

## **FIXED BASED OPERATOR LEASE AND OPERATING AGREEMENT**

This Fixed Based Operator Lease and Operating Agreement (“Lease”) made and entered into this 1st day of November, 2015, by and between the City of Charlotte, a Michigan municipal corporation (“City”), and Charlotte Air Services, LLC, a Michigan limited liability company (“FBO”).

WITNESSETH:

WHEREAS, the City owns and operates the Fitch H. Beach Municipal Airport; and

WHEREAS, the FBO desires to lease space and provide commercial services to the general public at the airport; and the parties agree to abide by the terms and conditions as set forth herein;

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and adequacy of which is hereby acknowledged and the promises and covenants contained herein, the City and the FBO agree as follows:

### **ARTICLE I - GENERAL**

1. **PREMISES.** The City hereby leases to the FBO, and FBO hereby leases from the City the following facilities:

A. **Hangar Facilities.** Hangar attached to the terminal and the associated ramp area and one enclosed T-Hangar.

B. **Building Premises.** A nonexclusive right to the terminal building.

C. **Airfield Premises.** Those portions of the airport delineated in Exhibit A1, attached hereto and forming a part hereof by reference.

2. **MANAGED PREMISES.** In addition to the lease of the hangar premises and building premises, the City hereby grants the FBO the right to operate and manage facilities at the airport, as assistant airport manager.

3. **APPURTENANT PRIVILEGES.** The FBO shall be entitled, in common with others so authorized, to the use of all facilities and improvements of a public nature which now are or may hereafter be connected with or appurtenant to the airport.

4. **EFFECTIVE DATE.** This Lease shall be effective on the date that the last one of the parties has executed this Lease (“effective date”).

5. **TERM.** The term of this Lease shall be for three years commencing on the 1st day

of October 2015 (“Commencement Date”) and expiring at the end of the third year, as hereafter defined, at 12:00 midnight. Provided, however, either party may terminate this Lease upon 60 days written notice with valid cause.

6. RENEWAL. The parties hereby agree to negotiate in good faith for a renewal of this Lease, with additions or deletions, as the parties may mutually agree, commencing not less than 60 days prior to the expiration date. It is the intention of the parties to improve service to the flying public, and the general public at large, and to provide the FBO with an opportunity to build and expand its business. It is the intention of the parties, consistent with the City’s obligation, under 29 USC §40103, to provide the FBO with the optimum opportunity to succeed in providing services to the general public.

7. INTENDED USE. The FBO shall use the premises in such a manner as may be consistent with this Lease and the nature of its operation, including but not limited to the following:

A. Minimum Services. The FBO shall provide, at a minimum, the following services, including but not limited to:

- 1) Aircraft ramp services (towing, parking, guidance, etc.).
- 2) Maintenance, repair and servicing of aircraft.
- 3) Oversight of the hangar and tie-down rental on behalf of the City, including management and subleasing of airport T-Hangars, shade shelters, and tie-downs.
- 4) Management of the fuel concession, and emergency service to disabled general aviation aircraft (i.e., towing, transporting disabled aircraft).
- 5) Management of the physical plant, including janitorial services. Communication with the City personnel to ensure notification of the necessity of repairs or maintenance.

B. Optional Aeronautic Services. The FBO may also provide the following optional aeronautic services:

- 1) Flight training.
- 2) Aircraft rental.
- 3) Sightseeing.
- 4) Aircraft charter.

8. PROHIBITED USE. The FBO shall not permit the premises to be used in any manner which may be in violation of this Lease, or relevant federal, state, county or municipal laws and regulations, including but not limited to any environmental laws as defined in Section 37, Hazardous Substances, of this Lease, the fire regulations of the City, and the Michigan Building Code as it may pertain to its use and occupancy of the premises.

9. HOURS OF OPERATION. The FBO shall be open for the conduct of its business on the premises 8:00 a.m. to 5:00 p.m., Monday through Friday, and weekends as needed. Any reduction in the days or hours of operation must be approved by the City, which may approve or disapprove of such reduction in its sole discretion.

