



**SKYLARK FIELD GROUND LEASE AGREEMENT  
BETWEEN THE CITY OF KILLEEN, TEXAS  
AND AEROSERVE, LLC**

**THIS GROUND LEASE AGREEMENT**, regarding the lease of ground space at Skylark Field and the construction of certain improvements (“Lease”), is made and entered into by and between the CITY OF KILLEEN, TEXAS, a home rule municipal corporation organized under the laws of the State of Texas (“Lessor” or “City”), and AEROSERVE, LLC, a Texas Limited Liability Company, (“Lessee”); collectively the “Parties.”

In consideration of the mutual covenants, promises, and obligations contained herein, the Parties agree as follows:

**1. LEASED PREMISES.**

Lessor hereby demises to Lessee ground space ("Ground" or “Premises”), at Skylark Field, 1523 Stonetree Drive, Killeen, Bell County, Texas (“Airport”), as more thoroughly identified and depicted in Exhibit “A”, attached hereto and incorporated herein for all purposes.

**2. TERM OF LEASE.**

2.1. Term.

This Lease shall commence on the date of execution (“Effective Date”) and shall automatically terminate after thirty (30) years (“Initial Term”), unless terminated sooner or extended through renewal as provided herein.

2.2. Renewals.

If Lessee performs and abides by all provisions and conditions of this Lease, upon expiration of the Initial Term of this Lease, Lessee shall have two (2) options to renew for an additional thirty (30) years (each a “Renewal Term”). In order to exercise an option to renew, Lessee shall notify Lessor in writing of its desire to renew this Lease no less than ninety (90) days and no more than one hundred eighty (180) days prior to the expiration of the Initial Term. No additional extensions or additional terms shall be permitted absent approval by the City Council for the City of Killeen.

2.3. Holdover.

If Lessee holds over after the expiration of the Initial Renewal Term, this action will create a month-to-month tenancy. In this event, for and during the holdover period, Lessee agrees to pay all applicable rentals, fees, and charges at the rates provided by Lessor’s Schedule of Rates and Charges or similarly published schedule in effect at the time of the Holdover. The rental rate will

be adjusted to equal the then fair market value, as determined by Lessor's market analysis ("Holdover Rate"). In no case shall the Holdover Rate be less than the applicable Ground Rate at the end of either term or the value assessed upon completion of a property appraisal completed by a third-party vendor that has been approved and secured by Lessor. A ten percent (10%) increase will be added to the fair market value rate until a new lease agreement is approved and executed. The holdover period will not exceed six (6) months from the time this Lease expires. Upon the expiration of the holdover period, the City may exercise all legal rights and remedies available, including but not limited to eviction.

### **3. RENT.**

#### **3.1. Ground Rate.**

Lessee hereby promises and agrees to pay Lessor an annual rent ("Ground Rate") as provided in Section 3.2. The Ground Rate shall be based on the square footage of each individual hangar built by Lessor upon the Premises. Additionally, each hangar shall be treated separately when calculating the Ground Rate based on the date that the hangar meets the definition of Completion of Construction as defined in Section 4.1.1.

#### **3.2. Rate Adjustments.**

##### **3.2.1. Initial ramp up of Ground Rate.**

3.2.1.1. No Ground Rate will be due until Completion of Construction.

3.2.1.2. The Ground Rate shall be \$0.15 per square foot for the first twenty-four (24) months following Completion of Construction.

3.2.1.3. The Ground Rate shall be \$0.20 per square foot for months twenty-five (25) through fifty-nine (59) following Completion of Construction.

3.2.1.4. The Ground Rate, subject to Section 3.2.2, shall be \$0.30 per square foot beginning on month sixty (60) following Completion of Construction through the remainder of the Initial Term or the entirety of the Renewal Term.

##### **3.2.2. Five-Year Adjustments of Ground Rate.**

Commencing sixty (60) months from the Effective Date and every fifth (5th) year thereafter for the remainder of the Initial Term, and any subsequent Renewal Term, the Ground Rate shall be adjusted each period based on changes in the Consumer Price Index. ("Adjusted Rate").

The Adjusted Rate shall be calculated by multiplying the current Ground Rate by the same net percentage as the Consumer Price Index (Dallas/Fort Worth regions for All Urban Consumers, less energy) as published by the U.S. Department of Labor, Bureau of Labor Statistics, during the preceding twelve (12) months. The Adjusted Rate shall become effective on each fifth-year anniversary of the commencement date, and the Tenant agrees to pay the Adjusted Rate without further notice or demand.

#### **3.3. Payment Dates and Late Fees.**

Rent payment shall be due in advance on or before the first (1st) day of each month. Monthly payments are calculated by dividing the Ground Rate for each hangar, as calculated pursuant to Section 3.2.1, by 12. Rent shall be considered past due if Lessor has not received full payment after the tenth (10th) day of the month for which payment is due. Without limiting Lessor's termination rights as provided by this Lease, Lessor will assess a late penalty charge of ten percent (10%) per month on the entire balance of any overdue rent that Lessee may accrue.

#### **4. CONSTRUCTION AND IMPROVEMENTS.**

##### **4.1. Mandatory Improvements by Lessee.**

As additional consideration for this Lease, Lessee covenants and agrees that it shall construct the improvements set forth below on the Premises ("Mandatory Improvements"), as more thoroughly described in Exhibit "B".

