

GROUND LEASE AGREEMENT

This LEASE AND DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20____, between _____ ("Tenant") and the City of Abilene, Kansas, a municipal corporation, (the "City") with respect to the facts and objectives set forth below.

RECITALS

- A. The City owns certain real property designated as the Abilene Municipal Airport ("Airport") for general aviation use by the public and recognized by the Federal Aviation Administration ("FAA") and the Kansas Department of Transportation ("KDOT") for such general aviation use.
- B. The City seeks to preserve the purpose of general aviation use of the Airport and provide for the prudent stewardship of taxpayer resources in the equitable and efficient administration of airport affairs.
- C. The City wishes to lease to Tenant and Tenant desires to lease a certain area of ground at the airport as set forth in Exhibit A for the purposes of designing and constructing an approved structure for the primary and predominant purpose of conducting aviation related activities. ("Leased Property")

NOW, THEREFORE, in accordance of the mutual promises and the agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree to the following terms and conditions:

SECTION ONE: TERM. This Agreement shall be for a period of fifteen (15) years commencing on the date set forth above, and shall automatically renew in five-year increments unless otherwise terminated by either party.

SECTION TWO: LEASE PAYMENT. Tenant shall pay \$100.00 a year plus an annual Lease Payment based on the actual square footage of the structure constructed by Tenant as provided in the Comprehensive Fee Schedule of the City of Abilene, Kansas. All applicable fees charged under this Agreement shall be paid to the Community Development Department. Lease Rates shall be payable by the tenth (10th) day of each February, except when the tenth (10th) day of February falls on a weekend or holiday and then the Lease Payment shall be payable on the next business day. The City reserves the right to amend the Lease Payment once every five (5) years during the term of the Agreement.

If the term hereof commences on a day other than the first day of February, the City shall pro-rate the Lease Payment on a per day basis. Tenant agrees that City shall not invoice or otherwise notice Tenant of the due date of the Lease Payment. Said Lease Payment may be either hand-delivered to City Hall located at 419 N. Broadway Street in Abilene, Kansas, or mailed to City Hall as herein provided for other notices and communications. Such remittances shall be addressed to the Community Development Department. The City shall not be responsible for failure of delivery or otherwise.

SECTION THREE: PENALTIES. The City shall require the payment of applicable penalty charges when the Lease Payment is not paid to the City by the tenth (10th) day of February. Such penalty charges shall be inclusive of the monthly Lease Payment. The Penalty Charge for City-owned Structure Lease Payments

shall be equal to Twelve Percent (12%) of the Lease Payment and payable by the fifteenth (15th) day of February.

A Daily Penalty Charge equal to Five Dollars (\$5.00) per day shall be charged to any Tenant having an outstanding balance as of the fifteenth (15th) day of February. Such Daily Penalty Charge shall be charged until all Payments and Charges have been remitted to the City or the Lease Agreement has been terminated. Failure by any Tenants to remit payment to the City of all outstanding Lease Payments and Penalty Charges by the fifteenth (15th) day of February shall require the City Manager to terminate the applicable Lease Agreement as provided in Section Thirteen, herein.

All penalty charges shall be established by ordinance and published and maintained in the Comprehensive Fee Schedule of the City of Abilene, Kansas.

SECTION FOUR: SETOFF PROGRAM. The City Manager is hereby authorized to submit any Lease Payments or Penalty Charges owed to the City to the State Setoff Program, as provided in K.S.A. 75-6201 *et seq.*, for collection following the termination of the Lease Agreement.