10. LEASEHOLD IMPROVEMENTS. Except as may be permitted by this Lease, no improvements, additions or changes shall be made to the premises without the earlier written approval of the City. Any such improvements will be made by the FBO at its own expense, and may or may not remain the property of the FBO, as agreed by the parties. All permitted improvements shall fully comply with all applicable building codes and fire protection codes in effect in the City.

11. SIGNAGE. During the term, FBO shall have the right, at its expense, to place in or on the premises and the building a sign or signs identifying FBO. Said sign or signs shall be of a size, shape and design and at a location or locations permitted by law and subject to the approval of the City which shall be granted or denied in its sole discretion. All FBO signage on the building shall be in compliance with the City's criteria for building signage and all signage shall comply with applicable governmental codes and shall be maintained by FBO in a good and clean condition. Upon City's written consent, FBO shall obtain such building permits or licenses as may be required for the erection and maintenance of any such signs and shall pay any required fees.

12. RENT. In partial consideration for the provision of management services by the FBO to the City, the FBO shall pay no rent to the City.

13. FINANCIAL RECORDS, DATA, REPORTS, FEES AND DISPUTES.

Reports. Hangar rent, tie-downs, shade shelter, and fuel concession reports shall be provided monthly.

14. LEASE YEAR. For purposes of this Lease, a lease year shall be defined as that twelve calendar month period during the term or renewal period then in effect commencing on the commencement date or the annual anniversary thereof, as may be applicable.

15. COMMON AREAS.

A. Nonexclusive Rights. FBO and its officers, directors, vendors, contractors, customers and employees (collectively "users") are hereby granted during the term or any renewal term then in effect, the nonexclusive right in common with the City and other tenants of the airport to use all exterior walkways, driveways and access areas (including curb cuts), sidewalks, service areas and rear doors for deliveries, parking areas and other areas in the airport designated by the City or otherwise available for the common use of the

tenants of the airport (“common areas”) for the normal and intended purposes of such areas.

B. Parking. The employees of the FBO may utilize parking areas as designated by the City.

16. RETURN OF PREMISES.

A. Condition of Premises. The FBO, on or before the expiration of this Lease, or any renewal term then in effect, or its early termination, shall remove all personal property of the FBO, repair any damage caused by such removal in a workmanlike manner and surrender and deliver of the premises, broom clean and in good order, condition and repair, less ordinary wear and tear. Any personal property not removed within thirty days after the expiration of this Lease, or its earlier termination, shall be deemed to have been abandoned by the FBO and may be retained or disposed of by the City in its sole discretion.

B. Contracts and Encumbrances. The FBO shall return the premises free and clear of any contractual obligations or other legal encumbrances not approved in writing by the City.

17. TAXES.

A. Personal Property Taxes. The FBO shall pay all fees and taxes as required by law, including personal property taxes, sales taxes, and the like, and shall deliver to the City the appropriate receipts which demonstrate the payment.

18. UTILITIES AND OTHER SERVICES.

A. Utilities. The City shall pay for all utilities on the property for the term of this Lease.

B. Pest Control. The City shall, at its sole cost and expense, be responsible for pest control in all structures included in the premises.

19. SECURITY. The FBO shall be responsible, at its sole cost and expense, for protecting the premises and the property located therein from theft and robbery, and shall keep all doors and windows securely fastened when not in use.

20. GOVERNMENTAL REGULATIONS.

A. Airport Rules and Regulations. The FBO shall comply with the airport rules and regulations as may be promulgated from time to time by the City, and the minimum standards and requirements of the conduct of commercial and noncommercial aeronautic services that may likewise be promulgated from time to time.

B. Compliance with Regulations. The FBO shall obtain, at FBO's expense, all licenses and permits required for, and comply with all federal, state and local laws, ordinances, orders, rules and regulations pertaining to the operation of the premises, for the intended use, now or hereafter in force. The City shall also make, at City's expense, all improvements, repairs and alterations to the premises, equipment and personal property that are required to comply with or conform to any such statutes, regulations and ordinances. Provided, however, the FBO shall be responsible for compliance with all statutes, regulations and codes which arise solely due to FBO's business operation on the premises.

