



**DEKALB TAYLOR MUNICIPAL AIRPORT**

**AGREEMENT**  
**FOR**  
**FULL FIXED BASE OPERATOR'S**  
**CONTRACT AND LEASE**

CITY CLERK FILES:  
Number: 105 08-91  
Date: 10-27-08

*City of*  
**DEKALB**

**Between**  
**The City DeKalb, Illinois**  
**And**  
**DeKalb Aviation Inc.**

**November 1, 2008**  
**through**  
**January 31, 2021**

**INDEX**

<b><u>Paragraph</u></b>	<b><u>Page</u></b>
<b>1)</b> Term	3
<b>2)</b> Holdover	3
<b>3)</b> Description of Leased Premises	3
<b>4)</b> Rentals and Fees	3
<b>5)</b> Utilities	4
<b>6)</b> Maintenance and Inspection of Records	4
<b>7)</b> Required Commercial Activities	4
<b>8)</b> Permitted Commercial Activities	6
<b>9)</b> Sub-Contracting	6
<b>10)</b> Advertising	6
<b>11)</b> Use of Airport Facilities	6
<b>12)</b> Disposition of Buildings	6
<b>13)</b> Disposition of Personal Property	6
<b>14)</b> Rules and Regulations	6
<b>15)</b> Compliance with Federal, State and Local Laws, Rules and Regulations	7
<b>16)</b> Non-Discrimination Requirements	7
<b>17)</b> Construction of Agreement	8
<b>18)</b> Subordination to Agreements between City and/or State of Illinois	8
<b>19)</b> Payment of Taxes, Assessments or Other Charges	9
<b>20)</b> Income Tax	9
<b>21)</b> Insurance	9
<b>22)</b> Worker's Compensation	10
<b>23)</b> Airport Maintenance	10
<b>24)</b> Furnishing of City Services	12
<b>25)</b> Default	12
<b>26)</b> Indemnification	13
<b>27)</b> Expenses of Litigation	14
<b>28)</b> Corporate Ownership	14
<b>29)</b> Notice	14
<b>30)</b> Assignment and Subleasing	14
<b>31)</b> Amendments	15
<b>32)</b> Non-waiver Provisions	15
<b>33)</b> Captions and Pronouns	15
<b>34)</b> Venue	15
Exhibit "A" Leased Area – East Terminal Area	17
Exhibit "B" Schedule of Rents and Fees	18

THIS NON-EXCLUSIVE AGREEMENT made and entered into this 1<sup>st</sup> day of November 2008, by and between the City of DeKalb of DeKalb County, Illinois, a municipal corporation, hereinafter called the "CITY" and DeKalb Aviation LLC, an Illinois corporation with offices at DeKalb, Illinois, as Fixed Base Operator, hereinafter referred to as the "FBO".

WITNESSETH:

WHEREAS, the CITY is the owner of a public airport known as the DeKalb Taylor Municipal Airport located in Section 24, Township 40 North, Range 4 East, and Section 18 & 19, Township 40 North, Range 5 East of the Third Principal Meridian in DeKalb County, Illinois, and as such owner has the authority to let said premises and to contract for a Fixed Base Operator thereon and desires to exercise that authority; and

WHEREAS, FBO desires to act as the Fixed Base Operator on said airport;

NOW THEREFORE, in consideration of the covenants and Agreements hereinafter set forth, and other good and valuable consideration, the parties hereto agree as follows:

**1. TERM:**

That the term of this lease and Agreement shall begin November 1, 2008 and end January 31, 2021. Upon mutual Agreement by both parties, an extension or renewal of this Agreement shall be upon terms and conditions negotiated by the parties to this Agreement as soon as practicable and at least ninety (90) days in advance of the expiration of said Agreement.

**2. HOLDOVER:**

The FBO agrees to relinquish possession of the premises as herein agreed to on the date of expiration of this Agreement and further recognize and agree that without any written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Agreement but shall only create a tenancy from month to month and which may be terminated at any time by the CITY.

**3. DESCRIPTION OF LEASED PREMISES:**

CITY hereby leases and demises to FBO the areas and facilities described in Exhibit "A" attached hereto and made a part hereof. Authorization is given to FBO, its employees, guests, passengers, customers, patrons and invitees to use all of the public space on said airport and FBO to have control over the leased space described in Exhibit "A" attached hereto.

**4. RENTALS AND FEES:**

FBO agrees to pay in consideration of the aforementioned rights and privileges to the CITY the rentals and fees as are set forth in Exhibit "B" attached hereto and made part hereof.