- 4.1.1. Lessee, at its sole cost and expense, shall construct two up to three airplane hangars on the Premises. Subject to events of Force Majeure, Lessee shall cause the construction of at least one hangar to begin within six (6) months following the Effective Date ("Commencement of Construction"). Construction of at least one hangar shall be completed and a Certificate of Occupancy issued no later than twelve (12) months following Commencement of Construction ("Completion of Construction").
- 4.1.2. Lessee shall complete the remaining Mandatory Improvements according to the Project Schedule ("Schedule"), as identified in Exhibit "B". For each major task on the Schedule, Lessee shall provide, at a minimum, a 7-day advance notice of commencement. Lessee shall complete all Mandatory Improvements within thirty-six (36) months of the Effective Date.
- 4.1.3. At the Completion of Construction, Lessee shall provide to the Lessor (i) a copy of the Certificate of Occupancy, (ii) a complete set of Record Drawings and/or as-built drawings in Adobe PDF and AutoCAD formats, and (iii) a summary of the total cost/value of the Mandatory Improvements.

Lessee warrants that all Mandatory Improvements shall be carried out by qualified contractors and tradespeople, using materials of good quality and suitable for the intended purpose and as further described herein.

The commencement and completion dates in this Section 4.1 are subject to the provisions of Section 26 below, and any delay by reason of force majeure shall result in a day-for-day extension of the period for performance, provided that the party is diligently and continuously pursuing in good faith a remedy to the delay during such time.

Should construction not be completed as evidenced by the issuance of a Certificate of Occupancy within the applicable time-period set forth above, Lessee shall be in default of this Lease.

Lessor shall take full title to any Mandatory Improvements on the Premises upon the expiration

or earlier termination of this Lease.

4.2. Discretionary Improvements.

Lessee may, at its sole discretion, perform modifications, renovations, improvements, or other construction work on or to the Premises (collectively, “Discretionary Improvements”) so long as it first submits all plans, specifications, and estimates for the costs of the proposed work in writing and also requests and receives in writing approval from the Executive Director of Aviation for the City of Killeen, or designee (“Director”). Lessor agrees to respond in writing to Lessee’s requests for approval within thirty (30) calendar days of receipt of such requests. Lessee covenants and agrees that it shall fully comply with all provisions of this Section 4 in the undertaking of any such Discretionary Improvements. Lessor shall take full title to any improvements on the Premises upon the expiration or earlier termination of this Lease, provided that trade fixtures shall remain the property of Lessee and may be removed so long as Lessee repairs any damage caused thereby.

4.3. Process for Approval of Plans.

Lessee’s plans for any improvements shall conform to the City’s architectural standards and must also receive written approval from the Director. All plans, specifications and work shall conform to all federal, state and local laws, ordinances, rules, and regulations in force at the time that the plans are presented for review. Additionally, when required by federal law and at least forty-five (45) days prior to the Commencement of Construction of any improvement by Lessee, Lessee shall complete and submit FAA Form 7460-1 to the U.S. Department of Transportation Federal Aviation Administration.

4.4. Mandatory Improvements by Lessor.

Lessor, as part of the City approved master plan titled “Skylark Field Airport | Airport Master Plan,” has made and plans to complete certain improvements to the facility surrounding the Premises that will make it possible for Lessor to execute agreed.

Lessor covenants and agrees that it shall construct the improvements on the premises owned by the City of Killeen in a timely and reasonable way.

4.4.1. Subject to events of Force Majeure, Lessor shall complete construction of the City planned terminal/FBO building adjacent to the Premises within eighteen (18) months of the Effective Date.

4.4.2. Lessor will continue to maintain taxiways and apron egress in accordance with accepted standards and as permitted and approved by regulatory authorities, TxDOT and FAA.

4.5. Documents.

Lessee shall supply the Director with comprehensive sets of documentation relative to any Improvement, including, at a minimum, as-built drawings of each project. As-built drawings shall be new drawings or redline changes to drawings previously provided to the Director. Lessee shall

supply the textual documentation in computer format as requested by Lessor.

4.6. Bonds Required of Lessee.

Prior to the commencement of any Mandatory or Discretionary Improvement, Lessee shall execute and deliver to Lessor (i) a payment bond that conforms to Subchapter I, Chapter 53 of the Texas Property Code and (ii) a performance bond in an amount equal to the project to cover the costs of all work performed of each construction contract or project. The bond shall guarantee satisfactory compliance by Lessee with all applicable requirements, terms, and conditions of this Lease, including, but not limited to, the satisfactory completion of the respective Improvements, and full payments to all persons, firms, corporations or other entities with whom Lessee has a direct relationship for the construction of such improvements.

4.7. Bonds Required of Lessee's Contractors.

Prior to the commencement of any Mandatory or Discretionary Improvement, in accordance with Texas Local Government Code section 2252.909, Lessee shall ensure that any contract with a third-party prime contractor includes a provision that requires said prime contractor to execute and deliver to Lessee (i) a payment bond that conforms to Subchapter I, Chapter 53 of the Texas Property Code and (ii) a performance bond in an amount equal to the contract to cover the costs of all work performed under such contractor's contract for such improvements. Lessee's prime contractor shall also furnish a maintenance bond in an amount equal to the contract price as security to protect Lessor against any defects in any portion of the improvements. The maintenance bond shall remain in effect for two (2) years after the date of final acceptance of the improvement by Lessor. Lessee shall provide Lessor with copies of such bonds prior to the commencement of such improvements. Such bonds shall name both Lessor and Lessee as dual obliges. If Lessee serves as its own contractor, Section 4.6 shall apply.