21. LIENS.

A. No Liens. The FBO shall have no power to subject the premises to construction, mechanics or materialmen's liens or any other type of lien. The existence of any such lien, which lien is not discharged by the FBO, or bonded off, within 30 days of such party's receipt of notice of filing, shall be a material default of this Lease. All contracts for work on the premises performed on behalf of the FBO must contain a waiver of lien by FBO's contractor against the premises. All persons performing work, labor or supplying materials on behalf of the FBO or City shall look solely to the interests of such party and not to that of the other party for amounts owed.

B. City Lien Waiver. The City acknowledges that FBO may enter into a personal property lease agreement or financing for its business or equipment to be physically located on the premises. In the event that a lender or equipment lessor requires a landlord waiver or subordination agreement to be executed by the FBO's landlord, the City shall, upon written request, execute a landlord waiver and subordination agreement. The terms may be as mutually agreed upon.

22. MAINTENANCE AND CLEANING SERVICES.

A. City's Obligation. The City, upon due notification by the FBO, shall make all necessary repairs and perform all necessary maintenance to the premises.

B. Cleaning Services. The FBO shall perform all necessary cleaning and janitorial services to the premises.

C. FBO's Failure to Perform. In the event the FBO fails to clean and properly maintain the premises, the City may, after notice, enter the premises or permit entry by contractor to perform such cleaning services and bill FBO for the actual costs incurred.

23. INSURANCE.

A. FBO's Obligation. The FBO, as of the commencement date, shall, from that time until the expiration or earlier termination of this Lease, maintain for itself and require

any contractor doing work on the premises to maintain the following insurance:

	<u>Type of Insurance</u>	<u>Limit of Liability</u>
1)	Workers Compensation Employer's Liability	Statutory Coverage \$500,000
2)	Public Liability (includes products and completed operations liability)	
	Bodily Injury	\$500,000 each person \$500,000 each accident
	Property Damage	\$1,000,000 each accident \$2,000,000 each aggregate
3)	Automobile Liability (includes hired cars and automobile non-ownership)	
	Bodily Injury	\$500,000 each person \$500,000 each occurrence
	Property Damage	\$500,000 each accident \$1,000,000 each aggregate

B. Policy Requirements. All of the insurance required under this paragraph shall be affected under enforceable policies issued by insurers licensed to do business in the State of Michigan. All policies, except workers' compensation policies, shall name the City as an additional insured, be an occurrence form, provide contractual liability covering the liability assumed in this Lease and shall not exclude any activity that would normally be associated with use of the premises without the prior written consent of the City which maybe withheld by the City at its sole discretion. All policies shall provide that they shall not be subject to cancellation or material change which affects the City, except upon at least 30 days prior written notice to the City.

C. FBO Reporting Requirement. The FBO shall provide City duly executed certificates of all insurance required by this Lease, and endorsements, enhancements and exclusions, together with satisfactory evidence of the payment of the premiums thereon prior to the commencement date. The FBO shall maintain current certificates of insurance on file with the City and, not less than 30 days prior to the expiration of the term of such policies during the term or any renewal term, a certificate showing the renewal coverage shall be delivered to the City.

24. INDEMNIFICATION.

A. Indemnification. FBO shall, on behalf of the City, defend, indemnify, and hold harmless the City, its members, officers, agents, and employees from and against any and all claims for loss, liability, and damages of whatever nature, to persons and property, including but not limited to death of any person and loss of the use of any property and costs related thereto, including but not limited to reasonable attorneys fees arising out of the business operation of the FBO at the airport. FBO shall defend all such claims, demands, and suits, whether or not a suit is filed. Procurement of insurance shall not release FBO of its duties herein.

