify, protect, and hold the City harmless from and after the date of this Agreement from and against any and all claims, costs, fines, judgments, and liabilities, including attorney fees and costs arising out of or in connection with the presence, storage, use, or disposal of Hazardous Materials or contaminants in, on, under, or about the Premises caused by the acts, omissions, or negligence of Operator or Operator’s agents, employees, business invitees, contractors, or subcontractors. The City represents that as of the date of this Agreement, the City has no knowledge and is not aware of any Hazardous Materials or contaminants in, under or about the Premises. Operator’s obligations under this paragraph shall survive the expiration or earlier termination of the term of the lease. For purposes of this Agreement, Hazardous Materials means any flammables, explosives, radioactive materials, petroleum or petroleum byproducts, minerals, metals, chemical substances, asbestos or asbestos-containing materials, hazardous or toxic substances, or any other materials or wastes as are presently defined in or regulated under the environmental laws and the Rules and Regulations.

Section 8.04 Fire and Extended Coverage Insurance.

The Operator shall, at its expense, procure and keep in force at all times during the term of this Agreement with a company suitable to the City, broad form insurance on the building(s) and other improvements on the Premises against loss and damage by fire, aircraft and extended coverage perils. The Operator shall furnish evidence of insurance in an amount not less than the full replacement value of the improvements. The term “full replacement value” shall mean the actual replacement cost from time to time, less exclusions provided in the normal fire insurance policy. Insurance shall name the City as an additional named insured and shall provide that the City receive thirty (30) days’ notice of expiration or cancellation.

Section 8.05 Waiver of Subrogation.

Operator, for itself and its respective successors and assigns (including, without limitation, any person, firm or corporation which may become subrogated to any of its rights) waives any and all rights and claims for recovery against City, and its officers, employees, agents and assigns, or any of them, on account of any loss or damage to any of its property located on the Premises insured under any valid and collectible insurance policies, to the extent of any recovery collectible under such insurance policies. Each insurance policy carried by Operator and insuring all or any part of such property must provide that the insurance company waive all right of recovery by way of subrogation against the City.

Section 8.06 Application of Insurance Proceeds.

If the fixed improvements placed upon the Premises shall be partially or totally destroyed or damaged, the Operator and the City, within thirty (30) days of the damage shall decide whether or not to proceed with restoration. If the City and the Operator elect not to restore the same to their previous condition, the proceeds of insurance payable by reason of such loss remaining after payment in full of the mortgage or bond debt and costs to return the site to its original condition, shall be apportioned between the City and the Operator, with the City receiving the same proportion of such proceeds as the then unexpired portion of the Agreement term bears to the full Agreement terms, including renewal options, and the Operator receiving the balance. The Agreement shall then be canceled. If the damage results from an insurable cause and if the City elects to have the Operator restore Premises with reasonable promptness, or the City and Operator decide to construct the new building(s) on another site, the Operator shall be entitled to receive and apply the entire proceeds of any insurance covering such loss to said restoration, including applicable site clean-up, in which event this Agreement shall be appropriately amended as necessary and continue in full force and effect.

Section 8.07 Performance Bonds.

The Operator shall cause a surety bond to be issued in the amount of 100% of the building and site development construction costs, prior to the beginning of any construction financed by the Operator or for the restoration of Premises in accordance with Section 8.05 above.

Section 8.08 Destruction of Premises (Uninsured Cause).

In the event of damage to or destruction or loss of the building or buildings by an uninsured cause, Operator shall decide, within thirty (30) days of the event, whether it will repair, restore, rebuild, or raise said building or buildings. Within sixty (60) days of the event, Operator shall initiate restoration or raising activities and complete those activities within one hundred twenty (120) days of the event unless otherwise agreed by the City. In the event Operator fails to take action as noted above, this Agreement may be terminated and City shall have the right to raise the building(s) and return the site to its original condition. Operator shall be liable for reimbursing the City for all costs incurred.

ARTICLE 9
CANCELLATION BY THE CITY

Section 9.01 Events of Default by Operator.

