



CITY OF BATTLE CREEK
Battle Creek Executive Airport at Kellogg Field
15551 South Airport Road
Battle Creek, Michigan 49015
(269) 966-3470

Commercial Lease and Use Agreement

Between the
CITY OF BATTLE CREEK and the
BOARD OF TRUSTEES OF
WESTERN MICHIGAN UNIVERSITY
ON BEHALF OF ITS COLLEGE OF
AVIATION

*Battle Creek
Airport at
Field (KBTL)*



*Executive
Kellogg*



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COMMERCIAL LEASE AND USE AGREEMENT

This Commercial Lease and Use Agreement (Lease or Agreement) is made and entered into the _____ day of _____, 2026 by and between the City of Battle Creek (City), a Michigan municipal corporation, whose mailing address is P.O. Box 1717, Battle Creek, Michigan 49016 (Lessor) and the Board of Trustees of Western Michigan University on behalf of its College of Aviation, a constitutional body corporate governing a state institution of higher education located in Kalamazoo, Michigan, whose mailing address is 1903 W. Michigan, Kalamazoo, Michigan 49008-5134 (Lessee). Lessor and Lessee may hereinafter be referred to collectively as the Parties or individually as a Party.

1. INTRODUCTION

Recitals

- 1.1.1. WHEREAS, Lessor is a Michigan municipal corporation duly organized and validly existing under the laws of the State of Michigan with the power to carry on its business as it is now being conducted under the statutes of the State of Michigan and the Charter of the City of Battle Creek.
- 1.1.2. WHEREAS, Lessor is the owner and operator of the Battle Creek Executive Airport at Kellogg Field (Airport) located in Battle Creek, Michigan;
- 1.1.3. WHEREAS, Lessor is the owner of certain real property located at the Airport and described in Section 4 below (Premises);
- 1.1.4. WHEREAS, Lessee is the owner of certain buildings and improvements located on the Premises and desires to lease the Premises from Lessor to engage in certain Aeronautical Activities described in Section 4.1.7 – 4.1.9 below (Activities) at the Airport; and
- 1.1.5. WHEREAS, Lessor desires to lease the Premises to Lessee and allow Lessee to engage in such Activities at the Airport.
- 1.1.6. WHEREAS, Lessor and Lessee are parties to certain other lease agreements as follows:
 - 1.1.6.1. Airport Site Lease between the City of Battle Creek, Michigan (City) and Western Michigan University Board of Trustees (Western) dated May 18, 1995, as amended from time to time, which lease was assigned to Lessee, consisting of five different parcels;
 - 1.1.6.2. Assignment of Lease regarding the hangar previously owned by the Eaton Corporation and now owned by the Board of Trustees of Western Michigan University dated August 27, 2015;
 - 1.1.6.3. The prior lease agreements have expired and Lessee now seeks to continue its use of the Premises to operate aircraft hangars, office and classroom space, and other facilities to support Western Michigan University's College of Aviation's existing aircraft maintenance and flight training facilities pursuant to this Lease.
- 1.1.7. NOW, THEREFORE, for and in consideration of the conditions, obligations, privileges, and agreements contained herein, and for other good and valuable consideration, Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor and the Parties hereby agree as follows:

2. INCORPORATION OF RECITALS

- 2.1.1. This Agreement is based on the preceding recitals which are incorporated herein by reference.

3. DEFINITIONS

- 3.1.1. The words or phrases defined in Exhibit A, whenever used in this Agreement, shall be construed as defined therein unless (from the context) a different meaning is



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intended or unless a different meaning is specifically defined and more particularly ascribed to the use of such words or phrases.

4. PREMISES

Description

4.1.1. Lessor hereby leases to Lessee, certain real property located at the Airport, consisting of approximately 18.09 acres of land, herein referred to as the "Premises" and more particularly described and shown in Exhibit B, which is attached hereto, made part hereof, and incorporated herein by reference. For the avoidance of doubt, the Premises being leased by Lessor to Lessee does not include the buildings or contents of the buildings located on the land within the Premises as these are already owned by Lessee.

