

LEASE AND OPERATING AGREEMENT

THIS LEASE AND OPERATING AGREEMENT (the “Agreement”), is entered into this ___ day of _____, 20___, between Fairhope Airport Authority, a public corporation organized under the laws of the State of Alabama (the “Authority”), and _____ (the “Operator”).

RECITALS:

WHEREAS, the Authority owns and operates the H. L. “Sonny” Callahan Airport (the “Airport”) in Baldwin County, Alabama, for the use and benefit of the public; and

WHEREAS, Operator desires to lease land on the Airport to store and house aircraft owned by Operator pursuant to this Agreement; and

WHEREAS, it is in the best interests of the Authority to encourage aeronautical activity at the Airport;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein, the Authority and Operator hereby agree as follows:

ARTICLE I
LEASED PREMISES

The Authority leases to Operator, and Operator hereby hires and takes from the Authority, the tract of land at the Airport shown on **Exhibit A** (the “Leased Premises”), subject to all liens, easements, restrictions and other encumbrances of record, provided such matters do not prevent operator from conducting its business on the Leased Premises. If a Fuel Farm Addendum is included, the Authority also grants to Operator space in the designated fuel farm area on the East Terminal Area Layout Plan within which space Operator shall have the right to construct and use a fuel tank (for self service only) per the terms of the attached Fuel Farm Addendum.

The Leased Premises shall be taken by Operator in the **AS IS** condition, subject to all defects, latent and patent, and shall be improved, maintained and operated at Operator’s sole cost and expense except as may otherwise be specifically provided in this Agreement.

ARTICLE II
GRANT OF USE

The Authority grants Operator the right to the Leased Premises and the improvements constructed thereon to conduct, on a NON-EXCLUSIVE basis, aeronautical services and activities described as a private corporate aviation operation, operating under Part 91 and/or Part 135 of the Federal Aviation Regulations, for itself and any of its subtenants (collectively “Approved Users”) including: (1) maintenance, fueling, and storage of Operator’s aircraft, or the aircraft used or leased by Operator; (2) aircraft access areas; (3) aircraft parking in accordance with item (1); (4) ground vehicle parking for Operator’s owners, agents, employees, customers, and guests; (5) storage of

parts, equipment, and supplies required for the maintenance of Operator's aircraft and facility; and (6) aircraft and ground vehicle parking for invitees doing business Approved Users; (7) general corporate offices; and (8) other business activities. The Authority grants to Operator the rights of ingress and egress to and from the Leased Premises over Airport common use roadways, subject to the Authority's rules and regulations.

Operator is bound by all the terms, criteria, and requirements contained in "Sonny Callahan Airport – *Minimum Standards*" dated May 20, 2014 (the "*Minimum Standards*"), attached as **Exhibit B**, as amended from time to time by the Authority.

Operator shall not use the Leased Premises, and any improvements thereon, for any purpose other than the authorized purposes set forth above.

Operator agrees that the rights granted under this Agreement are non-exclusive and the Authority herein reserves the right to grant similar privileges to other operators on other parts of the Airport. Nothing in this Agreement shall be construed as granting or authorizing any exclusive rights to Operator within the meaning of 49 U.S.C. paragraphs 40103(e) and 47107(a)(4).

ARTICLE III **ENVIRONMENTAL RESPONSIBILITIES**

A. Environmental Assessments and Responsibilities. The Authority has obtained (or will obtain) an ASTM Standards Phase 1 environmental assessment from an environmental consulting firm acceptable to the Authority. The Authority will provide Operator with a copy of the assessment.

At the termination of this Agreement, Operator, at Operator's expense, shall obtain an environmental assessment encompassing all of the Leased Premises, and furnish a copy to the Authority. The same criteria and additional testing that applied for the Phase 1 assessment will also apply for the environmental assessment done at the termination of this Agreement.

Within six (6) months, Operator shall promptly effect remediation of any contamination disclosed in the environmental assessment prepared at the termination of the Agreement not also disclosed in the environmental assessment furnished by the Authority, taking into account any matters that may have been present in the first environmental assessment, but not detected due to improved detection methods. Operator shall deliver a post-remediation environmental assessment substantiating completion of such remediation in accordance with applicable law. The Authority may extend the 6-month period for good cause.

B. Environmental Compliance. Operator agrees that no oils, petroleum products, synthetic lubricants, gasoline, solvents, or other hazardous materials may be permanently or temporarily stored on the Leased Premises. No storage tanks, either of the above ground type or below ground type, may be constructed or stored on the Leased Premises.

Small quantities of the above items necessary for the day to day operation of Operator are permitted. However, Operator will not store any one item in a quantity greater than fifty-five (55) gallons and will not have a combined total of all such substances on the Leased Premises at any one time greater than three hundred (300) gallons.

Operator shall comply with all laws, including any federal, state, or local statute, law, ordinance, code, rule, or regulation, regulating or relating to the environment, air quality, hazardous substances or materials, or petroleum products that may apply to the use of the Leased Premises. If the Leased Premises become environmentally contaminated during Operator's occupancy due to Operator, its invitees, guests, licensees, officers, employees, agents, or independent contractors negligence, inaction, or other acts, or acts of God (the "Operator Contamination"), Operator shall be responsible for all costs related to the environmental remediation of the Leased Premises as required by applicable governmental regulatory bodies. Any Operator Contamination discovered after the termination of this Agreement shall remain the responsibility of Operator. Operator shall defend and indemnify the Authority and hold the Authority harmless from and against any and all claims, losses, liabilities damages, injuries, costs, expenses (including attorneys' fees), claims for damage to the environment, claims for fines or civil penalties, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against the Authority by any person, entity, or governmental agency arising out of or related to Operator Contamination.