**5. USE OF PREMISES.**

Lessee hereby agrees to use the Premises solely for aviation-related purposes and strictly in accordance with the terms and conditions of this Lease. Lessee shall have the right to sublease portions of the Premises, including the entire hangar, to various third parties ("Sublessees") for aviation-related purposes only under terms and conditions acceptable to and determined by Lessee, provided that all such arrangements for subleases with a term greater than five (5) years shall be in writing and approved in advance by Lessor. All written agreements executed by Lessee to Sublessees for any portion of the Premises shall contain terms and conditions that (i) do not conflict with Lessee's duties and obligations under this Lease; (ii) incorporate the terms and provisions of this Lease; (iii) restrict the use of the Premises to aircraft storage or other aviation or aviation-related purposes acceptable to Lessor; and (iv) treat users of the same or substantially similar facilities in a fair and non-discriminatory manner. Lessee shall use a standard lease form for all Sublessees and shall submit a copy of such standard lease form, including rental rates, without regard to lease terms, to the Director prior to Lessee's execution of its first lease and from time to time thereafter following any material changes to such lease form, including, without limitation, any changes to Lessee's rental rates for portions of the Premises. Lessee may make non-material modifications to its standard lease to the extent that such are not contrary to Lessor's Sponsor's Assurances.

## **6. REPORTS, AUDITS, AND RECORDKEEPING.**

Lessor reserves the right to require Lessee to provide Lessor with a written annual report, in a form acceptable to the Director, that reflects Lessee's rental rates for any subleases of the Premises in the immediately preceding calendar year. If required, such written annual report shall be provided to Lessor within thirty (30) days following the end of the preceding calendar year. Lessor may request, and Lessee shall promptly provide, similar reports on a more frequent basis that reflect Lessee's rental rates for the period requested by Lessor. These reports shall be delivered to Lessor's Department of Aviation at the address provided in Section 15. In addition, Lessee shall keep and maintain books and records pertaining to Lessee's operations at the Airport and other obligations hereunder in accordance with Lessee's current basis of accounting or, if Lessee changes such basis, in a manner satisfactory to Lessor's Internal Auditor and at a location within the City of Killeen. Lessee's basis of accounting will be deemed to be to the satisfaction of Lessor's Internal Auditor if it is in compliance with industry standards or generally accepted accounting principles. Upon Lessor's request and following reasonable advance notice, Lessee will make such books and records available for review by Lessor during Lessee's normal business hours. Lessor, at Lessor's sole cost and expense, shall have the right to audit such books and records in order to ensure compliance with the terms of this Lease and the Sponsor's Assurances made by Lessor to the Federal Aviation Administration.

## **7. UTILITIES.**

Lessee, at Lessee's sole cost and expense, shall be responsible for the installation and use of all utility services to all portions of the Premises and for all other related utility expenses, including, but not limited to, deposits and expenses required for the installation of meters. Lessee further covenants and agrees to pay all costs and expenses for any extension, maintenance, or repair of any and all utilities serving the Premises. In addition, Lessee agrees that all utilities, air conditioning and heating equipment and other electrically operated equipment which may be used on the Premises shall fully comply with Lessor's Mechanical, Electrical, Plumbing, Building, and Fire Codes ("Codes"), as they exist or may hereafter be amended.

## **8. MAINTENANCE AND REPAIRS.**

### **8.1. Maintenance and Repairs by Lessee.**

Lessee agrees to keep and maintain the Premises in a good, clean, and sanitary condition at all times, reasonable wear and tear excepted. Lessee covenants and agrees that it will not make or suffer any waste of the Premises. Lessee, at Lessee's sole cost and expense, will make all repairs or replacements necessary to prevent the deterioration in condition or value of the Premises, including, but not limited to, the maintenance of and repairs to all hangars and other structures, doors, windows and roofs, and all fixtures, equipment, hangar modifications and surrounding pavement, grass and weed management on the Premises and adjacent easement. Lessee shall be responsible for all damages caused by Lessee, its agents, employees, contractors, subcontractors, licensees, or invitees, and Lessee agrees to fully repair or otherwise cure all such damages at Lessee's sole cost and expense.

Lessee agrees that all improvements, trade fixtures, furnishings, equipment, and other personal property of every kind or description which may at any time be on the Premises shall be at Lessee's sole risk or at the sole risk of those claiming under Lessee. Lessor shall not be liable for any damage to such property or loss suffered by Lessee's business or business operations which may be caused by the bursting, overflowing, or leaking of sewer or steam pipes, from water from any source whatsoever, or from any heating fixtures, plumbing fixtures, electric wires, noise, gas or odors, or from causes of any other matter.

8.2. Compliance with ADA.

Lessee agrees that all improvements it makes at the Airport shall comply with all ADA requirements. In addition, Lessee, at its sole cost and expense, agrees to keep and maintain the Premises in full compliance with the Americans with Disabilities Act of 1990, as amended ("ADA").

8.3. Inspections.

8.3.1. Lessor shall have the right and privilege, through its officers, agents, or employees, to inspect the Premises. Except in the event of an emergency, Lessor shall conduct such inspections during Lessee's ordinary business hours and shall use its best efforts to provide Lessee at least twenty-four (24) hours' notice prior to any inspection.

8.3.2. If Lessor determines during an inspection of the Premises that Lessee is responsible under this Lease for any maintenance or repairs, Lessor shall notify Lessee in writing. Lessee agrees to begin such maintenance or repair work diligently within thirty (30) calendar days following receipt of such notice and to then complete such maintenance or repair work within a reasonable time, considering the nature of the work to be done. If Lessee fails to begin the recommended maintenance or repairs within such time or fails to complete the maintenance or repairs within a reasonable time, Lessor may, in its discretion, perform such maintenance or repairs on behalf of Lessee. In this event, Lessee will reimburse Lessor for the cost of the maintenance or repairs, and such reimbursement will be due on the date of Lessee's next monthly rent payment following completion of the maintenance or repairs.

