

AIRPORT NON-COMMERCIAL USE LAND LEASE

THIS AGREEMENT made this _____ day of _____ by and between the City of Independence, Iowa, a municipal corporation, lessor, hereinafter referred to as "City" and _____ lessee, hereinafter referred to as "Lessee".

1. Lease of Airport Property; Premises. For and in consideration of the rents and covenants hereafter set forth, City leases to Lessee the following described premises at the City of Independence Municipal Airport, Buchanan County, Iowa:

Lot (____), Airport Development Area No. 1, (____ foot by ____ foot), as depicted on Exhibit A which is made a part hereof and incorporated herein by reference.

2. Use of the Airport. Lessee has the privilege of using the public portions of the Airport in common with other users. Lessee shall have the right to conduct all operations authorized pursuant to the terms of this Lease, provided, however, that this Lease shall not be deemed to grant to Lessee or those claiming under Lessee the exclusive right to use any part or portion of the airport other than the premises. Use of the airport is subject to rules and conditions as now exist or may be enacted in the future by City, State of Iowa, or the United States. Lessee is subject to customary fees and charges for such use as may be established from time to time by City. City reserves the right to enter at any time upon the premises for the purpose of inspection to determine compliance with the terms of this Lease. Reasonable effort will be made to notify Lessee of such entry before entry is made.

3. Term. The initial term of this Lease shall be twenty (20) years, commencing _____ and expiring, unless earlier terminated, on _____. After the expiration of the twenty (20) year term, the City, at its sole option, may enter into a new Lease with Lessee upon terms then mutually acceptable to City and Lessee provided the premises are not needed for airport or other general aviation purposes and, further, provided that the Hangar, in the City's sole opinion, is structurally sound, in good repair, and suitably maintained.

4. Rent. Lessee agrees to pay City the sum of \$_____ per year on or before _____ and on or before the first day of January of each year thereafter during the term of the Lease. For the first year of the Lease the rental rate is established at \$_____ per square foot of land leased. The rent payable in this section shall be adjusted as of the first day of the month of July in each year beginning on _____ and on each successive _____. Subject to the limitation set forth below, the rent shall be adjusted as follows:

For the purpose of this lease "CPI" means the Consumer Price Index published by the U.S. Department of Labor and Bureau of Labor Statistics (Midwest Region Average, All Urban Consumers, All Items), or if such index is discontinued, such successor index

measuring the average rate of inflation in the United States as may be published by an agency of the United States, and if there is none, then such other index measuring the average rate of inflation in the United States as Lessor shall reasonably designate. The CPI in effect on the commencement date of this lease shall be the Base Index. On each date specified for adjustment of the rent in this section, the Index in effect immediately before the date (the "Adjustment Index") shall be used for the purpose of calculating the amount of the adjustment, if any. If the Adjustment Index has increased over or decreased from the Base Index, the rent payable until the next date specified for the adjustment of rent shall be increased or decreased by the same percentage as the Adjustment Index bears to the Base Index.

Notwithstanding anything above to the contrary, in no event shall the monthly rent payable by Lessee at any time during the term of this Lease Agreement be decreased as a result of the adjustment provided for in this section.

5. Use of Premises.

- a. The premises shall be used for the construction of a private airplane hangar and for the hangaring of airplanes, airplane parts, accessories, fuel, oil, lubricants, and other equipment and to service, repair, and overhaul airplanes owned by the Lessee. All such uses shall be for private purposes and shall not be used for commercial activities.
- b. Before construction of any building, Lessee shall provide City with plans for the building for approval. Lessee shall construct aircraft storage facilities in conformity to design standards as may be prescribed by the City from time to time, including color, style, size and any other aesthetic requirements.
- c. The Lessee agrees that the hangar building shall be constructed at no cost to the City. All construction shall be in a good and workmanlike manner.
- d. Lessee must comply with the City of Independence's current building codes, as well as all other applicable building, fire, and zoning codes and other federal, state, and county laws and ordinances in effect as of the time of entering into this Lease and as amended from time to time thereafter.
- e. In the event the Lessee has not completed construction of the building on the premises within twelve (12) months from the date of this Lease, City may terminate this Lease without further obligation to Lessee.
- f. Lessee shall pay the cost of all labor and materials furnished or provided in connection with the construction of the building and shall not permit the filing of any mechanic liens against the premises, title to which at all times remains in City. If any lien is filed against the premises, Lessee must discharge the lien or provide adequate bond or other surety in a manner and

amount reasonably satisfactory to City within thirty (30) days after the filing of the lien.