**5. UTILITIES:**

- a. **FBO'S RESPONSIBILITIES:** FBO agrees to pay all utilities for the leased property as described in Exhibit "A". Said utilities shall include, but not be limited to, electricity, natural gas, cable TV, sanitary sewer and water.
- b. **CITY'S RESPONSIBILITIES:** CITY agrees to pay rubbish collection, electricity for airfield runway and taxiway lighting, ramp lighting (detached from main FBO building), parking lot lighting, beacon, nav-aid lighting, i.e., PAPI, AWOS, NDB, LOC/DME, etc.
- c. **CITY TELEPHONE SERVICE:** CITY reserves the right to install telephone line(s) at its own expense. CITY agrees to pay charges associated with listing said telephone number in the local telephone directory of its choice. CITY shall provide, maintain and pay for all charges for a telephone for the flight room.
- d. **FBO TELEPHONE SERVICE:** FBO reserves the right to install at its own expense any additional telephone lines required for its operation. FBO shall be responsible for any and all costs, expenses and charges incurred with regard to use and/or listings of such telephone lines.

**6. MAINTENANCE AND INSPECTION OF RECORDS:**

FBO shall maintain copies of all invoices on site and the same shall be made available for inspection by the CITY upon reasonable request and at the CITY's expense.

**7. REQUIRED COMMERCIAL ACTIVITIES:**

- a. FBO agrees to store and sell aviation fuel, lubricants, greases, and similar petroleum products as are necessary and convenient to the customary users of the premises and facilities. FBO, at its own expense, shall provide competent attendants to fuel aircraft from 7:30 AM to 6:00 PM April 1 to October 1 and 7:30 AM to dusk from October 1 to March 31 and provide adequate "on-call" service between closing and opening hours. FBO will also maintain a quality control program for all fuels. Fuel must be filtered as it is drawn from underground tanks. Fuel pumped from trucks must be filtered as it is pumped into aircraft. All filters must be changed as often as necessary to maintain fuel quality or at least every six months, except if they are used as final filters. All filter changes must be recorded on a permanent log kept by FBO. Each major replacement cost of any piece of equipment of the fuel farm in excess of \$500.00 shall be paid by CITY. FBO shall not be responsible for more than one replacement cost per piece per year. FBO agrees to operate said fuel depot facility in full compliance with all applicable Federal, State and Local applicable rules and regulations.
- b. Notwithstanding the foregoing, CITY acknowledges that any underground tanks, and fuel farm, is owned by the CITY. CITY represents and warrants to FBO, to the best of its knowledge that the same, whether on leased property or the on airport property adjacent to the leased premises, are in

full compliance with all applicable environmental statutes, regulations and or ordinances as of the date hereof and that the CITY has not received notice of a violation of same. CITY shall indemnify, defend by counsel reasonably acceptable to FBO and hold FBO, and its officers, directors, employees, agents and representatives harmless of, from an against any and all claims, damages, fines, judgments, cleanup, removal or restoration costs, investigation expenses, penalties, costs, liens, liabilities or losses arising from the presence of any hazardous substance or contamination on or in the leased premises caused by third parties not under the control of FBO before expiration of the Term or caused by the CITY before, during and for a period of one (1) year after the Term. This indemnity shall survive the termination of this Lease for a period of one (1) year after the Term. In addition, CITY agrees to provide for the "Financial Responsibility Requirements" pursuant to law regulating "Underground Storage Tanks".

- c. The FBO shall operate and maintain CITY owned and provided Unicom radio facility and, during operating hours, employ and have present a person to provide Unicom communication service. During operating hours, Unicom shall at all times be monitored when vehicular traffic for maintenance, snow removal, etc. is in progress, and communications maintained between vehicles and Unicom facility.
- d. FBO shall have no right to affix or install any improvements to the structure of CITY owned premises for Unicom aerial or other accessory without permission of the CITY.
- e. FBO agrees to provide aircraft repair services on site by an employee holding a current and valid FAA mechanic's certificate.

**8. PERMITTED COMMERCIAL ACTIVITIES:**

FBO may conduct the following commercial activities on said premises: air charter services; training of student pilots; aerial reconnaissance and photography; operating aircraft repair shops; servicing of aircraft; furnishing mechanics or pilot service; sale of charts and related pilot equipment, sale of aircraft, aircraft parts and engine parts, instruments, avionics and installation of all of the foregoing; storage of aircraft other than heretofore excepted; sale of gas and oil and aircraft lubricants and fuels; and such other commercial activities as may be reasonably related to the aircraft business provided written approval by the CITY is secured in advance of implementing said occurrences.