Each of the following events shall constitute an "Event of Default by Operator":

1. Operator fails to pay rentals, fees and charges when due, and such default continues for a period of ten (10) days after receipt of written notice from the City that such non-payment constitutes an event of default.
2. Operator fails after receipt of written notice from the City to keep, perform or observe any term, covenant or condition of this Agreement, other than as set forth in paragraph 1 (above) and such failure continues for thirty (30) days after such receipt, or if by its nature such event of default by Operators cannot be cured within such thirty (30) day period, Operator fails to commence to cure or remove such event of default by the Operator within said thirty (30) days and to cure or remove same as promptly as reasonably practicable.
3. Operator abandons the premises. Operator's intent not to re-occupy the premises may be presumed upon expiration of ten (10) days after receipt of written notice from the City that it believes in good faith that Operator has abandoned the premises.
4. Operator shall become insolvent, shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, shall file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under and other law or statute of the United States or of any state thereof, or shall consent to the appointment of a receiver, trustee, or liquidation of all or substantially all of its property.

- 5. An Order for Relief shall be entered at the request of Operator or any of its creditors under the federal bankruptcy or reorganization laws or under any law or statute of the United States or any state thereof.
- 6. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Operator and shall not be dismissed within thirty (30) days after the filing thereof. Operator shall pay to the City all reasonable costs and fees, including attorney and accounting fees and expenses, incurred by the City in the exercise of any remedy in the event of any default by the Operator.
- 7. By or pursuant to, or under, any legislative act, resolution or rule, or any order of decree of any court or governmental board or agency, an officer, receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of Operator and such possession or control shall continue in effect for a period of fifteen (15) days.
- 8. Operator shall become a corporation in dissolution, or voluntarily or involuntarily forfeit their corporate charter, other than through merger with a successor corporation.
- 9. The rights of the Operator hereunder shall be transferred to, pass to, or devolve upon, by operation of law or otherwise, any other person, firm, corporation or other entity, as a result of any bankruptcy, insolvency, trusteeship, liquidation or other proceedings or occurrence described in Subsections 4 through 8 above.
- 10. Operator defaults with respect to its commercial activity operating authorization under Section 2.01.

Section 9.02 Remedies for Operator’s Default.

- 1. Upon the occurrence of an “Event of Default by the Operator,” Operator shall remain liable to the City for all arrearages of rentals, fees or charges payable hereunder and for all preceding breach(es) of any covenant herein contained. The City, in addition to the right of termination, and to any other rights or remedies it may have at law or in equity, shall have the right of re-entry and may remove all Operator’s persons and property from the Premises. Upon any such removal, Operator’s property may be stored in a public warehouse or elsewhere at the cost of, and for the account of, the Operator. Should the City elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided by law, it may, at any time subsequent to an “Event of Default by the Operator,” either terminate this Agreement or re-let the Premises and any improvements thereon, or any part thereof, for such term or terms (which may be for a term extending beyond the term of this Agreement) at such rentals, fees and charges, and upon such other terms and conditions, as the City, in its sole discretion, may deem advisable, with the right to make alterations repairs or improvements on said Premises. No re-entry or re-letting of the Premises by the City shall be construed as an election of the City’s part to terminate this Agreement, unless a written notice of such intention is given to the Operator. In re-letting the Premises, the City shall make a good faith effort to obtain terms and conditions no less favorable to itself than those contained herein and otherwise seek to mitigate any damage it may suffer as a result of the “Event of Default by the Operator.”
- 2. Unless the City elects to terminate this Agreement, the Operator shall remain liable for and promptly pay all rentals, fees and charges accruing hereunder until termination of this Agreement at the expiration date set forth herein.
- 3. In the event that the City re-lets the Premises, rentals, fees and charges received by the City from such re-letting shall be applied: first, to the payment of any indebtedness other than rentals, fees and charges due hereunder from the Operator to the City; second, to the payment of any cost of such re-letting; third, to the payment of rentals, fees and charges due and unpaid hereunder; and, the residue, if any, shall be held by the City and applied in payment of future rentals, fees and charges as the same may become due and payable hereunder. Should that portion of such rentals, fees and charges received from such re-letting applied to the payment of rentals, fees and charges due hereunder be less than the rentals, fees and charges payable during the applicable period, Operator shall pay such deficiency to the City. The Operator shall also pay to the City, as soon as ascertained, any costs and expenses incurred by such re-letting not covered by the rentals, fees and charges received from such re-letting.