Operator acknowledges that the Authority is subject to City of Fairhope, Baldwin County, State of Alabama, and/or Federal storm water regulations, 40 C.F.R. Part 122 for "vehicle maintenance shops" (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations and/or deicing operations that occur at the Airport. Operator may not conduct any of the above operations unless: 1) Operator is authorized by this Agreement to conduct said operations, and 2) Operator has applied for and received a storm water discharge permit if required by storm water regulations.

Operator shall cooperate with the Authority in minimizing the exposure of storm water to "significant materials" as defined in 40 C.F.R. Part 122(b)(12), and shall comply with any applicable governmental and Authority storm water pollution prevention plans. Operator is solely responsible for the compliance and construction of any storm water/surface water facilities, holding areas, treatment areas, diversionary fixtures or improvements, or other water flow control mechanisms deemed necessary by an authorized governmental entity.

ARTICLE IV

COMPLIANCE WITH RULES AND REGULATIONS

Operator agrees to conform to all other Federal, State, and local laws and regulations which may apply to the services to be performed by Operator, and that the Authority is to be held free and harmless from any act or failures by Operator to do so.

Operator shall obtain and maintain in force all licenses, permits and other certificates required by Federal, State, County, or Municipal authorities for its operation.

Operator agrees to observe all security requirements of Transportation Security Administration 49 C.F.R. 1542 and the Airport Security Plan, as may be applicable, and as either may, from time to time, be amended, and to take such steps as may be necessary or directed by the Authority to ensure that employees, invitees, agents and guests observe these requirements.

If the Authority incurs any fines and/or penalties imposed by Federal, State, County, or Municipal authorities as a result of the acts or omissions of Operator or anyone acting under its direction and control, then Operator shall be responsible to pay or reimburse the Authority for all such fines or penalties.

ARTICLE V **TERM**

The term of this Agreement shall commence at 12:00 a.m. on _____, 2019 (the “Commencement Date”) and shall continue for a period of thirty (30) years until 11:59 p.m. on _____, 2049 (the “Ending Date”), plus the time necessary for Operator to complete its obligations under Paragraph 7 of the Fuel Farm Addendum (if applicable). All Articles in this Agreement remain in full force and effect during the entire term of this Agreement until Operator has completed these obligations. After the Ending Date Operator shall no longer exercise its rights and privileges described in Article II to conduct aeronautical services and activities described therein.

ARTICLE VI **RENTS AND FEES**

A. Base Ground Rent. In consideration of the rights and privileges herein granted, Operator hereby covenants and agrees to pay the Authority upon commencement of this Agreement annual base ground rent of \$0.27 per square foot of Leased Premises. The Leased Premises are _____ square feet. From ____, 2019 to ____, 2024, the annual base ground rent shall be \$_____.

Operator agrees to pay the annual base ground rent due to Authority, on or before the Commencement Date and on the anniversary thereof in each year during the term of this Agreement. **No invoice will be sent.** Base ground rent for periods less than one year shall be prorated on a daily basis (365-day year). Operator shall be responsible for adding the applicable state and local sales tax to all base ground rental payments. Said payments shall clearly indicate what amount of the total payment is for base ground rent and what amount is for state and local sales tax.

Any rental payments required under the Agreement which are not received when due shall accrue interest at the rate of one and one-half percent (1.5%) per month from the due date until receipt of payment.

B. Adjustments to Base Ground Rent. Adjustments to the base ground rental rate will be made every five (5) years. The base ground rental rate shall increase by 12.5% every five (5) years.

The adjusted annual base ground rental rate will go into effect according to the following schedule:

Jan. 1, 2024 – Dec. 31, 2029.....	\$ _____
Jan. 1, 2029 – Dec. 31, 2034.....	\$ _____
Jan. 1, 2034 – Dec. 31, 2039.....	\$ _____
Jan. 1, 2039 – Dec. 31, 2044.....	\$ _____
Jan. 1, 2044 – Dec. 31, 2049.....	\$ _____

**ARTICLE VII
SECURITY DEPOSIT**

Prior to commencing operations, Operator must post with the Authority, must continuously maintain for the entire term, a security deposit of three thousand dollars (\$3,000.00). The security deposit shall be payable to the Authority in the event Operator defaults in any of its monetary obligations to the Authority hereunder.

**ARTICLE VIII
TAXES AND ASSESSMENTS**

Operator shall promptly pay all property taxes; personal property taxes; all sales and other taxes measured by or related to the payments hereunder required under law; all license fees; and any and all other taxes, charges, imposts or levies of any nature, whether general or special, which, at any time, may be in any way imposed by local, state, or federal authorities, or that become a lien upon Operator, the Authority, the Leased Premises, or any improvements thereon, by reason of this Agreement. The Authority warrants and represents that it shall not impose upon Operator any taxes, assessments, or charges, except those imposed on all other businesses operating on the Airport.

**ARTICLE IX
INSURANCE AND INDEMNIFICATION**

Operator shall procure and maintain insurance of the types and to the limits specified below **at all times** during the Lease Term. The Authority shall be an Additional Insured on **all policies**, where applicable, and such coverage shall be at least as broad as that provided to the Named Insured under the policy. The Authority shall not be liable for premium payment. If the limits of liability afforded should become impaired by reason of any claim, then Operator agrees to have such limits as set forth, reinstated under the policy. **In all instances**, Operator’s insurance shall be considered primary, and all other insurance shall be excess over and above Operator’s coverage.

Operator and the Authority agree that the minimum limits and type of insurance required may become inadequate, and Operator agrees that it will increase such coverage or Limits of Liability to commercially reasonable levels within ninety (90) days upon receipt of notice in writing from the Authority.

Insurance shall be issued by an insurer that is satisfactory to the Authority, for the Authority's protection only. The amounts, form and type of insurance shall conform to the following minimum requirements:

A. Worker's Compensation. Operator shall purchase and maintain Workers Compensation Insurance Coverage for all Workers Compensation obligations required by law. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least \$100,000 each person (accident), \$100,000 each person (disease), and \$500,000 aggregate (disease).