8.3.3. During any inspection, Lessor may perform any obligations that Lessor is authorized or required to perform under the terms of this Lease or pursuant to its governmental duties under federal state or local laws, rules or regulations. Lessee will permit the City's Fire Marshal or his or her authorized agents to inspect the Premises and Lessee will comply with all requirements of the Fire Marshal or his or her authorized agents that are necessary to bring the Premises into compliance with the City of Killeen Fire Code and Building Code provisions regarding fire safety, as such provisions exist or may hereafter be amended. Lessee shall maintain in proper condition accessible fire extinguishers of a number and type approved by the Fire Marshal or his or her authorized agents for the particular hazard involved.

8.4. Environmental Remediation.

To the best of Lessor's knowledge, the Premises complies with all applicable federal, state, and local environmental regulations or standards. Lessee agrees that it has inspected the Premises and is fully advised of its own rights without reliance upon any representation made by Lessor concerning the environmental condition of the Premises. LESSEE, AT ITS SOLE COST AND EXPENSE, AGREES THAT IT SHALL BE FULLY RESPONSIBLE FOR THE REMEDIATION OF ANY VIOLATION OF ANY APPLICABLE FEDERAL, STATE OR LOCAL ENVIRONMENTAL REGULATIONS OR STANDARDS THAT IS CAUSED BY LESSEE, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, OR INVITEES.

## **9. SIGNS.**

Lessee may, at its sole expense and with the prior written approval of the Director, install and maintain signs on the Premises related to Lessee's business operations. Such signs, however, must be in keeping with the size, color, location, and manner of display of other signs at the Airport and must comply with the requirements of Chap. 31, Art. V, Div. 4 of the City of Killeen Code of Ordinances. Lessee shall maintain all such signs in a safe, neat, sightly, and physically good condition.

## **10. RIGHTS AND RESERVATIONS OF LESSOR.**

Lessor hereby retains the following rights and reservations:

- 10.1. Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, including, but not limited to, the right to prevent Lessee from erecting or permitting to be erected any building or other structure which, in the opinion of Lessor, would limit the usefulness of the Airport, constitute a hazard to aircraft or diminish the capability of existing or future navigational or navigational aids used at the Airport.
- 10.2. This Lease shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States Government, which relates to the operation or maintenance of the Airport and is required as a condition for the expenditure of federal funds for the development, maintenance, or repair of Airport infrastructure. In the event that any such existing or future agreement directly causes a material restriction, impairment or interference with Lessee's primary operations on the Premises ("Limitation") for a period of less than seven (7) calendar days, this Lease shall continue in full force and effect. If the Limitation lasts more than seven (7) calendar days, Lessee and Lessor shall negotiate in good faith to resolve or mitigate the effect of the Limitation. If Lessee and Lessor are in good faith unable to resolve or mitigate the effect of the Limitation, and the Limitation lasts between seven (7) and one hundred eighty (180) days, then for such period (i) Lessee may suspend the payment of any rent due hereunder, but only if Lessee first provides adequate proof to Lessor that the Limitation has directly caused Lessee a material loss in revenue; (ii) subject to ordinary wear and tear, Lessor shall maintain and preserve the Premises and its improvements in the same condition as they existed on the date such Limitation commenced; and (iii) the term of this Lease shall be extended, at Lessee's option, for a period equal to the duration of such Limitation. If the Limitation lasts more than one hundred eighty (180) days, then (1) Lessor and Lessee may, but shall not be required to, (a) further adjust

the payment of rent and other fees or charges, (b) renegotiate maintenance responsibilities and (c) extend the term of this Lease, or (ii) Lessee may terminate this Lease upon thirty (30) days' written notice to Lessor.

- 10.3. During any war or national emergency, Lessor shall have the right to lease any part of the Airport, including its landing area, to the United States Government. In this event, any provisions of this instrument which are inconsistent with the provisions of the lease to the Government shall be suspended. Lessor shall not be liable for any loss or damages alleged by Lessee as a result of this action. However, nothing in this Lease shall prevent Lessee from pursuing any rights it may have for reimbursement from the United States Government. If any lease between Lessor and the United States Government executed pursuant to this Section 10.4 directly causes a Limitation for a period of less than seven (7) calendar days, this Lease shall continue in full force and effect. If the Limitation lasts more than seven (7) calendar days, Lessee and Lessor shall negotiate in good faith to resolve or mitigate the effect of the Limitation. If Lessee and Lessor are in good faith unable to resolve or mitigate the effect of the Limitation, and the Limitation lasts between seven (7) and one hundred eighty (180) days, then for such period (i) Lessee may suspend the payment of any rent due hereunder, but only if Lessee first provides adequate proof to Lessor that the Limitation has directly caused Lessee a material loss in revenue; (ii) subject to ordinary wear and tear, Lessor shall maintain and preserve the Premises and its improvements in the same condition as they existed on the date such Limitation commenced; and (iii) the term of this Lease shall be extended, at Lessee's option, for a period equal to the duration of such Limitation. If the Limitation lasts more than one hundred eighty (180) days, then (i) Lessor and Lessee may, but shall not be required to, (a) further adjust the payment of rent and other fees or charges, (b) renegotiate maintenance responsibilities, and (c) extend the term of this Lease, or (ii) Lessee may terminate this Lease upon thirty (30) days' written notice to Lessor.
- 10.4. Lessor covenants and agrees that during the term of this Lease it will operate and maintain the Airport and its facilities as a public airport consistent with and pursuant to the Sponsor's Assurances given by Lessor to the United States Government through the Federal Airport Act; and Lessee agrees that this Lease and Lessee's rights and privileges hereunder shall be subordinate to the Sponsor's Assurances.
- 10.5. Lessee's rights hereunder shall be subject to all existing and future utility and drainage easements and rights-of-way granted by Lessor for the installation, maintenance, inspection, repair, or removal of facilities owned or operated by electric, gas, water, sewer, communication, or other utility companies. Lessee's rights shall additionally be subject to all rights granted by any ordinance or statute which allows utility companies to use publicly owned property for the provision of utility services.
- 10.6. Lessor agrees Lessee shall have the right of ingress and egress to and from the Premises by means of roadways for automobiles and taxiways for aircraft including access during the construction phase of airport improvements, unless otherwise agreed to in writing by both parties. Such rights shall be consistent with the rules and regulations with respect to the occupancy and use of airport premises as adopted from time to time by the City of Killeen and by the Federal Aviation Administration or any other state, federal or local authority.