- g. Lessee shall not erect or permit to be erected on said premises or on the exterior of any building any sign of any type without the prior written consent of City. Lessee shall not place or permit to be placed in or on any portion of the demised premises any weight or weights in excess of a reasonable or safe carrying capacity for the structure. If a sign is permitted by the City, the sign may not conflict with the rules and regulations of 14 C.F.R. § 77 – Safe, Efficient Use, and Preservation of the Navigable Airspace.
- h. Lessee agrees at its own expense to observe all regulations and requirements of the City of Independence or other public authorities in force at the time of taking of possession by the Lessee of the leased premises or which may thereafter be made regarding the condition of the leased premises or conduct thereon, including all building, fire, sanitary, police, or other regulations.
- i. Lessee shall not use or allow for any commercial use of the hangar building or premises without the expressed written consent of the Lessor. Lessee may obtain a Commercial Operator Permit per the Minimum Standards permit application process. Lessee's facilities must meet the Minimum Standards for their proposed operation.

6. Sale; Assignment; Subletting and Mortgage. Lessee will not sell, assign, sublet, or mortgage the premises or any part thereof or sell, assign, sublet or mortgage this Lease or any interest therein or permit the Lease to become transferred by operation of law without first obtaining the written consent of City, whose consent is subject to the City's sole discretion. Approval of proposed sale, transfer, sublet, or mortgage shall not be unduly withheld by the City. Any assignment, sale in bankruptcy or insolvency of the Lessee may, at the option of City, be considered an assignment within the meaning of this Lease and as a breach thereof.

7. Maintenance. Lessee, at its own cost and expense, shall maintain the leased premises and the structures located thereon. Lessee shall keep and maintain the property in good order and repair and in a clean and neat condition. Lessee shall not permit any waste or nuisance on the leased premises or permit anything on the leased premises to interfere with the rights of other tenants of the City or users of the airport. In the event the premises are not properly maintained, the City, may after notice to the Lessee, cause the property to be maintained and the cost thereof will be billed to tenant as an administrative fee. In the event of non-payment the unpaid billing shall be certified for collection with the property taxes in the manner provided by law.

Snow removal in front of Lessee's hangar and mowing and weed control are the responsibility of the Lessee.

8. Hazardous Materials. Lessee shall not store hazardous materials on the leased premises except such materials as are normal and reasonably necessary for aircraft operation and maintenance. All hazardous materials shall be stored, handled, and disposed of properly in accordance with all federal, state, county, and municipal rules and regulations. Any spill or discharge shall be immediately reported to City or other appropriate agency. Improper storage, use, handling, or disposal of hazardous materials shall be grounds for termination of this Lease agreement.

9. Taxes, Assessments, and Other Charges. In addition to other charges identified in this Lease, the Lessee shall pay all taxes, assessments, licenses, fees, or other charges that may be levied or assessed upon the Lessee's property or building or any activity of the Lessee. Upon request by the City, the Lessee shall provide proof of such payment. The Lessee shall establish his own accounts for utilities, and pay all rates and charges for any utility used or consumed in connection with or in the leased property during the term of this Lease. Upon request by the City, the Lessee shall provide proof of such payment.

10. Insurance. Lessee shall maintain the following insurance coverages:

- a. Lessee shall carry aircraft liability insurance for each aircraft stored on the leased premise.
- b. Lessee shall carry hull insurance on each aircraft stored on the leased premises. The limits of the insurance shall be in an amount equal to or greater than the current value of the aircraft, instruments, and accessories. On or before the date of this lease, Lessee shall provide a Certificate of Insurance to the City of Independence indicating the required coverage for the entire term of the lease and providing for a minimum of thirty (30) days' notice to a change or cancellation of that coverage.
- c. In lieu of carrying hull insurance, Lessee covenants and agrees that he will not hold the City of Independence or any of its agents, or employees responsible for any loss occasioned by fire, theft, rain, windstorm, hail, or from any other cause whatsoever, whether said cause be the direct, indirect, or merely a contributing factor in producing the loss to any airplane, automobile, personal property, parts, or surplus that may be located or stored hangars, aprons, field, or any other location at the airport; and Lessee agrees the plane and the contents are to be stored, whether on the field or in the hangars, at Lessee's risk.