B. Aircraft Liability. Aircraft Liability Insurance must be provided, including coverage for bodily injury and property damage. The required minimum limit for this coverage is \$1,000,000 per occurrence.

C. Commercial General Liability. Commercial General Liability coverage must be provided, including bodily injury and property damage liability for premises, operations, products and completed operations, and independent contractors. Broad Form Commercial General Liability coverage or its equivalent shall provide broad form contractual liability applicable to this Agreement, personal liability and broad form property damage liability. The coverage shall be written on occurrence-type basis with minimum limits of \$2,000,000 per occurrence and in the aggregate.

D. Business Auto Policy. Business Auto coverage must be provided, including death, bodily injury and property damage arising out of operation, maintenance or use of owned, non-owned and hired automobiles and employee non-ownership use. Minimum limits of \$300,000 combined single limit must be provided.

E. Environmental Impairment. Environmental Impairment coverage must be provided, including spillage, leakage, seeping or the like arising out of the aviation fuel storage tank system (fuel farm), all of which may be sudden and accidental, or over a long period of time. This coverage shall be written on a claims-made type basis with minimum limits of \$1,000,000 combined single limit or as required by Federal or State Statute.

F. Umbrella Liability Insurance. Umbrella Liability Insurance shall make up any difference between the policy limits of underlying policies' coverage, and the total amount of coverage required shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

G. Property Insurance. Operator shall maintain property insurance coverage which insures any improvements constructed on the Leased Premises against fire, extended coverage and Standard Insurance Office (ISO) defined “Special Perils” of physical damage. The company or companies providing property insurance coverage shall be qualified to do business in the State of Alabama. Such policy shall contain a Waiver of Subrogation endorsement in favor of the Authority. Operator agrees to apply any payment made as a result of any insurable loss to the debris removal, repair or replacement of such Improvements subject to the rights of any Lender or Mortgagee. Such funds shall be expended on such debris removal, repair or replacement within a reasonable period of time. A period of more than twelve (12) months shall be deemed unreasonable.

Certificates of Insurance

Required insurance shall be documented in the Certificates of Insurance which provides that the Authority shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. With the exception of workers’ compensation and automobile liability coverage, the Authority shall be named on each Certificate as an Additional Insured and this Lease Agreement shall be listed. If required by the Authority, Operator shall furnish copies of Operator’s insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the “Certificate of Insurance” form equal to an ACORD 25. If any policy that is cancelled or non-renewed is not timely replaced, Operator shall, upon instructions of the Authority, cease all operations under the Agreement until directed by the Authority, in writing, to resume operations. The “Certificate Holder” address should read: Fairhope Airport Authority, P. O. Box 429, Fairhope, AL 36533.

Hold Harmless

Operator shall indemnify and hold harmless the Authority, its Officers, Directors, and volunteers, from any and all claims, suits, actions, damages, liability and expenses in connection with loss of life, bodily or personal injury, or property damage, including loss or use thereof, directly or indirectly caused by, resulting from, arising out of, related to, or occurring in connection with the performance of this Agreement or on or about the Airport premises, provided any such claim, suit, action, damage, liability or expense is caused in whole or in part by an alleged act or omission of Operator, or Operator’s subtenants, contractors, subcontractors, representatives, licensees, invitees, agents, or employees of Operator or employees of any of the aforementioned individuals or entities. Operator’s obligation shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance. Nothing contained herein shall obligate Operator to indemnify or hold harmless the Authority for the Authority’s own negligence, or willful or intentional acts. Operator agrees to pay on behalf of the Authority, as well as provide a legal defense for the Authority for all claims as described in this HOLD HARMLESS paragraph. Such payment on behalf of the Authority shall be in addition to any and all other legal remedies available to the Authority and shall not be considered to be the Authority’s exclusive remedy.

ARTICLE X
IMPROVEMENTS

A. Initial Improvements. Upon execution of this Agreement, Operator shall promptly design and construct, at its own expense, all improvements needed for the operation to be conducted from the Leased Premises. Said improvements shall be in accordance with those included in Operator's plans submitted to and approved by the Authority and shall comply with FAA design standards relying upon the professional opinion of the Authority's aviation engineering firm of record. Operator must submit final plans and specifications to the Authority and to the City of Fairhope Building Department for review not later than 120 days after the Effective Date. The Authority shall review said plans and specifications and return them to Operator with appropriate comments within 60 days after receipt. **No work shall be performed until the Authority and the City of Fairhope Building Department approve Operator's plans.** Upon receipt of the Authority's approval of the plans and specifications, Operator shall have eighteen (18) months to complete the construction of the initial improvements and be in operation. The improvements are to be constructed by qualified and licensed contractors and subcontractors.

Upon the execution of this Agreement, the Operator shall deliver to the Authority a deposit in the amount of \$10,000. This is in addition to the Security Deposit set forth in Article VII, above. The Operator may use this deposit as a credit toward Operator's annual lease payments OR, if Operator is current on its annual lease payments then the Authority shall refund this deposit to Operator upon completion of the Initial Improvements.

B. Additional Improvements. Operator shall have the right to construct improvements, alterations, or additions to the Leased Premises to facilitate the authorized usage of the Leased Premises, provided Operator conforms with all conditions of this Article including:

- (1) The proposed improvements and alterations are submitted to the Authority and to the City of Fairhope Building Department for review;
- (2) The Authority determines, in its sole discretion (which shall not be unreasonably withheld), that the proposed improvements and alterations will be consistent with the Airport's Master Plan, land use plan and architectural design and quality of construction then in effect; and
- (3) The improvements, alterations, and additions are to be constructed by qualified and licensed contractors and subcontractors.