## **11. INSURANCE.**

Lessee shall procure and maintain at all times, in full force and effect, a policy or policies of insurance as specified herein, naming the City of Killeen as an additional insured and covering all public risks related to the leasing, use, occupancy, maintenance, existence or location of the Premises. Lessee shall obtain the required insurance specified to be maintained by a commercial tenant in accordance with Exhibit "C", the "City of Killeen Aviation Insurance Requirements" attached hereto and made part of this Lease for all purposes.

In addition, Lessee shall be responsible for all insurance to construction, improvements, modifications, or renovations to the Premises and for personal property of its own or in its care, custody, or control.

11.1. Adjustments to Required Coverage and Limits, Insurance requirements, including additional types of coverage and increased limits on existing coverages, are subject to change at Lessor's option and as necessary to cover Lessee's and any Sublessees' operations at the Airport. Lessee will accordingly comply with such new requirements within thirty (30) days following notice to Lessee.

11.2. As a condition precedent to the effectiveness of this Lease, Lessee shall furnish Lessor with appropriate certificates of insurance signed by the respective insurance companies as proof that it has obtained the types and amounts of insurance coverage required herein. Lessee hereby covenants and agrees that not less than sixty (60) days prior to the expiration of any insurance policy required hereunder, it shall provide Lessor with a new or renewal certificate of insurance. In addition, Lessee shall, at Lessor's request, provide Lessor with evidence that it has maintained such coverage in full force and effect.

## **12. INDEPENDENT CONTRACTOR.**

It is expressly understood and agreed that Lessee shall operate as an independent contractor as to all rights and privileges granted herein, and not as an agent, representative, or employee of Lessor. Lessee shall have the exclusive right to control the details of its operations and activities on the Premises and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, patrons, licensees, and invitees. Lessee further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between Lessor and Lessee.

## **13. INDEMNIFICATION.**

LESSEE HEREBY ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR PROPERTY LOSS, PROPERTY DAMAGE, AND/OR PERSONAL INJURY OF ANY KIND, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH ITS USE OF THE AIRPORT UNDER THIS LEASE OR WITH THE LEASING, MAINTENANCE, USE, OCCUPANCY, EXISTENCE, OR LOCATION OF THE PREMISES, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF LESSOR, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES. LESSEE COVENANTS AND AGREES TO, AND

DOES TO THE EXTENT ALLOWED BY LAW, WITHOUT WAIVING ANY DEFENSES PROVIDED BY LAW, HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND LESSOR, ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR LAWSUITS FOR EITHER PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO LESSEE'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH LESSEE'S USE OF THE AIRPORT UNDER THIS LEASE OR WITH THE USE, LEASING, MAINTENANCE, OCCUPANCY, EXISTENCE, OR LOCATION OF THE PREMISES, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF LESSOR, ITS OFFICERS, AGENTS, EMPLOYEES.

LESSEE ASSUMES ALL RESPONSIBILITY AND AGREES TO PAY LESSOR FOR ANY AND ALL INJURIES OR DAMAGES TO LESSOR'S PROPERTY WHICH ARISE OUT OF OR IN CONNECTION WITH ANY AND ALL ACTS OR OMISSIONS OF LESSEE, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, OR INVITEES, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF LESSOR, ITS OFFICERS, AGENTS, OR EMPLOYEES. LESSOR DOES NOT GUARANTEE POLICE PROTECTION TO LESSEE, ANY SUBLESSEES OR THEIR PROPERTY. LESSOR IS OBLIGATED ONLY TO PROVIDE SECURITY ADEQUATE TO MAINTAIN LESSOR'S CERTIFICATION UNDER FAA REGULATIONS. LESSEE SHALL COMPLY WITH ALL APPLICABLE REGULATIONS OF THE FAA RELATING TO AIRPORT SECURITY. LESSEE SHALL PAY ALL FINES IMPOSED BY THE FAA ON LESSOR OR LESSEE RESULTING FROM LESSEE'S OR ANY SUBLESSEES' FAILURE TO COMPLY WITH SUCH FAA REGULATIONS OR TO PREVENT UNAUTHORIZED PERSONS OR PARTIES FROM THEIR OBTAINING ACCESS TO THE AIR OPERATIONS AREA OF THE AIRPORT FROM THE PREMISES.

#### **14. TERMINATION.**

In addition to termination rights contained elsewhere in this Lease, Lessor shall have the right to terminate this Lease as follows:

##### **14.1. Failure by Lessee to Pay Rent, Fees, or Other Charges.**

If Lessee fails to pay any rent, fees, or other charges due under this Lease, Lessor shall deliver to Lessee a written invoice and notice to pay the invoice within thirty (30) calendar days. If Lessee fails to pay the balance outstanding within such time, Lessor shall have the right to terminate this Lease effective immediately.