B. Additional Indemnification. In addition to the indemnification set forth in paragraph A above, and not as a limitation of any kind, FBO shall indemnify, hold harmless, and defend City, its officers, agents and employees, from and against any and all loss, liability, and damages arising out of or in any manner related to:

1) Any breach by FBO, its agents, employees, contractors or subcontractors whether approved or unapproved of any of the terms and conditions, or other provisions of this Lease.

2) Any and all claims or liability for compensation under any workers' compensation statute arising out of injuries sustained by any employee of FBO or of any licensee, contractor, subcontractor, tenant, or subtenant of FBO.

3) Any and all taxes, fees and assessments of every kind, including taxes imposed or which may be imposed by the County of Eaton, the State of Michigan, and/or any other taxing authority which by law may be levied or assessed on the real property or personal property of the FBO pursuant to this Lease, or which arise out of the operations of FBO, or by reason of occupancy by FBO or any of FBO's agents, licensees, invitees, contractors, subcontractors, tenants, or subtenants, whether or not approved by the City. FBO shall be responsible for obtaining bills for all of said taxes and assessments directly from the taxing or assessing authority, and shall promptly deliver to the City copies of receipts of payment.

4) Any materially inaccurate representation or warranty made by FBO in or under this Lease.

5) The violation of any law of the United States, State of Michigan, or any municipal, county, state or federal authorities which is directly or indirectly related to the business operations of the FBO, its employees, agents, or those holding or occupying under the FBO, including but not limited to air and noise pollution.

C. City's Attorney Fees. FBO's obligations to pay on behalf of, defend,

indemnify, and hold harmless, as set forth in this paragraph, shall include any and all attorney's fees and costs incurred by City in enforcing and obtaining compliance with this Lease.

D. No Insurance Limitations. The provisions of this paragraph are independent of, and shall not be limited by, any insurance obligations in this Lease, and shall survive the expiration or earlier termination of this Lease with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination. The purpose of insurance coverage required by this Lease, or otherwise, shall not relieve FBO of any duties set forth in this paragraph.

25. RISK OF LOSS. FBO shall store its property in and shall occupy the premises and the common areas at its own risk.

26. THIRD PERSONS. Neither the City nor the FBO shall be responsible or liable to the other party for any damage to either person or property that maybe occasioned by or through the acts or omissions of third parties.

27. DISCLAIMER OF WARRANTIES.

A. Writing Required. No representations or warranties shall be binding upon City unless expressed in writing herein or in a duly executed amendment hereof.

B. Disclaimer. Without limiting the generality of the foregoing, the City does not warrant, and hereby disclaims any and all liability and responsibility for or with respect to or on account of:

1) Except as agreed to by the parties, the condition of the premises, or the airport or any portions thereof, or for or on account of anything affecting such conditions.

2) Noise, noise pollution, air quality, air pollution or pollution of the land.

3) The existence or non-existence of any rights-of-way, zoning ordinances, easements, restrictions or covenants running with the land affecting the premises.

C. Premises "As Is". City makes no representation or promise with respect to the premises, fixtures and/or equipment located thereon except as herein expressly set forth. FBO accepts the premises and all that is located thereon in an "As Is" condition and at no cost to the City, except as set forth in Exhibit 2, as may be amended from time to time by mutual agreement of the parties.

D. Indirect, Consequential and Incidental Damages. The City shall have no liability for any indirect, consequential, or incidental damages to FBO, its agents, servants, employees, guests, tenants, or subtenant, whether authorized or not, caused by or arising out of any condition, failure, or activity enumerated in this paragraph.

E. Failure to Utilize Premises. The City shall not be liable for the failure or inability of FBO to utilize all of the premises and FBO does hereby release and discharge City from all claims of every kind growing out of the condition of the premises or facilities located thereon.

F. Defects. The City shall not be responsible or liable for any defect in any building or the common areas or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall it be responsible or liable for any damage to any person or to any property of FBO or other person caused by or resulting from burst, broken or leaking pipes or by or from, steam or the running, backing up, seepage, or overflow of water or sewage in any part of the premises or for any damage caused by or resulting from acts of God or the elements, the failure of any public utility in supplying utilities to premises or for any damage caused by or resulting from any defect or negligence in the occupancy, construction, operation or use of any of the premises or the common areas, or the operation of any machinery, apparatus, or requirement by any other person or by or from the acts of negligence of any occupancy of premises.