C. General Construction Requirements. Prior to any construction activity, Operator shall submit detailed plans, specifications, and a construction time schedule for the improvements, to the Authority for approval. The Authority shall either approve or disapprove the plans and/or specifications submitted by Operator. Approval by the Authority of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural and aesthetic plan for the area leased by Operator. **Such plans are not approved for architectural or engineering design or compliance with applicable laws or codes and the Authority, by**

approving such plans and specifications, assumes no liability or responsibility hereof or for defect in any structure or improvement constructed according to such plans and specifications. The Authority reserves the right to reject any design submitted and shall state the reasons for such action. No changes or alterations shall be made to said plans and specifications after approval by the Authority.

As soon as possible following the Authority's approval, Operator shall proceed with construction of improvements. Operator's construction of improvements must comply with all City, County, and/or Alabama building codes and regulations including application for, and receipt, of all necessary permits and other permissions, and including payment by Operator of all government and utility company fees.

Operator shall construct all improvements and additions to the Leased Premises at its own expense. Neither the Leased Premises, nor the Authority's interest in said Leased Premises, nor any improvements constructed thereon, shall be subjected to any lien or encumbrance for improvements constructed by Operator.

As a condition precedent to the commencement of **any** improvements, Operator shall obtain and deliver to the Authority: 1) a performance bond for 100% of the project cost; and 2) a labor-and-materials bond for 100% of the project cost, each of which shall be from a bonding company with at least an "A" rating from A. M. Best rating service. In the event of a default by Operator, these bonds shall be immediately and automatically assigned to the Authority without any further action or consent of Operator.

Operator shall reimburse the Authority for all costs and expenses, including attorney's fees, which the Authority incurs:

- (1) As a result of the fact that the improvements, additions, or alterations do not comply with local, state and federal law;
- (2) In defending against, settling or satisfying any claims that the Authority is responsible for paying for improvements commissioned by Operator hereunder; or
- (3) In defending against, settling or satisfying any mechanic's lien claims, asserted as a result of unpaid for improvements commissioned by Operator.

Should Operator construct improvements, alterations, or additions without fulfilling its obligations hereunder, Operator shall remove said improvements, alterations, or additions if directed by the Authority, and shall do so at its own expense and within the time limits specified.

Operator shall provide Authority with one complete set of "as-built" drawings for each improvement, alteration, or addition made to the Leased Premises during the term of this Agreement.

Within sixty (60) days after completion (i.e., issuance of a certificate of occupancy) of any improvements, alterations, or additions, Operator shall submit to the Authority a detailed, certified statement from the construction contractor(s), architect(s), and engineer(s) specifying the total construction costs, both hard costs such as building contractor and material costs and soft costs such as architect fees, bond costs, letter of credit fees, attorney fees to review and negotiate construction contracts and construction issues and for loan closing, and design and closing costs, but excluding debt service (collectively “Direct Costs”). Such costs, less amounts reimbursed by federal or state grants, and less amounts credited to Operator rent payments by the Authority, shall become the basis for depreciation of Operator improvements (hereinafter the “Basis for Depreciation”) as provided for in Article XXV, Buyout of Improvements. If the certified statement is not timely provided, the assumed Basis is \$0.00 for purposes of Article XXV.

Title to Operator’s trade fixtures and signs and personal property shall at all times during the term of this Agreement remain with Operator.

Operator shall not sell, convey, remove, or demolish, in whole or in part, any improvements, alterations, or additions upon the Leased Premises without the prior written consent of the Authority.

ARTICLE XI **SIGNS**

Operator shall have the right to place in or on the Leased Premises a sign or signs identifying Operator. Such sign(s) shall be of a size, shape and design, and at a location or location, approved in writing in advance by the Authority and in conformance with standards established by the Authority with respect to the Airport’s overall directional graphics and sign program. The Operator, upon written request from the Authority, shall remove all lettering and signs so erected on the Leased Premises at the expiration of this Agreement.

ARTICLE XII **MAINTENANCE**

Operator agrees, at its own expense, to maintain and keep in good condition and repair, all portions of the Leased Premises, including any improvements, alterations, or additions thereon, and any utility lines thereon. As used herein, maintenance shall include the upkeep, repair, and replacement of all structural and non-structural aspects of the Leased Premises and all existing and future improvements thereto. Maintenance shall include:

- (1) The maintenance of all hangars, fencing (excepting the airport perimeter fence), landscaping, irrigation, foundations, walls, roofs, drainage installations, curbs, islands, sidewalks, driveways, aircraft ramp, aircraft taxi lanes, parking areas (vehicular and aircraft), and Operator-constructed and/or modified vehicular and aircraft ingress/egress and access-ways provided for in this Lease;

- (2) The maintenance of all interior and exterior utility lines, equipment, fixtures and connections in accordance with Article XV, Utilities;
- (3) The maintenance of all interior and exterior doors, locks, walls, windows, ceilings and partitions;
- (4) The maintenance of all interior and exterior lighting fixtures and standards including bulbs, tubes, ballasts, starters, switches and outlets;
- (5) All interior and exterior painting; and
- (6) All janitorial, pest control and security services.

The Authority shall not be liable for damage caused by wind, water, steam, sewage, snow, ice, gas, bursting or leaking of pipes or plumbing or electrical causes, unless the damage is proved to be the result of gross negligence of the Authority.

The Authority shall have no responsibility for maintenance, repair, or replacement of the Leased Premises or any Operator's Improvements. Operator, at its sole cost and expense, shall provide custodial service and other service(s) required by Operator.

Operator agrees to maintain all portions of the Leased Premises, and any improvements, alterations, or additions thereon, in a safe, clean, and neat condition, and not permit any accumulation of wreckage, debris, or trash. Operator agrees to provide for complete, proper and adequate sanitary handling and disposal of all trash, garbage, waste and other refuse; to provide and use suitable covered metal receptacles for all trash, garbage and other refuse on or about the Leased Premises, and not to pile boxes, cartons, carts, drums, or the like on the outside of the buildings, or dump any waste matter of any nature, including but not limited to sewage waste on the Leased Premises nor to permit contamination of the Authority's sewers or the Airport's drainage control reservoir(s) and/or storm water drainage areas.