**9. SUB-CONTRACTING:**

FBO shall not subcontract any services or operations to be performed by FBO under this Agreement without prior written permission from the CITY and such permission shall not be unreasonably withheld.

**10. ADVERTISING:**

FBO may install and operate, at its own expense, such signs and advertising materials posted on airport premises as have been expressly approved by the CITY and such approval shall not be unreasonably withheld.

**11. USE OF AIRPORT FACILITIES:**

FBO is authorized to use, in common with others, the aeronautical facilities at the airport. These shall include, but not be restricted to, the landing area, its extensions and additions, the access roadway, the runways, the apron, the taxiways, the public air navigation facilities, such radio aids, beacons, signals, flood lights, landing lights, and all other facilities and equipment for flying, landing, and the taking off of aircraft.

**12. DISPOSITION OF BUILDINGS:**

At the expiration of this Agreement, and all options, renewals, or extensions thereof, all structures or leasehold improvements which are fixtures placed upon the leased premises by FBO shall become the property of the CITY and FBO agrees to waive any right or claim for compensation for said structures or leasehold improvements. Further, CITY shall be entitled to have the premises demised herein restored to reasonable conditions, ordinary wear and tear, damage by the elements, or other causes beyond the control of FBO excepted, provided however that no structures or leasehold improvements placed upon the leased premises shall be removed therefrom without the written permission of the CITY.

**13. DISPOSITION OF PERSONAL PROPERTY:**

Upon expiration or prior termination of this Agreement, FBO shall have a reasonable period, but not to exceed sixty days, for the removal of all trade fixtures, furnishings and equipment previously furnished at the expense of the FBO. Upon failure of FBO to remove said fixtures, furnishings and equipment within that time, the title thereto shall vest in the CITY and FBO agrees to waive any right or claim to be compensated for said fixtures, furnishings and equipment. Trade fixtures, furnishings and equipment do not include any buildings or other permanent structures constructed and owned by FBO.

**14. RULES AND REGULATIONS:**

CITY shall retain the authority to revise, issue, and publish rules and regulations for the use of the airport premises by all persons. FBO will abide by the "Minimum Standards" and such rules and regulations as enforced by the City of DeKalb. Such rules and regulations shall in no way alter or amend the rights of the parties under this Agreement.

**15. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS, RULES AND REGULATIONS:**

- a. FBO agrees to operate the airport facility under its control (See Exhibit "A") for the use and benefit of the public; to make available its airport facilities and services to the public without unjustly discriminatory or other unreasonable charges of fees or any use of the airport or its facilities or for any airport services. FBO agrees to operate the airport facility under its control in strict compliance with the Rules and Regulations as adopted by the CITY as amended from time to time and as attached and made a part hereof, and to perform all services required of the FBO as a minimum, but not limited to those which are required of the "Full Fixed Base Operator". Charges for the transient rental of the tie-downs located in front of the FBO building shall be paid to FBO and shall be reasonable and said rates shall be agreeable to the CITY. FBO agrees that all fuel charges made by FBO for its fuel shall be reasonable and comparable to other airports within a 60-mile radius; excluding O'Hare and Midway.
- b. FBO agrees to conduct all flight and ground activities on, at, or near the airport in accordance with proper rules and regulations of all authorities having jurisdiction over such operations including, but not limited to, the Federal Aviation Administration, and the Illinois Division of Aeronautics.
- c. FBO agrees to obtain and pay for all licenses, permits, approvals, fees, or other similar authorizations or charges required under federal, state, or local laws or regulations insofar as they are necessary to exercise the privileges extended to FBO under the terms of this Agreement. Further, FBO agrees to abide by all applicable federal, state and local laws and regulations of public agencies with jurisdiction over the activities of the FBO.

**16) NON-DISCRIMINATION REQUIREMENTS:**

The FBO in the operation and use of the airport will comply with the following covenants:

- a. It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended, and the CITY reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature.
- b. The FBO, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, religion, color or national origin, shall be excluded from participating in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in construction of any improvements on, over or under such land and the

furnishing of services thereon, no person on the grounds of race, religion, color, or national origin shall be excluded from participation in, denied the benefits of, or Fixed Base Operator's Contract otherwise be subjected to discrimination, (3) that the FBO shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

- c. The FBO agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; PROVIDED, that the FBO may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types or price reductions to volume purchasers. It is a condition of this Agreement that the CITY shall have the right to take action as the United States of America may direct to enforce this covenant. Non-compliance with the covenant shall constitute a material breach of this Agreement, and in the event such non-compliance the CITY, the State of Illinois, or the United States of America may take appropriate action to enforce compliance, may terminate this Agreement to which this covenant relates, or seek judicial enforcement of this covenant. This covenant shall become effective on the execution of this Agreement and shall constitute a part hereof, and shall remain in full force and effort so long as said airport under this Agreement continues to be used and operated as a public airport.