28. NOTICE OF CLAIM. FBO shall give prompt notice to City in case of fire or accidents or other casualties in or about premises, or of any defects in any fixtures or equipment therein.

29. WAIVER OF SUBROGATION. City and FBO hereby waive any rights each may have against the other on account of any loss or damage incurred by City or FBO, as the case may be, to their respective property, the building, the premises, or its contents arising from any risk generally covered by fire, and extended coverage insurance policies. The parties each, on behalf of their respective insurance companies insuring the property of either City or FBO against any such loss or damage, waive any right of subrogation that such companies may have against City or FBO, as the case may be.

30. ASSIGNMENT AND SUBLEASE.

A. FBO's Assignment.

1) FBO may not assign this Lease, without the prior written consent of the City, which consent may be withheld or granted in the City Council's sole discretion. Any transfer of FBO's interest in this Lease or the premises by operation of law, regardless of whether the same is characterized as voluntary or involuntary, shall be construed as an assignment governed by this paragraph. City's written

consent to any one assignment shall not act as a waiver of the requirements of consent with respect to any subsequent assignment.

2) Upon a permitted assignment under this paragraph, the assignee shall assume all rights and obligations of FBO under this Lease. Any assignee of FBO shall deliver to City an assumption agreement in a form reasonably satisfactory to City within ten days after approval by the City Council of such assignment. Notwithstanding anything to the contrary contained in this Lease, upon a permitted assignment of this Lease, the assigning FBO's liability under this Lease shall not terminate.

B. Sublease. Except as set out herein, FBO shall not have the right to sublease or otherwise dispose of the premises or this Lease or any part thereof, or of its right, title or interest therein, or its power to execute this Lease or any amendment or modification thereto, to any person(s) or business entity(ies), company or corporation. Any sublease or other disposition shall be void and shall be deemed a material breach of this Lease and cause for immediate termination.

C. City's Assignment. The City may, at any time, with or without notice, assign, transfer, or delegate any or all of its rights hereunder.

31. DEFAULT.

A. Default by FBO.

1) Subject to FBO's right to notice and opportunity to cure specified in subsection (2) of this paragraph, FBO shall be deemed to be in default of its obligations under this Lease upon the occurrence of any of the following:

a) FBO's failure to perform any material covenant, promise or obligation contained in this Lease.

b) The appointment of a receiver or trustee for all or substantially all of FBO's assets.

c) The filing of a voluntary or involuntary petition on behalf of the FBO for relief under any bankruptcy or insolvency law.

d) The sale of FBO's interest under this Lease by execution or other legal process.

e) The seizure, sequestration or impounding by virtue or under authority of any legal proceeding of all or substantially all of the personal

property or fixtures of FBO used in or incident to the operation of the premises.

f) FBO's making an assignment of this Lease for the benefit of creditors.

g) Any sale, transfer, assignment, subleasing, concession, license, or other disposition prohibited under this paragraph of the Lease.

h) FBO doing or permitting to be done anything that creates a lien upon the premises and shall fail to obtain the release of any such lien or bond off any such lien as required herein.

2) FBO shall only be deemed in default of this Lease upon the FBO's failure within 30 days after receipt of notice from the City of a default of any provision of this Lease, or if such default cannot be reasonably cured within such 30 day period, then within such additional time up to 60 days as is reasonably necessary provided that the FBO continuously and in good faith proceeds to cure such default.

3) Upon FBO's default hereunder City may exercise all remedies available at law or in equity. All such remedies shall be cumulative and non-exclusive.

B. Default by City.

1) City shall be in default under this Lease if City fails to perform any of its obligations or breaches any of its covenants contained in this Lease and said failure or breach continues for a period of 30 days after written notice of such default from FBO, provided this 30 day cure period shall be extended for such reasonable period of time as is necessary to cure the default, if the alleged default is not reasonably capable of cure within said 30 day period and City commences and continues to diligently cure the alleged default.