SECTION FIVE: RIGHT TO CONSTRUCT. The City hereby grants to Tenant the right to erect and maintain a Structure on an area at the Airport as shown in Exhibit A (“Leased Property”). The Structure must be constructed in accordance with the plans and specifications as submitted by Tenant to the Community Development Department of the City prior to the commencement of construction. Tenant shall be solely responsible to pay for all materials and work to erect the Structure and connect any and all approaches necessary for accessing public runways and taxiways. Failure to pay for the cost of the Structure so constructed shall violate the terms of this Agreement and shall be cause to terminate the Agreement by City. The structure constructed by Tenant pursuant to this Agreement shall be the property of the Tenant, unless otherwise provided in this Agreement. Tenant has right to sell structure to third party following local real estate laws.

SECTION SIX: BUILDING PERMIT. Tenant agrees to obtain a building permit from the Community Development Department and comply with all regulations and applicable code provisions as required. Tenant shall complete construction of the Structure within one year of the Effective Date of this Agreement. The Community Development Department shall have the authority to approve extensions to the building permit as allowed by City Code. Failure to complete construction of the Structure within one year of the Effective Date of this Agreement shall violate the terms of this Agreement and shall cause this Agreement to be terminated by City.

SECTION SEVEN: FLOODPLAIN. Tenant acknowledges that the Airport, including the Leased Property is located within a designated floodplain and that the development of the Lot(s) is subject to applicable floodplain regulations of the City. The cost of complying with floodplain regulations shall be the sole cost of the Tenant.

SECTION EIGHT: UTILITIES. Tenant acknowledges that the City will not provide utility services of any kind to the Leased Property and that Tenant shall solely be responsible for any costs associated with extending utilities to the Leased Property and all applicable utility charges for such utility services.

SECTION NINE: Fuel Flowage Fees. As further consideration herein and in addition to the rentals provided, the City shall be entitled to collect and Tenant agrees to pay a fuel flowage fee of \$0.05 for each gallon of aviation fuel (Jet A, 100LL, and any other fuel, whether currently existing or developed in

the future, used to power aircraft) delivered to Tenant on said Airfield for Tenant's consumption. The aforementioned flowage fees shall be due on _____.

SECTION TEN: LOCATION of Leased Property. The location of the developed space shall be as approved by the city Manager, or designee, and for purposes of this Agreement shall be designated as provided in Exhibit A, attached to this Agreement (" Leased Property "). The City shall cause a survey of the site to be performed and staked so the Structure can be properly located within the boundaries of the Leased Property.

SECTION ELEVEN: STRUCTURE USE. The use of the Structure must at all times conform to applicable regulations and policies of the City regarding the operation and management of the Airport. The Tenant may erect upon the exterior of the building reasonable sized signs declaring the name of the business and the services that are available. All signs must comply with the City of Abilene zoning ordinance.

SECTION TWELVE: CONDITION OF PREMISES. Tenant agrees to keep and maintain the premises and facilities in a clean and slightly fashion, free of trash, debris and other obstructions. Tenant shall abide by all airport rules established by the City in this regard.

SECTION THIRTEEN: TERMINATION. The Tenant may terminate this Agreement, at any time, by providing written notice to the City at least sixty (60) days prior to the effective date of such termination. Tenant will not be reimbursed any amount of the Lease Payment should Tenant elect to terminate Agreement.

The City may elect to terminate this Agreement if Tenant is in default of any of obligations herein, including but not limited to: the provisions of this Lease Agreement, applicable airport rules, regulations, or policies as adopted by the City. The City may also elect to terminate this Agreement prior to the end of the term, provided the City Commission adopts a resolution determining that a public interest exists justifying such termination.

Following such resolution determining a public interest in early termination, the City shall provide written notice within ninety (90) days of the termination's effective date ("Notice of Termination"). Within fourteen (14) days following such Notice of Termination, the Tenant and the City shall agree on an independent appraiser to prepare an appraisal of the market value of the Structure. Copies of the market value appraisal shall be provided to both parties within thirty (30) days following the Notification of Termination.

The City shall also solicit sealed bids from qualified structure relocation contractors to relocate the applicable structure to an agreeable location on the Airport. Such bidding process shall be done in compliance with the City's Purchasing Policy and shall be publicly opened, confirmed and accepted by the City Commission. The City shall commence the bidding process within (14) days following the Notice of Termination.