**17) CONSTRUCTION OF AGREEMENT:**

Nothing herein contained shall be construed in any way that would be in violation of the rules and regulations of the Federal Aviation Administration, the Illinois Division of Aeronautics, or any other state or federal authority with jurisdiction over the DeKalb Taylor Municipal Airport or the funds used in the construction or improvements of said airport. In the event that any of the provisions herein contained should conflict with such rules and regulations, then such rules and regulations shall prevail. Further, the CITY does not grant or permit by this Agreement any exclusive right for the use of the airport forbidden by Section 308 of the Federal Aviation Act of 1958 as amended.

**18) SUBORDINATION TO AGREEMENTS BETWEEN CITY AND UNITED STATES AND/OR STATE OF ILLINOIS:**

This Lease shall be subordinate to the provisions of any existing or future Agreement between the CITY and the United States, relative to the operation and maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the airport. CITY represents, however, that it has no knowledge



of any project, plans, regulations or actions of any governmental body, which would prevent the use of this Agreement for its full term. However, in the event any Agreement existing or entered into in the future pursuant to this paragraph, conflicts with any material term of this lease in a substantial matter, than upon mutual Agreement of the parties this Agreement may be modified to comply, or at the option of either party, it may be terminated, with 60 days prior written notice to the other party.

**19) PAYMENT OF TAXES, ASSESSMENTS OR OTHER CHARGES:**

CITY will pay when due, all lawful taxes, assessments, or charges which during the term hereof may become a lien or be levied by the United States of America, the state, county, city, or other tax levying body upon any real or personal property owned or leased by CITY except as provided in exhibit "B" hereto attached and incorporated by this reference. Said payment shall be due and payable as set forth on schedule of fees covered in Exhibit "B" attached hereto and made a part hereof.

**20) INCOME TAX:**

FBO agrees that it has no ownership interest in the premises, or right to purchase the premises and waives any right to claim investment tax credit or depreciation under the Internal Revenue Code on the premises leased. This waiver shall constitute an irrevocable election, binding upon FBO and all successors in interest under this lease. However, FBO shall not be prevented from any deductions, tax credit or depreciation for lease hold improvements or fixtures installed by FBO with funds other than tax-exempt bond proceeds upon the leased premises.

**21) INSURANCE:**

FBO shall deliver to the CITY all required policies of insurance satisfactory to CITY in companies licensed to do business in the State of Illinois and having a minimum A rating in "Best's Key Rating Guide". The CITY reserves the right to annually review and adjust the Comprehensive General Liability coverage minimums to comply with current insurance industry standards. Said policies shall show on their face that FBO is a named insured and CITY is an additional named insured and shall be in the following categories and amounts:

Comprehensive General Liability:

- 1) Bodily injury liability - For injury or wrongful death to one person \$1,000,000 for injury or death to more than one person - \$1,000,000;
- 2) Property damage liability - For all damages arising out of injury or destruction of property in any one accident - \$1,000,000;
- 3) Hangarkeeper's Insurance - For any airplane - \$200,000; in any occurrence - \$200,000;

- 4) Product Liability insurance - For injury or wrongful death per person - \$200,000; for injury or wrongful death per occurrence - \$500,000; property damage - \$200,000.

All of said policies shall be endorsed to provide that they shall not be canceled or materially changed without thirty (30) days prior written notice to the CITY. Further, FBO shall supply the CITY with evidence that the aircraft maintained for the purpose of leasing or renting by FBO, and any additional aircraft to be used for flight instruction by FBO, are insured for liability pursuant to law for FBO's negligence or its strict liability, if any; and that as to said insurance, a certificate shall be delivered to the CITY containing a stipulation that the coverage shall not be canceled or materially changed without thirty (30) days prior written notice to the CITY. The FBO assumes all risk of loss, damage or injury, by fire or otherwise, to persons or property, caused solely by reason of FBO's management, control, or its operations on the airport and releases the CITY, its officers and employees from all claims for such loss, damage or injury sustained by the FBO or by any person whomsoever. The FBO further agrees to indemnify and hold harmless the CITY, its officers and employees against all claims for such loss, damage or injury sustained by the FBO, or by any agent or employee of the FBO or by any person whomsoever, when such injury, loss or damage is due to the negligence or fault of the FBO. The CITY shall maintain property insurance for city-owned property. CITY shall maintain adequate property damage liability insurance on city-owned buildings and equipment as described in Exhibit "A". A copy of said policy shall be supplied to the FBO.