- d. Comprehensive general liability insurance insuring Lessee against any liability arising out of this lease agreement, or the use, occupancy, or maintenance of the demised premises and all areas appurtenant to the demised premises. Such insurance shall be in the amount of not less than Two Million (2,000,000.00) per occurrence for property damage, bodily injuries, or deaths of persons occurring in and about the premises, not necessarily caused by aircraft, or in or about the Airport if caused by the act or omission of Tenant or those for whom Tenant is responsible. Such insurance may provide for a sub limit of not less than One Hundred Thousand (\$100,000.00) per person. The insurance policy shall insure the hazards of the demised premises and operations conducted in and on the demised premises, independent contractors, contractual liability (covering the indemnity included in this lease agreement), and shall name the City of Independence (Lessor) as an additionally insured party.
- E. Lessee shall also provide all risk property coverage at full replacement value. Lessor shall be furnished with a copy of a certificate of insurance. The insurance policies also showing endorsements requiring thirty (30) days' written notice to Lessor prior to any cancellation or any reduction in the amount of coverage.
- F. In accordance with the subrogation provisions of the standard property insurance contract, it is hereby understood and agreed by and between the undersigned parties that they do jointly and separately waive any or all right of recovery against the other for insured loss occurring to the real property owned by City of Independence and personal property owned by the Lessee all while located at the leased premises.

Any policy issued to the City of Independence providing duplicate or similar coverage shall be deemed excess over Tenant's policies. Tenant waives any subrogation rights against the City of Independence on all claims and insurance policies. Tenant shall not use or permit the Premises to be used in any manner that would void Tenant's or the City of Independence's insurance or increase the insurance risk. Tenant shall comply with all requirements imposed by the insurers for the City of Independence and Tenant.

11. Indemnification. To the fullest extent permitted by law, Lessee agrees to indemnify, defend, save and hold completely harmless the City of Independence or any of its agents, employees, or Airport Commission members responsible for any and all liabilities, losses, damages, suits, actions, claims, judgments, settlements, fines or demands of any person arising by reason of injury or death of any person, or damage to any property occasioned by fire, theft, rain, windstorm, hail, or from any other cause whatsoever, whether said cause be the direct, indirect, or merely a contributing factor in producing the loss to any airplane, automobile, personal property, parts, or surplus that may be located or stored in the hangars, aprons, field, or any other location at the airport; and Lessee agrees

that the planes and the contents are to be stored, whether on the field or in the hangars, at Lessee's risk.

The provisions of this section shall survive expiration or earlier termination of this lease. The furnishing of the required insurance shall not be deemed to limit Tenant's obligations under this Section.

The Tenant shall defend, indemnify and hold the City of Independence harmless from any claims or liabilities as a result of Tenant's failure to procure and to keep in force the insurance required in the Lease.

12. Ground Control; Air Traffic. Lessee shall comply with all rules, minimum standards, and field regulations with respect to control of ground and air traffic and use of the airport as established by City from time to time and Lessee shall abide by all rules, regulations, and orders of the Iowa Department of Transportation and the Federal Aviation Administration and other lawful authorities with respect to aircraft operations and use of the leased premises.

13. Condemnation. City may exercise the right of eminent domain with respect to the leased premises. Lessee further agrees that if the leased premises shall be taken for any street or other public use, or shall during the continuance of this Lease be destroyed by the action of the public authorities, then this Lease and the term demised shall thereupon terminate.

14. Commitments to Federal or State Agencies. Nothing herein shall be construed to prevent the City from making such commitments as it desires to the Federal Government or to the State of Iowa in order to qualify for the expenditure of Federal and State funds on said airport.

15. Parking of Vehicles. Lessee may park his/her private automobiles in the building for short periods of time. Auto parking on the apron or grass will not be permitted.

16. Minimum Standards. Lessee shall comply with the Independence Municipal Airport Minimum Standards now existing or as hereafter amended or adopted by the City of Independence.