##### **14.2. Breach or Default by Lessee.**

If Lessee commits any breach or default, other than Lessee's failure to pay rent, Lessor shall deliver written notice to Lessee specifying the nature of such breach or default. Lessee shall have thirty (30) calendar days following receipt of such written notice to cure, adjust or correct the

problem to the standard existing prior to the breach. If Lessee fails to cure the breach or default within such time period, Lessor shall have the right to terminate this Lease immediately, unless such breach or default is not susceptible to cure within thirty (30) calendar days, in which event Lessee shall have such additional time to effect a cure as determined by Lessor.

14.3. Abandonment or Non-Use of the Premises.

Lessee's abandonment or non-use of the Premises for any reason for more than ninety (90) consecutive calendar days shall constitute grounds for immediate termination of this Lease by Lessor, unless such non-use is caused by Force Majeure, as set forth in Section 26 below.

14.4. Lessee's Financial Obligations to Lessor upon Termination, Breach, or Default.

If Lessor terminates this Lease for any non-payment of rent, fees, or other charges or for any other breach or default as provided in Sections 14.1, 14.2, or 14.3 of this Lease, Lessee shall be liable for and shall pay to Lessor all rent due for the remainder of the term then in effect as well as all arrearages of rentals, fees, and charges payable hereunder. The above notwithstanding, Lessor shall attempt, through reasonable and available commercial methods, to mitigate the above damages by reletting the Premises. If Lessor relets the Premises, then Lessee shall not be liable for further rent liability. However, in no event shall a reentry onto or reletting of the Premises by Lessor be construed as an election by Lessor to forfeit any of other rights under this Lease.

14.5. Rights of Lessor Upon Termination or Expiration.

Upon termination or expiration of this Lease, all rights, powers, and privileges granted to Lessee hereunder shall cease and Lessee shall vacate the Premises. Within twenty (20) days following the effective date of termination or expiration, Lessee shall remove from the Premises all trade fixtures, tools, machinery, equipment, materials, and supplies placed on the Premises by Lessee pursuant to this Lease. After such time, the title in all improvements shall vest with Lessor and Lessor shall have the right to take full possession of the Premises, by force if necessary, and to remove any and all parties and property remaining on any part of the Premises. Lessee agrees that it will assert no claim of any kind against Lessor, its agents, employees, or representatives, which may stem from Lessor's termination of this Lease or any act incident to Lessor's assertion of its right to terminate or Lessor's exercise of any rights granted hereunder.

**15. NOTICES.**

Notices required pursuant to the provisions of this Lease shall be conclusively determined to have been delivered (i) when hand-delivered to the other party at such addresses listed below, or at such other addresses as the receiving party designates by proper notice to the sending party, or (ii) three (3) days after being deposited in the United States Mail, postage prepaid, addressed as follows:

**If to Lessor:**

City of Killeen  
Attn: Executive Director of Aviation  
8101 Clear Creek Road

**If to Lessee:**

James Kelley Deloach  
Manager  
2101 Ruger Drive

Killeen, TX 76549

Killeen, TX 76543

**With copy to:**  
City of Killeen  
Attn: City Attorney's Office  
P.O. Box 1329  
Killeen, TX 76541

**16. ASSIGNMENT AND SUBLETTING.**

16.1. In General.

Lessee shall have the right to sublease portions, or all, of the Premises as provided by and in accordance with Section 5 of this Lease. Otherwise, Lessee shall not assign, sell, convey, sublease, or transfer the entirety of its rights, privileges, duties, or interests granted by this Lease without the advance written consent of Lessor.

16.2. Conditions of Approved Assignments and Subleases.

As provided for in Section 5, if Lessor consents to any assignment or sublease, all terms, covenants, and agreements set forth in this Lease shall apply to the assignee or sublessee, and such assignee or sublessee shall be bound by the terms and conditions of this Lease the same as if it had originally executed this Lease. The failure or refusal of Lessor to approve a requested assignment or sublease shall not relieve Lessee of its obligations hereunder, including payment of rentals, fees, and charges.

**17. LIENS.**

Lessee acknowledges that it has no authority to engage in any act or to make any contract which may create or be the foundation for any lien upon the property or interest in the property of Lessor. If any such purported lien is created or filed, Lessee, at its sole cost and expense, shall liquidate and discharge the same within thirty (30) days of such creation or filing. Lessee's failure to discharge any such purported lien shall constitute a breach of this Lease and Lessor may terminate this Lease upon thirty (30) days' written notice. However, Lessee's financial obligation to Lessor to liquidate and discharge such lien shall continue in effect following termination of this Lease and until such a time as the lien is discharged.

**18. TAXES AND ASSESSMENTS.**

Lessee agrees to pay any and all federal, state or local taxes or assessments which may lawfully be levied against Lessee due to Lessee's use or occupancy of the Premises or any improvements or property placed on the Premises by Lessee as a result of its occupancy.

**19. COMPLIANCE WITH LAWS, ORDINANCES, RULES, AND REGULATIONS.**

Lessee covenants and agrees that it shall not engage in any unlawful use of the Premises. Lessee further agrees that it shall not permit its officers, agents, employees, contractors, subcontractors, patrons, licensees, or invitees to engage in any unlawful use of the Premises and Lessee immediately shall remove from the Premises any person engaging in such unlawful activities. Unlawful use of the Premises by Lessee itself shall constitute an immediate breach of this Lease.

Lessee agrees to comply with all federal, state, and local laws; all ordinances, rules and regulations, and minimum standards of Lessor; all rules and regulations and minimum standards established by the Director; and all rules and regulations and minimum standards adopted by the City Council pertaining to the conduct required at airports owned and operated by the City, as such laws, ordinances, rules and regulations, and minimum standards exist or may hereafter be amended or adopted. If Lessor notifies Lessee in accordance with Section 15 above of any violation of such laws, ordinances, rules or regulations, Lessee shall immediately desist from and correct the violation.