Should Operator fail to comply with the terms and conditions of this Article within a period of thirty (30) days following written notice of such failure, the Authority reserves the right to take any action to cure said failure. Should the Authority take action to cure failures, Operator shall pay to the Authority an amount equal to the Authority's cost for such actions plus a twenty percent (20%) administrative charge. Said payment is to be made by the 10th day of the following month in addition to any other payments due.

ARTICLE XIII **UTILITIES**

Operator, at Operator's expense, shall be responsible for determining the existing hook-up points of all utility services Operator requires. The Authority shall not be obligated to provide for the extension of these utility service lines or to provide for the installation of any other utility service lines.

Operator, at its sole cost and expense, shall be responsible for the maintenance and repair of all utility lines required for the Leased Premises commencing at the point(s) where said utilities enter upon the Leased Premises, including but not limited to telephone, fiber optics cable, water, natural gas, sewer, and electricity. The Authority shall have no obligations related to said maintenance and repair. Operator shall coordinate any required maintenance and repair with the appropriate utility company. Operator shall be solely liable for the cost of all utility consumption on the Leased Premises and Operator shall obtain separate meters accordingly.

ARTICLE XIV **DAMAGE OR DESTRUCTION**

Operator shall be liable for any damage to the Airport and to any improvements thereon caused by Operator, its partners, officers, agents, or anyone acting under its direction and control, ordinary wear and tear excepted. All repairs for which Operator is liable shall be made by Operator unless the Authority determines that it is more appropriate for the Authority to make the repairs; provided, however, notwithstanding anything herein to the contrary, repairs to the improvements constructed by Operator may be made by Operator unless Operator fails to undertake such repairs as set forth below. In such a case, the Authority shall make the repairs at Operator's expense. All repairs for which Operator is liable and which are not undertaken after the Authority has given Operator notice to so do shall be performed by the Authority, in which event Operator shall reimburse the Authority for the cost thereof, plus a twenty percent (20%) administrative charge, and said amount shall be due by the 10th day of the following month in addition to any other payment due.

In case of damage to or destruction of the improvements upon the Leased Premises, Operator, at its sole expense, shall commence the repair or reconstruction of the improvements within sixty (60) days thereafter and diligently complete such repair or reconstruction within a reasonable time period and to a condition as near as reasonably practicable to the condition thereof immediately prior to such damage or destruction. In accordance with Article IX, Insurance and Indemnification, a period of more than twelve (12) months shall be deemed unreasonable. In the event Operator fails to commence repairs within the specified time, then, at the Authority's sole discretion, this Agreement shall terminate or the Authority may exercise its remedies under this Agreement.

In the event of a damage caused by a named storm, the Parties recognize that approved contractors may be unavailable to commence repairs within the prescribed timeframe, and Operator shall have additional time afforded to it to complete repairs within a reasonable timeframe. Further, in the event the Leased Premises or improvements thereon incur significant damage, Operator shall have the option to terminate this Agreement with no further obligation or liability. If Operator terminates this Agreement on this basis, the Authority shall have no obligation to buyout Operator's Improvements under Article XXII.

In the event this Agreement terminates pursuant to the paragraph above, Operator at its sole cost and expense, shall within four (4) months after the receipt of the Authority's notice as aforesaid, tear down and remove all parts of the improvements then remaining and the debris

resulting from such fire or other casualty and otherwise clean up the Leased Premises, and place the area in a condition similar to that when it was first provided to Operator. In all events, the Leased Premises shall be free and clear of liens, including the lien of any leasehold mortgage, arising by, thru, or under Operator.

ARTICLE XV
RIGHT TO ENTER

The Authority and its authorized officers and agents, shall have the right to enter upon the Leased Premises and any improvements and alterations thereon at reasonable times in the exercise of the Authority's obligations for health, safety, and security at the Airport.

ARTICLE XVI
QUIET ENJOYMENT

The Authority warrants and represents that it has good and marketable title to the Leased Premises free of encumbrances (but subject to FAA Grant Assurances and regulations). The Authority represents that upon payment of fees when due and upon performance of all other conditions required herein, Operator shall peaceably and quietly have, hold, possess and enjoy the Leased Premises, and all improvements thereon, for the term of this Agreement.

ARTICLE XVII
NON-DISCRIMINATION

Operator, agrees that (1) no person on the grounds of race, color, religion, sex, national origin, disability, or any other ground prohibited by applicable federal or state law shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Leased Premises; (2) no person on the grounds of race, color, religion, sex, national origin, disability, or any other ground prohibited by applicable federal or state law shall be subjected to discrimination in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services therein; and (3) Operator shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, C.F.R., Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation, effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

Operator shall furnish its accommodations and/or services on a fair, equal, and non-discriminatory basis to all users thereof and it shall charge fair, reasonable, and non-discriminatory prices for each unit or service, PROVIDED THAT Operator may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar type of price reductions to volume purchasers if in accordance with applicable law. The Authority shall have the right to terminate this Agreement if Operator breaches this covenant.

ARTICLE XVIII
WAIVER

Should Operator breach any of its obligations hereunder, the Authority may accept from Operator any payment or payments due under this Agreement, and continue this Agreement in effect without in any way waiving the Authority's ability to exercise and enforce all available remedies upon default provided hereunder or provided by law for said breach. In addition, any waiver by either party of any default, breach, or omission of the other under this Agreement shall not be construed as a waiver of any subsequent or different default, breach, or omission.

ARTICLE XIX
DEFAULT AND REMEDIES

A. Events of Default by Operator. Subject to any cure periods otherwise set forth herein, the following shall constitute material defaults by Operator:

(1) The failure to keep **any** covenant, agreement, or obligation covered under this Agreement, subject to a thirty (30) day cure period following written notice by Authority to Operator of such failure.