2) Upon City's default hereunder, FBO may exercise all remedies available at law or in equity. All such remedies shall be cumulative and non-exclusive.

32. ACCESS BY CITY. The City and persons duly authorized by the City shall, upon reasonable notice to FBO, have free access over the premises at reasonable times, accompanied by FBO's representatives, for the purpose of:

A. Inspections. Inspecting the premises for violation of any of the covenants or conditions of this Lease.

B. Repairs. Making repairs as required by this Lease and local, state and federal laws and regulations. City shall be allowed to take all material into and upon the premises that may be required for all reasonable repairs to be made by City under this Lease, without the same constituting an eviction of FBO. City shall use its best efforts to do all repairs when FBO is not open to the public and to conduct all such repairs in a manner so as to minimize any disruption to FBO's business.

C. Development. Carrying out airport development projects and other City sponsored or approved construction.

D. Showing. Showing all or part of the premises to prospective tenants.

33. ACCESS BY FBO.

A. Ingress and Egress. The City shall maintain FBO's ingress and egress to and from the premises uninterrupted at the level presently provided, except as otherwise provided in this Lease.

B. Airport Closure. The City may close the airport, or any portion thereof, from time to time. The number and duration of such closures shall be determined by the City in its sole discretion.

34. DESTRUCTION OF PREMISES.

A. Total Destruction. If the premises are totally destroyed by fire or other casualty or if the premises are partially destroyed to an extent that the premises are not suitable for the operation of FBO's business, then the City or the FBO shall have the option of terminating this Lease upon written notice to the other party, within 60 days after such casualty loss, in which event all obligations herein shall cease as of the date of such casualty, and neither City nor FBO shall have any further obligations or rights hereunder except for any obligations existing at the time of the termination. If this Lease is terminated pursuant to this paragraph, all casualty insurance proceeds from FBO's insurance policies shall be paid to the FBO for loss of FBO's property, and to the City for such property insured by the City.

35. REPRESENTATIONS AND WARRANTIES.

A. FBO. FBO hereby represents and warrants to City that: (i) FBO is a duly authorized and validly existing limited liability company qualified to do business in the State of Michigan; (ii) FBO has the full right and authority to enter into this Lease; (iii) each of the persons executing this Lease on behalf of FBO is authorized to do so; and (iv) this Lease constitutes a valid and legally binding obligation of FBO, enforceable in accordance with its terms.

B. City. The City represents and warrants to FBO that: (i) City is the fee simple owner of the premises; (ii) except as set out herein, there are no agreements, contracts, covenants, conditions or exclusions which would, if enforced, prohibit or restrict the operation of the premises for the intended use; (iii) City is a duly authorized and existing municipal corporation under the laws of the State of Michigan; (iv) City has the full right and authority to enter into this Lease; (v) each of the persons executing this Lease on behalf of the City is authorized to do so; and (vi) this Lease constitutes a valid and legally binding obligation on City, enforceable in accordance with its terms.

36. HAZARDOUS SUBSTANCES.

A. Definitions. For the purposes of this Lease, the term “Hazardous Substance” shall mean (i) any chemical compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any local government, state or federal environmental laws as a “hazardous substance,” “hazardous material,” “hazardous waste,” “extremely hazardous waste,” “infectious waste,” “toxic substance,” “toxic pollutant,” “radioactive” or any other formulation intended to define, list, or classify substance by reason of deleterious properties, such as ignitability, radioactivity, corrosivity, reactivity, carcinogenicity, toxicity, or “EP toxicity”; (ii) asbestos; and (iii) any petroleum, natural gas, natural gas liquids, liquified natural gas, or synthetic gas for fuel (or mixtures of natural gas and such synthetic gas).