4. Notwithstanding anything to the contrary in this Agreement, if a dispute arises between the City and Operator with respect to any obligation or alleged obligation of the Operator to make payment(s) to the City, the payment(s) under protest by the Operator of the amount claimed by the Operator to be due shall not waive any of the Operators' rights, and if any court or other body having jurisdiction determines all, or any part, of the protested payment was not due, then the City shall as promptly as reasonably practicable reimburse the operator any amount determined as not due plus interest on such amount at the highest rate allowable under West Virginia law.
5. Operator shall pay to the City all reasonable costs, fees (including attorneys & accountants) and expenses incurred by the City in the exercise of any remedy upon an event of default by the Operator.
6. Any remedy provided by law.
7. All remedies available to the City are cumulative and no one remedy will be exclusive of another remedy conferred by law or this Agreement.

ARTICLE 10
CANCELLATION BY OPERATOR FOR EVENTS OF DEFAULT BY CITY

Section 10.01 Event of Default by City.

Each of the following events shall constitute an "Event of Default by City":

1. The City fails, after receipt of written notice from Operator, to keep, perform or observe any term, covenant or condition herein contained to be kept, performed or observed by the City and such failure continues for thirty (30) days; or, if, by its nature, such "Event of Default by City" cannot be cured within such thirty (30) day period, the City fails to commence to cure or remove such "Event of Default by City" within said thirty (30) days and to cure or remove the same as promptly as reasonably practicable.
2. The City closes the Airport to flights in general or to the flights of the Operator, for reasons other than weather, acts of God or other reasons beyond its control, and fails to reopen the Airport to such flights within sixty (60) days of such closure.
3. The City is permanently closed as an airport by act of any federal, state or local government agency having competent jurisdiction.
4. The City is unable to use the Airport for a period of at least sixty (60) days due to any law or any order, rule or regulation of any appropriate governmental authority having jurisdiction over the operations of the airport, or any court of competent jurisdiction issues an injunction in any way preventing or restraining the use of the Airport, or any part thereof, for airport purposes, and such injunction remains in force for a period of at least sixty (60) days.
5. The United States Government or any authorized agency of the same (by executive order or otherwise) assumes the operation, control or use of the Airport and its facilities in such a manner as to substantially restrict Operator from conducting its operations, and such restrictions shall continue for a period of at least sixty (60) days.

Section 10.02 Remedies for City's Default.

Upon the occurrence of an "Event of Default by City," the Operator shall have the right to suspend or terminate this Agreement and all rentals, fees and charges payable by Operator under this Agreement shall abate during a period of suspension or shall terminate, as the case may be. In the event that Operator's operations at Airport should be substantially restricted by action of any governmental agency having jurisdiction thereof, then Operator shall, in addition to the rights of termination herein granted, have the right to a suspension of this Agreement, or part thereof, and abatement of an equitable proportion of the payments due hereunder, from the time of giving written notice of such election until such restrictions shall

have been remedied and normal operations restored. In addition to its remedy of termination, the Operator shall be entitled to all other remedies available to it by law or equity.

**ARTICLE 11
RIGHTS UNDER TERMINATION**

Section 11.01 Fixed Improvements.

It is the intent of this Agreement that the leasehold improvements, alterations and items affixed thereto shall be and remain the property of the Operator during the entire term of this Agreement or any extension or renewal. Upon termination of this Agreement or any extension or renewal, ownership of leasehold improvements, alterations and items affixed thereto shall automatically revert to the City and the Operator shall have no further rights under this Agreement nor shall it have any interest in the Premises, buildings or improvements, constructed thereon. Alternatively, the City may decide to have the Operator dismantle and remove the as constructed hangar and return the site to the condition it was in or better as it was prior to the beginning of this Agreement.