17. Termination of Lease; Removal of Hangar. At the termination of this Lease, (and provided a new Lease has not been entered into between the parties under paragraph 3), if the Lessee shall have paid all taxes, assessments and rents by him payable under this Lease, and shall have kept and performed all terms and conditions of this Lease on his part to be kept and performed, the Lessee shall have the privilege of removing from the leased premises all buildings or property thereon belonging to said Lessee and shall restore said premises to as good condition as they were in when they were entered into upon by the Lessee, reasonable wear and tear excepted, provided the Lessee shall do so within six (6) months after the termination of this Lease. If said buildings and property are not so removed within the said six (6) month period, the Lessee hereby conveys the same

absolutely to the City and the title thereto upon the expiration of said six (6) month period shall vest in the City without further act or conveyance.

18. Default.

a. **Events of Default.** Any of the following shall constitute a default under this Lease:

- (1) Lessee fails to pay money owed to City under this Lease when due, and such failure continues for ten (10) days after written notice from City to Lessee.
- (2) Lessee uses the premises for any purpose not expressly authorized by this Lease and such default continues for ten (10) days following written notice from City to Lessee.
- (3) Lessee fails to allow an inspection in accordance with the terms and conditions of this Lease and such default continues for ten (10) days following written notice from City to Lessee.
- (4) Lessee sells, assigns, subleases, transfers, or mortgages this Lease except as otherwise permitted, and such default continues for ten (10) days following written notice from City to Lessee.
- (5) Lessee fails to carry the insurance required under this Lease; any insurance required under this Lease is cancelled, terminated, expires or is reduced or materially changed so as to not comply with this Lease; or City receives notice of any such conditions, and such failure continues for a period of ten (10) days following written notice from City to Lessee.
- (6) Lessee vacates or abandons the premises, and such default continues for ten (10) days following written notice from City to Lessee.
- (7) Lessee fails to discharge, by payment or bond, any lien or encumbrance placed upon the premises or improvements in violation of this Lease within thirty (30) days following written notice from City to Lessee that any such lien or encumbrance is filed against the premises and/or improvements.
- (8) Lessee (a) makes a general assignment for the benefit of creditors; (b) commences any case, proceeding or other action seeking to have an order for relief entered or to adjudicate Lessee bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property; or (c) involuntarily becomes the subject

of any proceeding for relief which is not dismissed within sixty (60) days of its filing or entry.

- (9) Lessee fails to pay taxes, assessments, fees, or other charges due and such default continues for a period of ten (10) days following written notice from City to Lessee.
- (10) Lessee fails to comply with any other term or condition of this Lease and such default continues for more than thirty (30) days after written notice from City to Lessee, or for a longer period of time as may be reasonably necessary to cure the default, but only if (a) Lessee is reasonably capable of curing the default, and (b) is working diligently as determined by City to cure the default.

b. City Remedies. If a default occurs, City, at its option and in its sole discretion, may at any time thereafter do one or more of the following to the extent permitted by applicable law:

- (1) City may, without releasing Lessee from its obligations under this Lease, attempt to cure the default. City may enter the premises for such purpose and take such action as it deems desirable or appropriate to cure the default. This entry is not an eviction of Lessee or a termination of this Lease.
- (2) Terminate this Lease upon written notice to Lessee and re-enter the premises as of its former estate, and Lessee covenants in the case of such termination to indemnify City against all loss of rents and expenses during the remainder of the term.
- (3) Exercise all other rights and remedies, legal and equitable, including injunctive relief, ejectment or summary proceedings such as an eviction action and any other lawful remedies, actions or proceedings.