**22) WORKER'S COMPENSATION:**

FBO shall provide and carry Worker's Compensation Insurance on all of its employees as required by law and make required reports to agencies and furnish suitable evidence thereof to the CITY upon request by the CITY.

**23) AIRPORT MAINTENANCE:**

- a. The CITY will be responsible for maintenance of the following items at the airport:
1. Paved landing areas, taxiways, ramps, and all air navigation facilities at said airport in at least the same condition as they are at the commencement of this Agreement.
  2. Snow removal and mowing of large areas, which may be plowed and mowed with a large truck, plows and tractor mowers.
  3. Maintaining weed control on all pavement areas and fences.
  4. The CITY will be responsible for the electricity for field lighting and the furnishing of light bulbs and parts and maintenance of runway lights, taxiway lights, beacon lights, PAPI, AWOS, LOC/DME, obstruction lights, ceiling light,

directional lights, ramp lighting, parking lot lighting, and non-directional beacon.

5. Hand mowing, trimming and snow removal within two feet of buildings and fences at the east terminal tie-down area and around parked aircraft where large tractor mowers and truck plows would endanger aircraft and buildings.

The FBO will be responsible for maintenance of the following items at the airport:

- b.** Cleaning, minor maintenance, and repairs to the interior and exterior of any CITY owned buildings situated on land leased to FBO as described in Exhibit "A". Said maintenance shall include, but not be limited, to the cleaning, repair and maintenance of all mechanical systems, including the following categories: heating, air conditioning, plumbing, electrical, carpentry, masonry, glazing, and aircraft hangar doors, and all other areas of the interior and exterior of said buildings. Provided that FBO shall not be obligated to spend more than \$500.00 per category per year for said maintenance or repair. All maintenance or repairs to CITY owned buildings including mechanical systems, walls, roofs, structural members, electrical, plumbing, heating, air conditioning and aircraft hangar doors in excess of \$500.00 per category per year shall be the obligation of the CITY. All modifications made by FBO to the interior of CITY owned buildings shall be expressly approved in writing by the CITY prior to modification. Any leasehold improvements affixed to any CITY owned building controlled by the FBO shall become the property of the CITY of DeKalb upon expiration of the Agreement. FBO agrees to maintain all property pursuant to City of DeKalb property maintenance provisions at a minimum and in a clean, orderly and healthful condition as on the date hereof, normal wear and tear accepted. FBO shall at all times remain liable for the contribution toward the maintenance or repair pursuant to the above. FBO shall not be responsible for any maintenance costs resulting directly from or attributed from any City subleased FBO building space as described in Exhibit "C" attached hereto and made a part hereof.
- c.** Inspection: CITY shall retain all rights of inspection and supervision over the demised premises described in Exhibit "A" at reasonable times and upon reasonable notice, for the purpose of maintenance, repair, or the enforcement of the provisions of this Agreement.
- d.** FBO shall not permit deterioration or damage to any property or improvements located on the airport which are subject to its control, except as shall result from ordinary wear and tear and damage by the elements, and at the expiration or termination of this Agreement, FBO

shall yield up to return to the CITY said premises in the same condition as they are at the commencement of this Agreement, subject to ordinary wear and tear and damage by the elements.

- e. FBO shall repair all damages to said premises caused by its employees or its operation thereon at its expense.

**24) FURNISHING OF CITY SERVICES:**

The CITY shall be responsible for the aforementioned mowing and weed control services, and for snow removal of aircraft movement areas. FBO may negotiate with CITY for any services the CITY may request upon mutually agreed upon terms and conditions.

**25) DEFAULT:**

- a. The occurrence of any of the following shall constitute a default of this Agreement for Full Fixed Base Operator's contract and lease:

- 1) Filing of a petition, voluntarily or involuntarily for the adjudication of FBO as a bankrupt;
- 2) The making by FBO of any general assignment for the benefit of creditors;
- 3) The occurrence of any act, which operates to deprive FBO permanently of the ability to perform its duties under this Agreement;
- 4) Failure to pay rent on the demised premises as described above;
- 5) The abandonment or discontinuance by FBO of any operation herein required at the airport without cause;
- 6) Failure by FBO to observe and perform any other provision of this Agreement for Full Fixed Base Operator's contract and lease;
- 7) Use of airport by FBO for unlawful purposes.