Section 11.02 Personal Property.

Upon termination of this Agreement, the Operator shall remove all personal property, and items not affixed, from the Premises within ninety (30) days after said termination and restore the Premises to its original condition. If the Operator fails to remove said personal property, said property shall revert to City ownership and may thereafter be removed by the City at Operator's expense.

**ARTICLE 12
ASSIGNMENT AND SUBLETTING**

Section 12.01 Assignment.

Except as otherwise provided in Section 4.10 hereof, the Operator shall not assign this Agreement, or any part hereof, in any manner whatsoever, or assign any of the commercial operating privileges recited herein without the prior written consent of the City and under such terms and conditions as City may impose as set forth in Section 4.11.C. The term "assignment" includes, without limitation, a transfer of a majority in interest of the ownership of Operator or transfer by operation of law. **PROVIDED, HOWEVER**, in the event the City approves such assignment, Operator shall remain liable to the City for the remainder of the term of this Agreement to pay to the City any portion of the rental and fees provided for herein upon failure of the assignee to pay the same when due. Said assignee shall not assign said Agreement except with the prior written approval of the City and the Operator herein, and any assignment by the Operator to any third party shall contain a clause to this effect.

Section 12.02 Subletting.

Operator shall not sublet the whole of the Premises without the prior written consent of City, which may be withheld in City's sole discretion. **PROVIDED, HOWEVER**, Operator may sublet portions of the hangar to airplane owners without the City's prior written consent, in pursuance of Operator's operating authority set forth in Sections 2.01 and 2.02 above. The operator shall ensure all individuals subletting space in the premises have commercial operating or concession agreements with the Airport, prior to sublet of space. *In that event, Operator shall maintain a current list of sublease / rental tenants on file with the City including the name, address, phone number, aircraft type, and N-number of the aircraft, of each tenant.*

**ARTICLE 13
QUIET ENJOYMENT**

The City covenants that the Operator, upon payment of the rentals reserved herein and the performance of each and every one of the covenants, agreements and conditions on the part of the Operator to be observed and performed, shall and may, peaceably and quietly, have, hold and enjoy the Premises for the term of this Agreement, free from molestation, or disturbance.

**ARTICLE 14
GENERAL PROVISION**

Section 14.01 Non-Interference with Operations of Airport.

The Operator, by accepting this Agreement, expressly agrees for itself, its successors and assigns, that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft at the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the Operator.

The City shall maintain and keep in repair the Airport landing areas, including taxiways and aircraft parking aprons, and shall have the right to direct and control all activities of the Operator in this regard.

Section 14.02 Attorney's Fees.

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover interest and its reasonable attorney's fees.

Section 14.03 Taxes and Special Assessments.

The Operator shall pay any leasehold interest tax assessed on said Premises and all personal property taxes which may be assessed against equipment, merchandise, or other personal property belonging to the Operator located on the Premises, or other permitted portions of the Airport. The Operator shall pay all real estate taxes attributed to the Operator's leasehold interest and all other real estate taxes which may be levied and assessed which are attributed to the Operator's leasehold interest in the Premises. The Operator shall pay all personal property taxes which may be levied and assessed against equipment, merchandise or other personal property belonging to the Operator located on the Premises. The Operator shall pay all sales or use taxes and assessments, Business & Occupancy taxes, license fees or other charges of any kind or nature, without exception, levied or assessed, arising out of the activities conducted on, and/or the occupancy of, the Premises.

Section 14.04 Right to Contest.