The City shall remit payment to the Tenant for the lesser of either purchasing the Structure based on the results of the market value prepared by the independent appraiser, or relocating it within (60) days following of the Notice of Termination. Should the Tenant desire to relocate the Structure and this option is not the lowest, the Tenant may elect to relocate the Structure, however, any costs above the lowest option shall be borne entirely by the Tenant. The Tenant agrees to have the structure(s)

removed within ninety (90) days following the Notice of Termination, or the City may remove the structure(s) without consequence and at a date and time of its choosing.

Should the City elect to terminate this Agreement due to a default of the Tenant of its obligations as herein provided, or should the Tenant elect to terminate this Agreement, the Tenant shall have the right to remove the Structure and contents from City property, provided that the removal shall be completed within ninety (90) days after of the Notice of Termination. Tenant shall be responsible at his own cost to pay for removal of the Structure and to clear the ground of all obstructions placed thereon by him so as to leave the ground level and clean and free from all hazards.

Should Tenant fail to remove the Structure within ninety (90) days of either providing Notice of Termination to the City or receipt by Tenant of Notice of Termination from City, the Structure and its contents shall become the sole property of City.

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

SECTION FOURTEEN: NOTICES AND COMMUNICATIONS. All notices to the Tenant shall be in writing and shall be mailed to the Tenant at the address indicated below. If any such notice to the Tenant shall be returned by the United States Postal Service, notice shall also be given by posting the same on the Structure door. Tenant agrees to notify the City of any changes in address within thirty (30) days of such change.

All notices hereunder to the Tenant shall be in writing and shall be addressed and mailed to:

Name:

Address:

The Tenant may be contacted by phone at the following phone numbers:

Home:

Work:

Cell:

All notices hereunder to the City shall be in writing and shall be addressed and mailed to:

City of Abilene, Kansas

Attn: City Manager

PO Box 519

Abilene, KS 67410

SECTION FIFTEEN: ASSIGNMENT; TRANSFERRABILITY. No interest in this Agreement may be assigned by the Tenant without consent of the City, which consent will not be unreasonably withheld. Tenant is expressly prohibited from subletting, licensing or permitting any other party or parties to occupy any portion of Structure except as otherwise provided herein.

SECTION SIXTEEN: INDEMNIFICATION. Tenant agrees to indemnify the City, its officer, employees and agents against and hold said parties harmless from any and all claims, demands, and liability which may be made or may arise as a consequence of Tenant's presence upon the Airport or the acts or omissions of the Tenant.

SECTION SEVENTEEN: CASUALTY and LIABILITY INSURANCE. The Tenant shall be responsible for the costs of any casualty insurance coverage it desires on the building or other permanent improvements to be constructed pursuant to Section Five. The City shall under no obligation to provide any such insurance protection, and shall be under no obligation to pay and costs of repairs to or replacement of improvements in the event of any casualty that occurs without any fault of the City or the City's officers, agents or employees.

SECTION EIGHTEEN: ENTIRE AGREEMENT. This document shall constitute the entire Agreement between the undersigned Tenant and the City.

NOW, THEREFORE, in consideration of the City of Abilene agreeing to the above mentioned conditions for the right to construct a Structure, the city does give full and complete consent to the Tenant for the use of the aforementioned City property in accordance with the provisions of this Agreement, the ordinances and regulations of the city and any other applicable laws or regulations of the State of Kansas or the Federal Aviation Administration at any time after the effective date of this Agreement.

[REMAINDER OF PAGE LEFT BLANK]

AGREED TO AND ACCEPTED BY THE PARTIES BELOW ON THE ____ DAY OF _____, 20__.

CITY OF ABILENE, KANSAS

TENANT

By: _____
_____, City Manager

Signature

Print Name

ATTEST:

_____, City Clerk