4.1.2. The address of the Premises is 237 Helmer Rd N, Battle Creek, MI 49037.

4.1.3. The Parties acknowledge that Lessee plans to construct a new large, storage hangar, expand and renovate its fleet maintenance facility, and expand and renovate its flight operations facility (which may include adding additional parking lots), which improvements (the Approved Alterations) have been approved by Lessor and are more specifically described on Exhibit C. Except for those Approved Alterations agreed to by the Parties as of the date of this Agreement, no material, structural additional improvements (including modifications, additions or deletions) (Alterations) shall be made to the Premises by Lessee without the prior written approval of Lessor, which shall not be unreasonably withheld, conditioned or delayed. Such approval shall not be required for any improvements or alterations made within the buildings located on the Premises.

4.1.4. Lessee warrants and represents that it has carefully and completely examined and inspected the Premises and fully understands its responsibilities and obligations with respect to the Premises and this Agreement.

4.1.5. Lessee accepts the Premises in an "as is, where is" condition.

4.1.6. Lessor represents and warrants to Lessee that:

- 4.1.6.1. Lessor has full right and power to execute and perform this Agreement and Lessor has the right and power to grant the estate demised herein.
- 4.1.6.2. Lessor owns fee simple title to the Premises, free and clear of any restrictions, easements and covenants, highways, leases, severances, agreements, conditions, limitations, mortgages and liens (except as granted to lenders that have entered into an Subordination Nondisturbance & Attornment Agreement or SNDA with Lessee) and other encumbrances which would materially interfere with the Activities. The Parties acknowledge and agree that there are FAA assurances, restrictions, obligations, and covenants (FAA CC&Rs) attached to the Premises, and Lessor represents to Lessee that these FAA CC&Rs do not materially interfere with the permitted Activities.
- 4.1.6.3. As of the Commencement Date, the Premises are in good working condition and repair, reasonable wear and tear excepted, are free from latent and patent defects and are suitable for Lessee's Activities with the exception of access roads which are not in good condition and will be repaired at Lessor's cost as more specifically described in this Agreement.
- 4.1.6.4. As of the Commencement Date all existing utility and mechanical systems, if any, are established, connected to the Premises, and are in good working condition and repair, reasonable wear and tear excepted.



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- 4.1.6.5. As of the Commencement Date, the Premises are in compliance with, and the Activities are permitted and expressly authorized under, all applicable Legal Requirements.
- 4.1.6.6. Lessor has not received any notice of, and has no knowledge of, existing violations related to the Premises, or any portion thereof.
- 4.1.6.7. Lessor has no knowledge of any persons or entities claiming a right of possession to all or any portion of the Premises.

Use

- 4.1.7. In addition to Lessor leasing the Premises to Lessee, this Agreement grants Lessee the right and privilege to use the Premises to engage in (on a non-exclusive basis) Activities at the Airport, subject to, and in accordance with, the terms and conditions of this Agreement and the Airport's Primary Management Compliance Documents (PMCDs). Lessor shall give Lessee prior advance written notice of any changes in the PMCDs to ensure that Lessee has notice of the changes and ample time to ensure compliance. If Lessee is not notified of any changes, Lessee is not required to comply with any such changes. The Premises may not be used for any other purposes or uses without the prior written consent of Lessor, which consent may be withheld in the sole and absolute discretion of Lessor.
- 4.1.8. Permitted Uses and Activities (Aeronautical Activities).
 - 4.1.8.1. For consideration of potential development, Lessee understands that any future use, or construction intended to enable it to use the Premises, must be intended to provide for the following Aeronautical Activities: utilizing, constructing, owning, and operating facilities to offer academic and training in aviation related programs, including but not limited to classes, continuing education and contract training; to support the aviation industry and governmental agencies through research and service activities; to provide service and aviation-related education to the University and community; to repair and maintain its own aircraft and to repair and maintain private aircraft as part of a course of instruction.
 - 4.1.8.2. For consideration of potential development, Lessee understands that it has the option to use the Premises to provide additional Aeronautical Activities in accordance with the Airport's Minimum Standards (as contained in the PMCDs) and with the written approval of the Lessor.
- 4.1.9. Lessee understands that Lessee is granted a right and privilege to use the Premises for engaging in Aeronautical Activities, such rights and privileges may be suspended or permanently revoked if Lessee does not comply with the terms and conditions of this Agreement, the PMCDs (including but not limited to the Minimum Standards), and Lessee's Operator Permit (herein referred to as the Permit) and such noncompliance continues for thirty (30) calendar days after written notice to Lessee of such noncompliance. Provided, however, that if the time to correct such noncompliance within thirty (30) days is not reasonable, Lessee shall have such time as reasonably required to correct such noncompliance so long as Lessee works diligently to become compliant.