The Operator shall have the right to contest the validity or amount of any tax, assessment or charge, lien or claim of any kind in with respect to the Premises. Operator shall, if the City requires the same in writing and if the taxes or other assessments have not been paid under protest or otherwise escrowed or provided for, furnish reasonable security for the payment of all liability, costs and expenses at the end of the litigation, and Operator, so long as the matter shall remain undetermined by final judgment, shall not be considered in default hereunder by the nonpayment thereof; **PROVIDED, HOWEVER**, that Operator shall not, under these provisions, permit the premises or any buildings or improvements situated thereon, to be sold or forfeited, and failure by the Operator to do what is necessary to prevent any such sale or forfeiture within ten (10) days from the publication or receipt of notice for sale or forfeiture, shall be deemed to be a default hereunder, and the City may, at its option, pay any such sum as may be required to avoid the sale or forfeiture and seek reimbursement for its cost from the Operator or ownership of the buildings or improvements involved.

Section 14.05 License, Fees and Permits.

The Operator shall obtain and pay for all licenses, permits, fees or other authorization or charges as required under federal, state or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

Section 14.06 Non Exclusive Rights.

It is hereby specifically understood and agreed between the parties that nothing herein contained shall be construed as granting or authorizing the granting of exclusive rights to the Operator or others, as defined in Section 308 of the Federal Aviation Act of 1958, as amended.

Section 14.07 Paragraph Headings.

The Section paragraph headings contained herein are for convenience in reference only and are not intended to define or limit the scope of any of the provision of this Agreement.

Section 14.08 Interpretations.

This Agreement shall be interpreted in accordance with the laws of the State of West Virginia.

Section 14.09 Non-Waiver.

No waiver of any condition or covenant in this Agreement contained, or of any breach thereof, shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

Section 14.10 Severability.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

Section 14.11 Binding Effect.

This Agreement, including all of its covenants, terms, provisions and conditions, shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, successors and assigns.

Section 14.12 No Partnership.

Nothing contained in this Agreement shall be deemed to create the relationship of principal and agent or of a partnership or joint venture or any relationship between the City and Operator other than the relationship of the City and Operator.

Section 14.13 Duty to be Reasonable.

Wherever in this Agreement the City is to give its consent, approval or otherwise exercise discretion in judgment, such consent, approval or judgment discretion shall not be unreasonably exercised or unreasonably withheld. When the City is called upon to give its consent or approval, or otherwise exercise its discretion and judgment as to financial matters which affect the City and the continuing operations of the Airport, the exercise of its judgment as to any such matters shall be solely and completely within the discretion of the City.

Section 14.14 Notices.

Whenever any notice or payment is required by this Agreement to be made, given or transmitted to the parties hereto, such notices or payments shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, addressed to:

CITY	OPERATOR
<p style="text-align: center;">Airport Director Morgantown Municipal Airport 100 Hart Field Road Morgantown, West Virginia 26505</p>	<p style="text-align: center;">RJ Williams Ground Speed Aviation, LLC 200 8th Street Fairmont, WV 26554 And 16192 Costal Highway Lewes, DE 19958</p>

Or such other place as either party shall, by written directive, designate in the manner herein provided.

Section 14.15 Entire Agreement.

This Agreement is the entire agreement between the parties and all prior or contemporaneous negotiations or agreements are deemed merged herein. There are no representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, between Operator and the City other than herein set forth. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the City or the Operator unless in writing and signed by them.

Section 14.16 Authorization and Execution.

By its execution hereof, Operator and the City warrant that all necessary corporate action has been taken with regard to the authorization and execution of this Agreement and that the individual(s) execution this Agreement and Lease for Hangar Site(s) on behalf of Operator are is/are duly authorized to do so. Whoever signs this Agreement on behalf of Operator and the City hereby confirms that they have the appropriate authority and have been so authorized to execute this Agreement on behalf of Operator and City, respectively.

IN WITNESS WHEREOF, the parties have caused this **Commercial Operating Agreement / Lease Agreement** to be executed on their behalf by their duly authorized officers:

City of Morgantown:

Ground Speed Aviation, LLC:

By: _____
A.Kim Haws, City Manager

By: _____
Robert J. Williams, III, Member

Date: _____

Date: 5/11/2022

Witness: _____

Witness: _____

Name: _____

Name: LYNN CHEFREN

EXHIBIT A