(2) The failure to pay any rent, fees, or any other monies owed hereunder when such fees and monies are due, subject to a five (5) day cure period following written notice by Authority to Operator of such failure.

(3) Should the operation of Operator change to such an extent that it is no longer able to meet the criteria set forth in its proposal for said operation or in the *Minimum Standards* (as amended from time to time) for the initial activities permitted under this Agreement, and Operator desires to continue with reduced or other services, Operator must make written application to the Authority to request a modification to said operation. Said modification to the permitted activities will be reviewed in accordance with Article II to determine if Operator may conduct said reduced or other services. Failure to make this application, or should the application be denied, the continuing operation of said reduced or other services, shall constitute a default.

(4) Operator undertakes any other commercial or noncommercial service or activity not specifically permitted under this Agreement.

(5) If any court shall take jurisdiction of Operator and its assets pursuant to any proceeding other than under the provisions of the Bankruptcy Act, or if a Receiver for Operator's assets is appointed, or if Operator shall be divested of its rights, powers, and privileges under this Agreement by other operation of law, other than under the Bankruptcy Act.

(6) Subject to casualty and the terms of Article XIV, Damage or Destruction, hereof, abandonment of Operator's operations, which shall be defined as Operator's failure to conduct regular and continuing operations on the Leased Premises in accordance with the requirements hereof for six (6) months.

B. Remedies Upon Default of Operator. Upon the occurrence of any of the events of default set forth above, the Authority may exercise any one or more of the following remedies. These remedies shall be cumulative, and not alternative:

(1) The Authority may sue for recovery of all damages incurred by the Authority or to compel Operator to perform its obligation(s) under this Agreement, and for reasonable attorney's fees.

(2) The Authority may utilize any portion, or all of the security deposit provided by Operator to remedy the default and to reimburse the Authority for any damages, including attorney's fees and other expenses of collection that it may sustain as a result of the default. In such event, Operator shall not be permitted to resume operations under this Agreement until such time as it furnishes another security deposit. However, this Agreement shall not be deemed terminated during said period unless written notice of the termination shall have been given and become effective in accordance with subparagraph 3, below.

(3) The Authority may terminate this Agreement. The termination shall only be effective upon written notice of same provided by the Authority to Operator. In no event shall this Agreement be construed to be terminated unless and until such notice is provided. The termination may be effective immediately upon provision of said notice, or at any other time specified in the notice. If this Agreement is terminated, Operator shall continue to be liable for: (a) the performance of all terms and conditions and the payment of all monies due hereunder prior to the effective date of said termination; (b) all damages, including attorney's fees and other expenses of collection, incurred as a result of any default; and (c) all conditions, terms and obligations in Article IX, Insurance and Indemnification .

(4) The Authority may utilize any other remedy provided by law or equity as a result of any event of default.

(5) Prior to exercising any remedy, the Authority will notify Operator's Lender (if applicable) and give Lender an opportunity to cure the default.

C. Events of Default by Authority. Subject to any cure periods otherwise set forth herein, the Authority shall be in default if it fails to keep any covenant, agreement, or obligation covered under this Agreement, subject to a thirty (30) day cure period following written notice by Operator to Authority of such failure.

D. Remedies Upon Default of Authority. Upon the occurrence of any of the events of default set forth above, Operator may sue for recovery of all damages incurred by Operator, if any, and attorney's fees.

ARTICLE XX
NON-DEFAULT TERMINATION EVENTS

A. Non-Default Termination Events. The occurrence of any of the following shall constitute a termination hereunder and entitle Operator to terminate this Agreement by giving ninety (90) days written notice:

(1) The lawful assumption by the United States of America, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to substantially restrict Operator from operating therefrom for a period in excess of ninety (90) days.

(2) The abandonment of the Airport as an airport or airfield for a period greater than 90 days.

B. Lost Profits. Except as set forth in Article XXV, Buyout of Improvements, the Authority shall not be responsible to Operator for any lost profits, expenses, liabilities or claims whatsoever that may result from termination by Operator or the Authority pursuant to this Article.

ARTICLE XXI
FORCE MAJEURE

Neither the Authority nor Operator shall be liable for any failure, delay, or interruption in performing its obligations hereunder (other than Operator's obligations to pay rent, fees and other monies) due to causes or conditions beyond their control, by which is meant: acts of God, the elements, weather conditions, earthquakes, fire, acts of governmental authority (other than the Authority or agency thereof), war, injunctions, or labor troubles or disputes of every kind (including those affecting the Authority, Operator, their contractors, subcontractors, or suppliers).

ARTICLE XXII
BUYOUT OF IMPROVEMENTS

In the event of cancellation or termination of this Agreement **prior to the Ending Date**, the Authority shall, within ninety (90) days after the date of such termination or cancellation, pay Operator for all Operator Improvements installed or constructed by Operator which were submitted to the Authority pursuant to ARTICLE XI, provided, however, the Authority shall not make any payments hereunder for any Operator Improvements not then in existence at the time of any such cancellation or termination. The price for said improvements shall equal the Basis for Depreciation pursuant to ARTICLE XI, depreciated on a straight-line basis commencing with the completion of such installation or construction and extending until the expiration of the Agreement, less the salvage value of the improvements retained by Operator.

ARTICLE XXIII
SURRENDER UPON TERMINATION

Upon the expiration or sooner termination of this Agreement Operator shall peaceably surrender to the Authority possession of the Leased Premises and all improvements, alterations, and additions; and, subject to terms of Article XXV, without any compensation whatsoever, and free and clear of any claims or interests of Operator or of any mortgages or any other third party whose position was derived from or through Operator. If any of said Leased Premises and improvements, alterations, and additions is encumbered by a mortgage or lien at the time of expiration or sooner termination of this Agreement, any such mortgagee shall have the same rights and obligations under this Agreement as Operator. The unimproved area(s) of the Leased Premises shall be restored by Operator at Operator's expense to as good a condition as the Leased Premises were initially provided to Operator, ordinary wear and tear excepted, to a flat and level condition. The improvements, alterations, and additions on the Leased Premises shall be restored by Operator at Operator's expense to as good a condition as when the improvements, alterations, and additions were initially constructed by Operator, ordinary wear and tear excepted.