- b. If (1) FBO defaults in the payments of rent or any additional charges and such default continues for five (5) days after the same has become due, or (2) FBO defaults in fulfilling any of the covenants or Agreements of this Agreement on its part to be kept or performed and such default is not cured or commenced to be cured (and diligently prosecuted to completion) within ten (10) days after written notice from CITY, then and in any of such events CITY may give FBO a written notice specifying said default and a date not less than ten (10) days thereafter whereupon the term shall end, and on the day specified, the term of this lease shall terminate and FBO shall then quit and surrender the demised premises to CITY and FBO shall remain liable as hereinafter provided.

- c. In the event of such termination, CITY shall have the right, without further notice to FBO or to any other person to reenter and take full

possession of the demised premises, including any buildings constructed by FBO at FBO's expense, under this Agreement, and to exercise any right or remedy of self help as might be provided by law. Upon such termination by CITY, all rights, powers, and privileges of FBO shall cease, and FBO shall vacate any space occupied by it under this Agreement and shall make no claim of any kind whatsoever against the CITY, its agents, representatives, by reason of such termination or any act thereto.

- d. If CITY defaults in fulfilling any of the covenants or Agreements of this Agreement on its part to be kept or performed and such default is not cured or commenced to be cured (diligently prosecuted to completion) within thirty (30) days after written notice from FBO, then and in any such events FBO, may give CITY a written notice specifying a day not less than ten (10) days thereafter whereupon the term of this lease shall expire as if that day were the day herein fixed before expiration of the term. In the event of termination by FBO, FBO shall within sixty (60) days of the date of termination restore the premises herein to its original condition, ordinary wear and tear, damage by the elements or other causes beyond the control FBO excepted, provided however, that no permanent structures or leasehold improvements constructed by FBO on the leased premises shall be removed without written consent of the CITY. In the event that said structures and leasehold improvements are not removed from the demised premises within sixty (60) days following the termination of this Agreement, said structures and said improvements shall become property of the CITY.

**26. INDEMNIFICATION:**

FBO agrees to indemnify, defend, and save harmless the CITY, its authorized agents, officers, representatives, commissioners, and employees from and against any and all claims, causes of action, including, but not limited to, legal fees and court costs associated with any such claim or cause of action, and arising directly or indirectly out of any acts of the FBO, its agents, servants, guests or business visitors.

CITY agrees to indemnify, defend and save harmless the FBO, its authorized agents, officers, representatives, successors and assigns from and against any and all claims, causes of action, liability or loss resulting from claims or court actions, and rising directly or indirectly out of acts of the City, its agents, its servants or guests.

**27. EXPENSES OF LITIGATION:**

Any attorney fees concerning litigation involving this Agreement shall be borne by the respective parties.

**28. CORPORATE OWNERSHIP:**

The FBO states that it is an Illinois corporation in good standing. The FBO may not assign or transfer this lease, or any interest therein, or sublet the premises or any part thereof, without the prior written consent of CITY, and FBO shall, at all times, assure that the shareholders of FBO shall substantially remain as presently held and that any transfer of forty (40) percent or more of the shareholder interest in the stock of the FBO to a shareholder other than Jeffrey Kohlert, John Kessler or Robert Mukenschnabl shall be subject to the approval of the CITY. It is agreed and understood that Jeffrey Kohlert is to maintain the position of Chief Executive Officer of the corporation of FBO. However, in the event of the incapacity of Jeffrey Kohlert, or the death of Jeffrey Kohlert, then John Kessler or Robert Mukenschnabl may assume said duties of Chief Executive Officer without the consent of the CITY. In the event any other person assumes the duties of Chief Executive Officer of FBO, the prior consent of the CITY must be obtained or this Agreement may be terminated upon six (6) months written notice to FBO by the CITY.

**29. NOTICE:**

Whenever any notice is required by this Agreement to be made, given or transmitted to the parties hereto, such notice shall be deemed to have been given if enclosed in an envelope with sufficient postage attached to insure delivery by certified mail, return receipt requested, and deposited in the United States mail, at DeKalb, Illinois address to -

<b>CITY:</b>	<b>City of DeKalb Airport Division 3232 Pleasant Street DeKalb, IL 60115</b>
<b>FBO:</b>	<b>DeKalb Aviation, LLC 3232 Pleasant Street DeKalb, IL 60115</b>

or such other place as either party shall in writing designate in the manner herein provided.