B. FBO’s Duties. FBO shall not cause or permit any hazardous substance to be used, stored, generated, or disposed of on, in or about the premises (except those commonly or properly used in connection with the operation of an FBO and which are used in accordance with all applicable government laws and regulations), without obtaining City’s prior written consent. If the premises become contaminated in any manner as a result of any breach of the foregoing covenant or any act or omission of FBO or any of its agents, employees or contractors, FBO shall indemnify, pay on behalf of, defend and hold harmless City from any and all claims, demands, actions, damages, fines, judgments, penalties, costs (including attorneys’, consultants’, and experts’ fees), liabilities, losses and expenses arising during or after the term of any renewal term then in effect and arising as a result of such contamination. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal, or restoration mandated by any federal, state, or local agency or political subdivision. Without limitation of the foregoing, if FBO causes or permits the prevention of any hazardous substance on, in or about the premises that results in contamination, FBO, at its sole expense, shall complete all required clean up, removal and remediation. FBO shall first obtain City’s approval for any such remedial action. Notwithstanding the foregoing, this indemnification shall only apply to contamination by hazardous substances resulting from FBO’s use and operation of the premises. Nothing herein contained shall be held to indemnify City from liability or to create any liability on FBO for hazardous substances contamination resulting from City’s ownership, use or operation, or the use of operation by any third party in, on or under the

premises or the building. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

37. AIRPORT PROTECTION.

A. City's Rights. It shall be a condition of this Lease, that the City reserves unto itself, its successors and assigns, for the use and benefit of the public:

1) The right of flight for the passage of aircraft in the airspace above the surface of the airport, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, 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; and

2) The right to take any action it considers necessary to protect the airspace and approaches of the airport against obstruction, together with the right to prevent FBO from erecting, or permitting to be erected, or locating any building, object structure on the premises adjacent to the airport, which, in the opinion of the City, would limit the usefulness of the airport or constitute a hazard.

B. FBO's Duties. The FBO, for itself, its successors and assigns, shall:

1) Restrict the height of structures and other obstructions on the herein described premises to such a height so as to comply with Federal Aviation Regulations, Part 17.

2) Prevent any use of the premises which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard.

38. NON-EXCLUSIVE RIGHTS. Notwithstanding anything contained in this Lease:

A. FBO's Rights. The rights granted under this Lease are non-exclusive and the City reserves the right to grant similar privileges to another FBO or other tenants on other parts of the airport; and

B. Private Party Rights. No right or privilege has been granted to FBO which would operate to prevent any person, firm or corporation operating aircraft at the airport from performing any services on its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform.

39. NOTHIRDPARTY BENEFICIARIES. This Lease sets forth the agreement between the parties and all rights and benefits established herein are established solely for the benefit of the

parties and are not intended to establish any rights or benefits in any other person or entity.

40. NOTICES. Any notice, demand, request or other instrument which may be or is required to be given or delivered under this Lease shall be deemed to be delivered (i) whether or not actually received, five days after deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, or (ii) when received (or when receipt is refused) if delivered personally or sent by a nationally recognized overnight courier, all charges prepaid, to the addresses of City and FBO as set forth in this paragraph. Such addresses may be changed by written notice to the other party in accordance with this paragraph. The parties acknowledge that copies of any notice sent by facsimile or e-mail are for convenience only, and shall be deemed to be proper notice required hereunder.

CITY: City of Charlotte  
111 E. Lawrence Avenue  
Charlotte, MI 48813

517/543-8843 (phone)  
517/543-8845 (fax)

FBO: Charlotte Air Services, LLC  
1325 Island Highway  
Charlotte, MI 48813

517/543-2299 (public line)  
517/712-8177 (Personal  
Line)

41. WAIVER. The waiver by City or FBO of any breach or default of any term, covenant, or condition shall not be deemed to be a waiver of any subsequent breach or default of the same or any other terms, covenant or condition, nor shall the acceptance or payment of rent or other payment be deemed to be a waiver of any such breach or default. No term, covenant or condition of this Lease shall be deemed to have been waived by City or FBO, unless such waiver is in writing.