19.1. Compliance with Schedule of Rates and Charges:

Lessee shall be bound by any customary charges adopted in the City's Schedule of Rates and Charges, as may be adopted by the City Council from time to time.

**20. NON-DISCRIMINATION.**

Lessee, for itself, its personal representatives, successors in interest and assigns, as part of the consideration herein, agrees as a covenant running with the land that no person shall be excluded from participation in or denied the benefits of Lessee's use of the Premises on the basis of race, color, national origin, religion, disability, sex, sexual orientation, transgender, gender identity or gender expression. Lessee further agrees for itself, its personal representatives, successors in interest and assigns that no person shall be excluded from the provision of any services on or in the construction of any improvements or alterations to the Premises on grounds of race, color, national origin, religion, disability, sex, sexual orientation, transgender, gender identity or gender expression. Lessee agrees to furnish its accommodations and to price its goods and services on a fair and equal basis to all persons. In addition, Lessee covenants and agrees that it will at all times comply with any requirements imposed by or pursuant to Title 49 of the Code of Federal Regulations, Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation and with any amendments to this regulation which may hereafter be enacted. If any claim arises from an alleged violation of this non-discrimination covenant by Lessee, its personal representatives, successors in interest or assigns, Lessee agrees to indemnify Lessor and hold Lessor harmless.

**21. LICENSES AND PERMITS.**

Lessee shall, at its sole expense, obtain and keep in effect all licenses and permits necessary for the operation of its operations at the Airport.

**22. GOVERNMENTAL POWERS.**

It is understood and agreed that by execution of this Lease, Lessor does not waive or surrender any of its governmental powers.

**23. WAIVER.**

The failure of Lessor to insist upon the performance of any term or provision of this Lease or to exercise any right granted herein shall not constitute a waiver of Lessor's right to insist upon appropriate performance or to assert any such right on any future occasion.

**24. GOVERNING LAW.**

The Parties agree that this Lease is governed by the laws of the State of Texas and the venue for any dispute arising from this Lease shall be Bell County.

**25. SEVERABILITY.**

If any provision of this Lease shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

**26. FORCE MAJEURE.**

Lessor and Lessee shall exercise every reasonable effort to meet their respective obligations as set forth in this Lease, but shall not be held liable for any delay in or omission of performance due to causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems, pandemics, and/or any other cause beyond the reasonable control of Lessor or Lessee.

**27. SIGNATURE AUTHORITY.**

The persons signing this agreement hereby warrants that he/she has the legal authority to execute this Lease on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance, or other authorization of the entity. Each party is fully entitled to rely on these warranties and representations in entering into this Lease or any amendment hereto.

**28. HEADINGS.**

Headings and titles used in this Lease are for reference purposes only and shall not be deemed a part of this Lease.

**29. ENTIRETY OF AGREEMENT.**

This written instrument, including any documents attached hereto or incorporated herein by reference, contains the entire understanding and agreement between Lessor and Lessee, its assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provisions of this Lease. The terms and conditions of this Lease shall not be amended unless agreed to in writing by both parties.

**30. COUNTERPARTS.**

This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute on and the same Lease.

*[Signature Page Follows]*

SIGNED, AGREED TO, and EFFECTIVE, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CITY OF KILLEEN

AEROSERVE, LLC

\_\_\_\_\_  
Kent Cagle  
City Manager

*Joel Davis, Member*  
\_\_\_\_\_  
Joel Davis  
Managing Member

ATTEST:

\_\_\_\_\_  
Laura Calcote  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Holli Clements  
City Attorney

## EXHIBIT A – SURVEY

[INSERT REAL PROPERTY DESCRIPTION AND MAP]

Exhibit A Ground Lease



## EXHIBIT B - MANDATORY IMPROVEMENTS BY LESSEE

N/A

## EXHIBIT C - MINIMUM INSURANCE REQUIREMENTS

Category	Property Insurance	Commercial General Liability	Hangarkeeper's Liability	Environmental Impairment Liability	Aircraft and Passenger Liability	Automobile Liability Hired and Non-owned
Fixed Base Operators (FBO's)	Yes	\$5,000,000	\$5,000,000	\$1,000,000		\$1,000,000
Aircraft Maintenance Operator & Avionics or Instrument Maintenance Operator-Piston	*5	\$1,000,000		\$1,000,000		\$1,000,000
Aircraft Maintenance Operator and Avionics or Instrument Maintenance Operator-Turbine	*5	\$5,000,000		\$1,000,000		\$1,000,000
Avionics or Instrument Maintenance Operator (Bench work Only)	*5	\$1,000,000				\$1,000,000
Aircraft Rental or Flight Training Operator	*5	\$1,000,000			\$1,000,000/Occr \$100,000/Pass	\$1,000,000
Aircraft Charter or Aircraft Management Operator	*5	\$1,000,000  *2			\$5,000,000/Occr \$500,000/Pass	\$1,000,000
Aircraft Sales Operator	*5		\$1,000,000		\$1,000,000/Occr \$100,000/Pass	\$1,000,000
Aircraft Storage Operator	*5	\$1,000,000	\$1,000,000			
Aircraft Storage Operator - sublease	*5	\$5,000,000   *3	\$5,000,000			\$1,000,000
Aviation Service Sole Proprietor	*5	\$1,000,000   *2				\$1,000,000
Other Commercial Aeronautical Activities		\$1,000,000			\$300,000/Occr	\$1,000,000
Temporary Specialized Aviation Service Operator		\$1,000,000			\$300,000/Occr	\$1,000,000
Non-Commercial Hangar Lessee	*5				\$300,000/Occr	\$1,000,000
Non-Commercial Flying Club	*5				\$1,000,000/Occr \$100,000/Pass	\$1,000,000
Non-Commercial Self-Fueling Permittee (Jet Fuel and/or Avgas)	*5	\$1,000,000		\$1,000,000	\$300,000/Occr	\$1,000,000
Non-Commercial Self-Fueling Permittee (Alternative Fuels e.g. mogas)	*5			\$500,000	\$300,000/Occr	\$250,000
Box Hangar, T-Hangar, Community Hangar	*5				\$300,000/Occr	\$250,000
Other	*Insurance requirements subject to determination by Aviation Department and Risk Management.					