**30. ASSIGNMENTS AND SUBLEASING:**

FBO shall not at any time assign any part of this Agreement, nor sublease any of the leased premises herein contained and bind the legal representatives, successors and assigns of the respective parties hereto without the prior written consent from CITY and such consent shall not be unreasonably withheld. The parties agree and acknowledge that CITY may reasonably withhold consent in the event that the same is necessary to preserve tax-exempt financing for construction of the premises; FBO further agrees that it shall take no action that would impair such tax exempt status of financing. This clause shall not apply to

the rental of hangar space used for the maintenance and storage of aircraft or tie-downs.

**31. AMENDMENTS:**

All amendments to this contract and lease must be made in writing by mutual Agreement of the parties and no oral amendments shall be made of any force or effect whatever.

**32. NON-WAIVER PROVISION:**

No waiver by either party at any time of any of the terms, conditions, or covenants of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same, or of any other terms, conditions, or covenants herein contained, nor of the strict and prompt performance thereof by either party.

**33. CAPTIONS AND PRONOUNS:**


The captions and headings of the various sections or paragraphs of this Agreement are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof.

**34. VENUE:**

The venue of any action brought on this Agreement shall be in DeKalb County, Illinois. IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

**CITY OF DEKALB**  
A MUNICIPAL CORPORATION

  
\_\_\_\_\_  
KRIS POVLSSEN, ACTING MAYOR

  
\_\_\_\_\_  
DONNA JOHNSON, CITY CLERK



ATTEST:

**DEKALB AVIATION, LLC**

  
\_\_\_\_\_  
JEFFREY R. KOHLERT CEO

ATTEST:

)

**EXHIBIT "A"**

**East Terminal Area:**

One 100' X 200' Fixed Base Operator's Steel Structure Building located upon property legally described below (excluding the CITY offices located on the second floor), one fuel depot consisting of; 2-12,000 gallon double wall fiberglass glass fuel tanks, 1-50 G.P.M. jet fuel dispensing unit and 1-30 G.P.M. avgas fuel dispensing unit along with related appurtenances; one City-owned, 2,000 gallon aviation fuel truck; 21 space aircraft parking apron adjacent to and south of the Fixed Base Operator's Building;

Ninety-five (95) automobile parking spaces adjacent to the Fixed Base Operator's Building, together with reasonable access to and from said parking area and building. All of the above as located at 3232 Pleasant Street, DeKalb, Illinois and as more clearly delineated on the attached Exhibits "A-2" (FBO Building Plans and Specifications Section 88-PW188-00-AP), and "A-3" (Fuel Plans and Specifications Section 88-PW188-00-AP).

In the event the FBO secures a written hangar lease space Agreement for the purpose of aircraft storage with a tenant, FBO agrees to provide the City of DeKalb with a copy of said lease(s). In the event the FBO secures a verbal hangar lease Agreement for the purpose of aircraft storage with a tenant, FBO agrees to provide in writing to the City of DeKalb the name, address, telephone number, lease term, rent rate and all other pertinent information of said lease.

**Fixed Base Operator's Building Envelope Legal Description:**

A part of Lot "A" of Section 19, Township 40 North, Range 5 East of the Third Principle Meridian, DeKalb County, Illinois, according to a plat of said Section 19, recorded in Book "B" of Plats, Page 117, in the DeKalb County Recorder's Office, described as follows: Commencing at the Northwest corner of said Lot "A" which point is the North Quarter Quarter corner on the West line of said Section 19; thence Easterly along the Northerly line of said Lot "A" which is also the Quarter Quarter Section line, 1,220.25 feet; thence Southerly at an angle of 89 degrees 15 minutes 47 seconds measured counterclockwise from the last described course, 450.66 feet to the Point of Beginning; thence Easterly, perpendicular to the last described course, 212.00 feet; thence Southerly, perpendicular to the last described course, 121.00 feet; thence Westerly, perpendicular to the last described course, 212.00 feet; thence Northerly, perpendicular to the last described course, 121,00 feet; to the Point of Beginning, containing 0.589 acres, more or less.