42. PARAGRAPH NUMBERS AND CAPTIONS. The paragraph numbers and captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections.

43. ENTIRE AGREEMENT. This Lease and any attachments hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions, and understandings between City and FBO concerning the premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, other than as herein set forth. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon City or

FBO until reduced to writing and signed by City and FBO.

44. SEVERABILITY. If any term, covenant or condition of this Lease, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term, covenant, or condition to persons or circumstances other than those as to which it was held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

45. APPLICABLE LAW, VENUE AND JURISDICTION. This Lease shall be governed by and be interpreted in accordance with the laws of the State of Michigan. Venue for state court actions shall be in Eaton County. Venue for federal court actions shall be in the Western District of Michigan. Each party waives any defense of improperly or inconvenient venue as to either court and consents to personal jurisdiction in either court.

46. SUCCESSORS. The provisions of this Lease shall inure to the benefit of the City and FBO and be binding upon the respective successors and permitted assigns.

47. FORCE MAJEURE. In the event that either party hereto shall be delayed or hindered in or prevented from the performance required hereunder by reason of strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God, or other reason of like nature not the fault of the party delayed in performing work or doing acts (“Permitted Delay”), such party shall be excused for the period of time equivalent to the delay caused by such permitted delay. Notwithstanding the foregoing, any extension of time for a permitted delay shall be conditioned upon the party seeking an extension of time delivering written notice of such permitted delay to the other party within ten days of the event causing the permitted delay, and the maximum period of time which a party may delay any act or performance of work due to a permitted delay shall be 60 days.

48. EXERCISE OF CITY’S RIGHTS. All rights reserved to City under this Lease shall be exercised in a reasonable manner and in a manner so as to minimize any adverse impact to FBO’s business or FBO’s use or enjoyment of the premises.

## **ARTICLE II - MANAGEMENT OBLIGATIONS**

49. AIRCRAFT STORAGE, END STORAGE UNITS/OFFICES AND TERMINAL RAMP. FBO shall manage the rental of the shade shelters, T-Hangars, tie-downs and other units on behalf of the City. The FBO shall receive, in acting as the rental agent of the City, 15% of the gross rent, as that rent is established by the City.

50. STORAGE UNIT MAINTENANCE. FBO shall be responsible for the general cleanliness, including but not limited to the policing of trash and debris in and around the storage units. No additions or modifications shall be made to the managed premises without the prior

written consent of the City, which consent may be withheld at the sole discretion of the City. FBO shall be responsible for damages caused by improper or abusive use of the premises.

51. COMPLIANCE WITH STORAGE UNIT REGULATIONS. FBO shall comply with and assist the City in ensuring that tenants comply with any and all rules and/or regulations which exist or may be established for the use and/or occupancy of the storage units by the City. The FBO shall promptly notify the City and other appropriate agencies of any observed violation of any of the rules and regulations of the FAA, MDOT, NTSB and the City.

52. FUEL FARM OPERATIONS. FBO shall manage the fuel storage facility (“Fuel Farm”) on the airport for the purpose of conducting in-to-aircraft fuel services at the airport. The fuel farm is part of the managed premises. FBO shall train personnel in fueling operations in accordance with written procedures promulgated by the FBO. A copy of such written procedures shall be provided to the City on or before the commencement date and at any time that the written procedures are modified.

53. FUEL FARM FEES. FBO shall receive a fuel flow fee of \$0.15 per gallon on all fuel sold on the premises.

54. ASSISTANT AIRPORT MANAGER. The principals of the FBO shall act as Assistant Managers of the airport. They shall manage hangar and tie-down rentals, and manage the fuel concession for the City, and such other management functions, as set forth above.

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed by their duly authorized representatives on the day and date first written above.

CITY OF CHARLOTTE

CHARLOTTE AIR SERVICES, LLC, FBO

\_\_\_\_\_  
Carrie Burch, Mayor

By: \_\_\_\_\_ Its: \_\_\_\_\_

\_\_\_\_\_  
Ginger Terpstra, City Clerk