Title to all remaining improvements, alterations, additions, personal property, trade fixtures and signs not removed by Operator from the Leased Premises or claimed from storage within thirty (30) days of the expiration or sooner termination of this Agreement shall be subject to the Authority taking ownership in whole or part of such remaining improvements, alterations, additions, personal property, trade fixtures and signs, without payment by the Authority to Operator of any compensation, and said remaining improvements, alterations, additions, personal property and trade fixtures and signs designated by the Authority shall thereafter be owned by the Authority free and clear of any claim or interest by Operator or of any mortgagee or any third party whose position was derived from or through Operator.

ARTICLE XXIV
HOLDING OVER

If Operator remains in possession of the Leased Premises after the expiration of this Agreement without any written renewal thereof, such holding over shall not be deemed as a renewal or extension of this Agreement but shall create only a tenancy from month to month, which may be terminated at any time by the Authority upon thirty (30) days written notice. Such holding over shall otherwise be upon the same terms and conditions as set forth in this Agreement.

ARTICLE XXV
RENEWAL

Operator has no guaranteed or preferential right of re-letting the Leased Premises following the termination of this Agreement. Should Operator desire to re-let the Leased Premises

following the termination of the term of this Agreement, Operator shall submit an application for lease in accordance with Airport leasing rules and regulations in effect at that time.

ARTICLE XXVI
AIRPORT DEVELOPMENT RIGHTS

The Authority reserves the right to further develop or improve all areas within the Airport, including landing areas, as the Authority may determine in its sole discretion to be in the best interests of the Airport, regardless of the desires or views of Operator, and without further interference or hindrance from Operator.

ARTICLE XXVII
SUBORDINATION

This Agreement shall be subordinate to existing and future Airport Bond Resolutions. This Agreement shall also be subject to and subordinate to agreements between the City of Fairhope, and State and Federal agencies for grants-in-aid and to the provisions of any agreements heretofore made between the City of Fairhope and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights of property to the City of Fairhope for Airport purposes, or to the expenditure of federal funds for the extension, expansion, or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Airport Act of 1958, as it has been amended from time to time.

ARTICLE XXVIII
ASSIGNMENT

Except in connection with construction financing for Improvements or Additional Improvements, Operator shall not assign its rights, title and interest herein without the written consent of the Authority, said consent not to be unreasonably denied or delayed. If an assignment is made, Operator shall continue to be liable, jointly and severally, with its assignee, for the fulfillment of all terms and conditions arising under this Agreement subsequent to the assignment, unless the Authority releases Operator in writing for such liability for future obligations.

ARTICLE XXIX
SUBLEASE

Operator may not sublease all or any portion of the Leased Premises, or all or any portion of the improvements thereon, without first obtaining written consent of the Authority. Said consent shall not be unreasonably denied or delayed. Operator may sublease portions of the Lease Premises for one or more aircraft parking areas and provide related services to one or more subtenants, provided that Operator shall give the Authority prior notice of each long-term partial sub-lease and shall identify the sub-tenant. Any such sub-lease must be in writing and be made subject to the terms and conditions of this Agreement. Short term sub-leases shall not require such

approvals. If Operator utilizes a self-contained fuel farm, in no event shall Operator be permitted to sell fuel to any sub-tenant. Operator is solely responsible for ensuring any sub-lease complies with applicable FAA Rules and Regulations.

ARTICLE XXX
SUCCESSORS

The provisions, covenants and conditions of this Agreement shall bind and inure to the benefit of the legal representatives, successors and assigns of the parties hereto.

ARTICLE XXXI
PARTIAL INVALIDITY

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

ARTICLE XXXII
NOTICES

All notices by either party to the other shall be made by depositing such notice in the registered or certified mail of the United States of America, postage prepaid, or with another delivery service requiring signature and receipt, and such notice shall be deemed to have been served on the date of such depositing correctly addressed notice in the registered or certified mail unless otherwise provided. All notices shall be delivered as follows:

If to Authority:

Joe McEnerney, Chairman
Fairhope Airport Authority
P.O. Box 429
Fairhope, AL 36533

If to Operator:

If by Courier:

Joe McEnerney, Chairman
Fairhope Airport Authority
161 N. Section St.
Fairhope, AL 36532

If by Courier:

The parties may from time to time designate, in writing, changes to the addresses stated.

ARTICLE XXXIII

REPRESENTATIONS REGARDING AUTHORITY AND OPERATOR

The Authority represents that it has the authority to enter into this Agreement and grant the rights contained herein to Operator.

Operator represents that it is a _____ and the undersigned signer warrants and represents that (1) he is a member of said limited liability company; and (2) he is authorized to execute this Agreement on the limited liability company's behalf; and (3) the limited liability company shall be bound as a signatory to this Agreement by his execution of this Agreement; and (4) that Operator is licensed to do business in the State of Alabama.

ARTICLE XXXIV RELATIONSHIP OF PARTIES

It is understood that the Authority is not in any way or for any purpose a partner or joint venture with, or agent of, Operator in the use of the Leased Premises or any improvements thereon, for any purpose.

ARTICLE XXXV AIRPORT PROTECTION

The Authority reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the Airport.

Operator shall not erect or permit the erection or growth of, or permit to remain in or on the Leased Premises, any structure, natural growth or other object extending into the airspace above the Leased Premises higher than as permitted in Federal Aviation Regulation Part 77 as such regulation may be amended from time to time.

Operator shall not use or permit the use in or on the Leased Premises in such a manner as to create electrical or electronic interference with communications between the Airport and aircraft, or between aircraft and any navigational controls, whether or not located on the Airport.