**EXHIBIT "B"**  
**SCHEDULE OF RENTS AND FEES**  
**EFFECTIVE November 1, 2008 THROUGH December 31, 2023**

The following schedule of rents and fees shall start November 1, 2008 and shall be in effect through December 31, 2023, subject to the terms and conditions hereof:

**A. FIXED BASE OPERATOR BUILDING:**

FBO shall pay to the CITY of DeKalb, as rent for the CITY owned building(s) and property described in Exhibit "A" utilized by FBO the single sum of \$3,000.00 per month payable on or before the 10<sup>th</sup> day of each month of the term of this Agreement, beginning the first day of November 2008 through December 31, 2010. Thereafter, the monthly rent shall be adjusted annually on the first of the month of January of the following calendar year of the term of this Agreement, with a monthly rent increase not to exceed 3% or in accordance with the Chicago-Gary-Kenosha Consumer Price Index average percentage increase for the preceding calendar year, whichever is less.

Payment shall be due on the 10<sup>th</sup> day of November 2008, and on the 10<sup>th</sup> day of each month and every month thereafter for the term of this Agreement. Rent payments received later than ten days from the date the same were due shall be subject to a penalty of one percent of total amount due, including any delinquent rent payments from previous months.

During the time period construction of airport improvements by the CITY require both runway lengths at DeKalb Taylor Municipal Airport (DTMA) to be shortened, the City agrees to reduce the FBO building monthly rent in the not-to-exceed amount of One Thousand Dollars (\$1,000.00) for each calendar month, or part thereof, that both runways are displaced until the runways are restored to normal operating distances.

**B. FUEL SALES:**

FBO agrees to pay to the CITY of DeKalb a fuel flow fee for the DeKalb Aviation LLC of \$0.04/gallon for 500,000 gallons or less and \$0.05/gallon for DeKalb Aviation LLC of 500,001 gallons or more. FBO further agrees to pay the CITY a Transient fuel flow rate of \$0.08/gallon for 500,000 gallons or less, \$0.12/gallon for 500,001 gallons up to 999,999 gallons and \$0.15/gallon for all fuel flow exceeding 1,000,000 gallons. The fuel flow fees shall be paid in monthly payments payable on or before the 1st day of each succeeding month. FBO shall maintain copies of all invoices for fuel sales on site and the same may be inspected by the CITY upon reasonable notice.

FBO agrees to sell and store aviation fuel through the means of both an FBO leased or owned fuel truck and the CITY-owned fuel truck and further agrees to only operate the City-owned fuel truck on the airport premises, only by FBO personnel and shall utilize said truck for aviation fuel sales when feasible. FBO personnel operating the fuel trucks shall hold a valid and current Illinois' drivers license. FBO agrees to provide its

personnel with proper training on the fueling and operation of the fuel trucks and fuel farm.

**Self serve fueling system will be charged 0.08/gallon fuel flow fee.**

FBO agrees to operate the fuel trucks and supply the fuel for said trucks at its own expense. Driving or operation of the CITY-owned fuel vehicle outside of the confines of the Airport Property is strictly prohibited.

Self serve fueling system will be charged 0.08 gallon fuel flow fee.

**C. FBO AIRCRAFT MAINTENANCE LABOR SURCHARGE:**

On a quarterly basis during each year of this Agreement, the FBO agrees to submit to the CITY a \$1.00 per hour surcharge for every hour of aircraft maintenance labor fees assessed/collected by the FBO for aircraft maintenance service generated at DTMA.

**D. FBO AIRCRAFT CHARTER SURCHARGE:**

On a quarterly basis during each year of this Agreement, the FBO agrees to submit to the CITY a 3% of the gross revenue from all charter flights that originate from the DeKalb Taylor Municipal Airport that is invoiced through DeKalb Aviation LLC.

**E. Flight School and Instructors:**

For each aircraft used in flight training/instruction or Aircraft Rental by DeKalb Aviation LLC, there will be an annual fee depending on the aircrafts horsepower. This is per our Minimum Standards chart on Page 21, Section 6 - Aircraft Rental. All Flight Instructors will be registered with the CITY and will pay the \$30 annual registration fee.

**F. FUTURE CONSTRUCTION OF A DEKALB AVIATION FACILITY:**

In the event the FBO negotiates a mutually agreeable and separate ground lease Agreement with the CITY to build a new facility at DTMA, following the issuance of an occupancy certificate to the FBO by the CITY, the CITY agrees to grant to the FBO an initial, one time, first year ground lease rate of \$0.00/square foot.

**G. GENERAL:**

FBO shall pay to the CITY Comptroller each monthly payment on or before the 10<sup>th</sup> day of every month.