### Additional Insurance Requirements

- Lessee's policies are to be primary to any other valid and collectible insurance available to the City
- All policies shall include a Waiver of Subrogation in favor of the City (Temporary SASO must also include Airport Lessee)
- The City of Killeen shall be named as Additional Insured (Temporary SASO must also include Airport Lessee)
- Policies shall have no exclusions by endorsement, which, neither nullify or amend the required lines of coverage, nor decrease the limits of said coverage

1 Coverage per aircraft should be equivalent to the average aircraft value at one time and coverage per occurrence should be equivalent to the average of the maximum value of total aircraft at one time, but not less than the amount noted above

2 Must include Negligent Instruction Coverage

3 If aircraft storage operator is providing subleasing space for aircraft storage

4 Only required for those providing flight instruction

5 Depends on terms of the lease agreement

6 If vehicle parked landside - State minimums would apply

# DEFINITIONS:

PROPERTY INSURANCE	Coverage for the Building includes (but is not limited to) the building and structures, completed additions to covered buildings, outdoor fixtures, permanently installed fixtures, machinery and equipment. The building material used to maintain and service the insured's premises is also insured. Business Personal Property owned by the insured and used in the insured's business is covered for direct loss or damage. The coverage includes (but is not limited to) furniture and fixtures, stock, improvements and betterments, leased property for which you have a contractual obligation to insure and several other similar business property items when not specifically excluded from coverage. The policy is also designed to protect the insured against loss or damage to the Personal Property of Others while in the insured's care, custody and control. Business Income (sometimes called Business Interruption) affords protection against the loss of earnings of a business during the time required to rebuild or repair covered property damaged or destroyed by fire or some other insured cause of loss. Extra Expense allows coverage for those additional expenses over and above normal operating expenses paid due to damage to covered property from a covered cause of loss. These expenses could include rent, utilities, moving expenses, telephone, advertising and labor.
COMMERCIAL GENERAL LIABILITY	<p>This coverage protects the insured for bodily injury or property damage to the third parties, for which they are legally liable. The policy covers accidents occurring on the premises or away from the premises. Coverage is provided for injury or damages arising out of goods or products made or sold by the named insured. Coverage is afforded for the named insured and employees of the named insured; however, several individuals and organizations other than the named insured may be covered depending upon certain circumstances specified in the policy. In addition to the limits, the policy provides supplemental payments for attorney fees, court costs and other expenses associated with a claim or the defense of a liability suit.</p> <p><u>Coverage A - Bodily Injury and Property Damage Liability</u> Bodily Injury means physical injury, sickness or disease, including death. Property Damage means physical injury to tangible property, including the resulting loss of use of that property.</p> <p><u>Coverage B - Personal Injury and Advertising Injury Liability</u> Personal Injury means false arrest, malicious prosecution, wrongful entry or eviction, libel, slander and violations of a person's right of privacy. Advertising Injury means libel, slander, disparagement, violations of a person's right of privacy, misappropriation and copyright infringement.</p> <p><u>Coverage C - Medical Payments</u> Medical Payments means medical expenses for bodily injury caused by an accident</p>
HANGARKEEPERS LIABILITY	Insures the hanger operator for legal obligations to pay damages due to loss to an aircraft that occurs when the aircraft is in the care, custody or control of the insured for safekeeping, storage, service or repair. Coverage extends to liability claims involving an aircraft's loss of use.
ENVIRONMENTAL IMPAIRMENT LIABILITY	Insures the pollution exposure associated with the insured's property and operations, Including costs of cleanup and remedial or corrective action due to a third-party demand or a government order. The Pollution exclusion in general liability insurance effectively eliminates coverage for damages for bodily injury, property damage and cleanup costs arising from most types of pollution events. Because of this, customized protection for the pollution exposure of numerous insureds in this category is essential
AIRCRAFT AND PASSENGER LIABILITY	Coverage geared specifically to the operation of aircraft and the risks involved in aviation. Aviation insurance policies are distinctly different from those for other areas of transportation and tend to incorporate aviation terminology, as well as terminology, limits and clauses specific to aviation insurance. Passenger liability protects passengers riding in the accident aircraft who are injured or killed. In many countries this coverage is mandatory only for commercial or large aircraft. Coverage is often sold on a "per-seat" basis, with a specified limit for each passenger seat.
AUTOMOBILE LIABILITY (TO INCLUDE HIRED & NON-OWNED VEHICLES)	The liability coverage of the Business Auto Policy provides protection against legal liability arising out of the ownership, maintenance or use of any insured automobile. The insuring agreement agrees to pay for bodily injury or property damage for which the insured is legally responsible because of an automobile accident. The policy also states that, in addition to the payment of damages, the insurer also agrees to defend the insured for all legal defense cost. The defense is in addition to the policy limits.
WAIVER OF SUBROGATION	An agreement between two parties in which one party agrees to waive subrogation rights against another in the event of a loss. The intent is to prevent one party's insurer from pursuing subrogation against the other party.