In the event of any default and for any type of remedy chosen by City, Lessee shall reimburse City for all reasonable fees and costs incurred by City, including reasonable attorneys' fees relating to such default and/or the enforcement of City's rights hereunder, and costs incurred attempting to cure a default. Any and all legal remedies, actions and proceedings shall be cumulative.

c. Cumulative Default. Notwithstanding the notice and cure periods set forth above, and subject to the inspection procedures or rights set forth herein, City shall only be required to provide Lessee with notice and opportunity to cure two (2) cumulative defaults in any calendar year. Only for purposes of this paragraph, cumulative default means: (i) Lessee's failure to pay money due under this Lease; (ii) Lessee's failure to comply with the use of premises section of this Lease; and (iii) any violation of the terms and conditions of this Lease which has the

likelihood in City's reasonable discretion to cause harm to life or property. In addition, City shall only be required to provide Lessee with notice and opportunity to cure two (2) defaults of failing to allow an inspection of the premises in any calendar year. Beginning with the third (3rd) cumulative default or third (3rd) failure to allow an inspection in any calendar year, City will not be required to provide notice and opportunity to cure and may immediately take such action as City deems appropriate under this Lease.

- d. **Requirements of the United States.** This Lease shall be subject and subordinate to the provisions of any existing or future agreement between City and the United States, or any agency thereof, relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development or operation of the airport; provided, however, that City shall, to the extent permitted by law, use its best efforts to cause any such agreements to include provisions protecting and preserving the rights of Lessee in and to the premises, and to compensation for taking thereof, interference therewith and damage thereto, caused by such agreement or by actions of City or the United States pursuant thereto.
- e. **Default of Other Agreements.** A default by Lessee of any other agreement between Lessee and City shall constitute a default of this Lease. Notice of a default in another agreement shall be deemed notice of default under this Lease.

19. Termination Provisions. Should the Lessee default in the performance of any terms, conditions or covenants of this Lease not otherwise specified, and should the default continue for a period of more than twenty (20) days after the City serves the Lessee with written notice, the City may terminate this Lease. This may be done without prejudice to any other remedy for lease payments or breach of covenant. In any such event the City may terminate this Lease by giving written notice of the termination. The rights and remedies given to the City are, and shall be deemed to be cumulative, and the exercise of one shall not be deemed to be an election excluding the exercise by the City at any other or different time of a different or inconsistent remedy.

20. General Provisions.

- a. **Waiver.** The waiver by City or Lessee of any breach of any term of this Lease shall not be deemed a waiver of any prior or subsequent breach of the same term or any other term of this Lease.
- b. **Entire Agreement; Amendments.** This Lease represents the entire agreement between the parties and supersedes any prior agreements regarding the premises. This Lease may only be amended or modified if done in writing and executed by all parties to this Lease.
- c. **Choice of Law and Venue.** This Lease shall be governed by and construed in accordance with the laws of the State of Iowa. Any disputes, controversies, or

claims arising out of this Lease shall be heard in the Buchanan County District Court, and all parties to this Lease waive any objection to the jurisdiction of the district court, whether based on convenience or otherwise.

- d. **Commitments to Federal and State Agencies.** Nothing in this Lease shall be construed to prevent City from making such commitments as it desires to the Federal Government or the State of Iowa in order to qualify for the expenditure of Federal or State funds on the airport.
- e. **Relationship of Parties.** Nothing contained in this Lease shall be deemed to create a partnership, association or joint venture between City and Lessee, or to create any other relationship between the parties other than that of City and Lessee.
- f. **Multiple Parties.** If more than one person or entity is named as the Lessee, the obligations of the Lessee shall be the joint and several responsibilities of all persons or entities named as lessee.
- g. **Consent and Approvals.** Whenever in this Lease the consent or approval of City is required, such phrase means the formal approval or consent of City through a meeting of the Independence City Council. When the consent or approval of City’s staff is required, such phrase means the consent or approval from the appropriate employee or agent of City.
- h. **Notice.** Any notice required under this Lease shall be in writing and delivered in person or by courier or mailed by certified mail, return receipt requested by United States Mail, postage prepaid addressed as follows:

If to the City:	City of Independence 331 1 st Street East Independence, IA 50644
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If to the Lessee:	_____

Notice is deemed given (i) two (2) business days after being deposited in the mail, whether or not the notice is accepted by the named recipient, or (ii) if delivered by any other means, the date such notice is actually received by the named recipient. Either party may change the party’s address for notice by providing written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Lease to be effective from the day and year first above written.

CITY OF INDEPENDENCE, A MUNICIPAL CORPORATION, CITY

By: _____
Bonita Davis, Mayor

AND

By: _____
Al Roder, City Manager

LESSEE

By: _____
Lessee

Date: _____