Operator shall not erect, install or permit the erection or installation of any lights that will or might make it difficult for aircraft pilots to distinguish between the Airport lights and other lights, or that will or might impair visibility or otherwise endanger the landing, taking off, or maneuvering of aircraft.

ARTICLE XXXVI GOVERNING LAW

This agreement shall be interpreted in accordance with the laws of the State of Alabama. In the event of any litigation between or involving Operator and the Authority, of any kind concerning or involving this Agreement the parties agree that it will take place only in the Circuit Court for Baldwin County, Alabama and not in any other location or Court.

ARTICLE XXXVII
ENCUMBRANCE OF LEASEHOLD ESTATE AND NOTICE TO MORTGAGEES

Operator may encumber by mortgage or other security instrument, by way of assignment, or otherwise, Operator's interest in this leasehold estate without prior written consent of the Authority.

Any lender on the security of the leasehold estate ("Lender") shall have the right at any time during the term of this Agreement: (1) to do any act or thing required of Operator hereunder and all such acts or things done and performed shall be as effective to prevent a forfeiture of Operator's rights hereunder; and (2) to realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by the security documents, or to acquire by deed-in-lieu, and to transfer, convey, or assign the title of Operator to the leasehold estate to any purchaser at any such foreclosure sale or transfer from Lender.

The rights of the Authority, in the event of a default, may not be exercised until written notice of such default to any Lender, or to the person or firm designated by any such Lender to accept such notices. It is agreed that such Lender shall have the right to cure any such default within thirty (30) days from receipt of said notice of any default that can be cured by the payment of money, or within thirty (30) days from receipt of said notice with respect to any other covenant or condition or term of this Agreement; and, if such default is of such nature that it cannot be remedied within said time, then such Lender shall have such additional time as is reasonably necessary to cure such default, provided that it commences the curing of such default within said thirty (30) day period, and thereafter diligently continues the curing of the same.

No Lender shall be required at any time to subordinate its mortgage to other mortgages or security instruments, nor shall such Lender be liable to the Authority as an assignee of this Lease unless and until such time as such Lender shall acquire the rights of Operator hereunder through foreclosure or other proceedings in the nature thereof, or by deed-in-lieu or as a result of any other action or remedy provided for by such mortgage, or which may otherwise be provided by law.

No modification, cancellation or surrender of this Agreement shall be made without the written consent of any Lender on the security of the leasehold estate when such Lender requests, or Lender's documents require, such written consent.

The Authority agrees to provide any estoppel upon request of Lender acknowledging that (and noting any exceptions) this Agreement is in full force and effect; that there are no defaults that exist under the Agreement; that the rent is current; and such other matters as Lender may reasonably require.

The Lender selected by Operator and the ultimate successor to Operator under this Agreement, in the event of foreclosure, deed-in-lieu or otherwise, is subject to the written approval of the Authority. Said approvals will not be unreasonably denied or delayed.

ARTICLE XXXVIII
COMPLIANCE WITH IMMIGRATION LAWS

The Parties affirm that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages or penalties resulting therefrom.

Operator shall at the outset of its performance under this Agreement, provide to Authority appropriate documentation establishing that Operator is enrolled in the E-Verify program. During the performance of the Agreement, Operator shall participate in the E-Verify program and shall from time-to-time at reasonable times verify that every employee that is *required* to be verified according to the applicable federal rules and regulations, *has been* verified.

Furthermore, if Operator engages contractors and/or subcontractors to work on the Leased Premises, Operator shall require all such contractors and/or subcontractors at the outset of performance under their respective contracts, to provide to Authority appropriate documentation establishing that each contractor and/or subcontractor is enrolled in the E-Verify program. During the performance of their respective contracts, each contractor and/or subcontractor shall participate in the E-Verify program and shall from time-to-time at reasonable times verify that every employee that is *required* to be verified according to the applicable federal rules and regulations, *has been* verified.

ARTICLE XXXIX
OPENNESS

It is not required that anything about this Agreement be kept confidential. Disclosure of its terms and conditions may be made to anyone. The Authority may be covered by the Alabama Open Meetings Act, § 36-25A-1 et seq., Ala. Code 1975, which requires openness to the public. This Agreement may be recorded as a public record for any purpose.

ARTICLE XL
BROKER'S OR FINDER'S FEES

If either Operator or the Authority has engaged a broker or finder regarding this Agreement, then any liability for or involving a broker or finder regarding this Agreement rests exclusively on the party which engaged any such brokers or finders.

ARTICLE XLI
ENTIRE AGREEMENT

This Agreement, together with all exhibits hereto, constitutes the entire Agreement and understanding between the parties with respect to the Leased Premises, and supersedes all negotiations, prior discussions, letters of intent and preliminary agreements. This Agreement may not be amended except by a writing executed by all Parties.

IN WITNESS WHEREOF, the parties hereto have signed this instrument on the date set forth above.

FAIRHOPE AIRPORT AUTHORITY

By: _____ Its: Chairman
Joe McEnerney

ATTEST: I hereby certify that Joe McEnerney, who is known to me, who signs as Chairman of Fairhope Airport Authority, is Chairman of Fairhope Airport Authority and, in that capacity, is authorized to sign this Agreement.

By: _____ Its: Secretary
Frank Groner

AIRPORT OPERATOR, LLC

By: _____ Its: Managing Member
John Q. Pilot

ATTEST: I hereby certify that _____, who is known to me, who signs as Managing Member of Airport Operator, LLC in that capacity, is authorized to sign this Agreement.

By: _____ Its: _____
Name:
Address:

This Instrument Prepared By:

Joshua P. Myrick
Stankoski Myrick, LLC
P.O. Box 529
Fairhope, Alabama 36533
Telephone: (251) 928-0123

EXHIBIT A
DESCRIPTION OF LEASED PREMISES

EXHIBIT B
MINIMUM STANDARDS