Prohibited Uses

- 4.1.10. Lessee agrees not to use and/or occupy the Premises in any manner or purpose contrary to this Agreement or any Regulatory Measures.
- 4.1.11. The provision of non-aeronautical products, services, or facilities (or any non-aeronautical uses, occupancy, and/or purposes) on the Premises that are not incidental or accessory to the Activities is expressly prohibited.



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Compliance

4.1.12. Lessee's use of the Premises and the Airport is subject to the following requirements:

4.1.12.1. As may be promulgated or amended from time to time, Lessee shall comply with all applicable:

4.1.12.1.1. Regulatory Measures,

4.1.12.1.2. Airport Sponsor Assurances and all other federal laws or Federal Aviation Administration (FAA) regulations, obligations, or guidance,

4.1.12.1.3. Airport's PMCDs, except that in case of conflict between this Agreement and the PMCDs, this Agreement shall control,

4.1.12.1.4. Airport policies, standards, rules, and directives (to the extent Lessee has been provided written advance notice of the policies, standards, rules and directives), and

4.1.12.1.5. Zoning, building, fire, safety, and other codes, ordinances, statutes, and other directives of any Agencies having jurisdiction.

4.1.12.2. If any provision of this Agreement is found to be in conflict with this Section 4, then the provision that establishes the higher or stricter standard shall prevail. In addition, if any of the matters described in this Section 4 are amended, altered, or modified following the date of this Agreement and such amendment, alteration, or modification materially interferes with Lessee's use of the Premises or the business conducted by Lessee on the Premises, Lessee shall be permitted to terminate this Agreement on written notice to Lessor or negotiate with Lessor to amend this Agreement to allow for the continuation of all or some of the Activities on the Premises.

4.1.12.3. In the event of an alleged violation of this Section 4 (or initiation of an investigation relating to same), Lessee shall, upon learning of the violation or investigation, promptly notify Lessor of the alleged violation and describe the action(s) being taken to resolve it.

4.1.12.4. Any violation of (or failure to comply with) this Section 4 that continues for thirty (30) calendar days (or if such violation is incapable of being cured within thirty (30) days, then such time as is reasonably required with diligent efforts to cure such violation) after written notice to Lessee of such violation (or failure to comply) shall be construed as a default or breach of this Agreement.

4.1.12.5. Lessee shall pay reasonable penalties, fines, costs, and expenses for a violation of (or failure to comply with) this Section 4, except: (a) where such penalties, fines, costs, expenses, violation or failure are attributable to facts or circumstances existing as of the Effective Date; or (b) to the extent that such penalties, fines, costs, expenses, violation or failure are not caused or increased by subsequent actions of Lessee.

4.1.12.6. Subject to 4.1.12.5, if penalties or fines are levied against Lessor or costs or expenses are incurred by Lessor relating to Lessee's violation of (or failure to comply with) this Section 4, Lessee shall pay Lessor the penalty, fine, cost, or expense unless Lessee is contesting the penalty or fine in good faith.

5. TERM

Original

5.1.1. The original term of this Agreement shall be for a period of thirty (30) years commencing at 12:00 a.m. on the _____ day of _____, 2026 (Commencement Date) and ending at 11:59 p.m. on the _____ day of



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2056 (Original Term), unless sooner terminated in accordance with this Agreement.

Extension of Term

- 5.1.2. Lessee shall be entitled to renew this Lease Agreement for an additional 10-year term, a maximum of four (4) times. Lessee shall provide Lessor with written notice of its desire to renew this Lease not later than 180 days prior to its expiration of the initial 30-year term or each 10-year renewal term, as applicable. If renewed, the term shall be defined to mean the Original Term and any renewal terms exercised by Lessee.
- 5.1.3. For the purposes of consideration of potential future Improvements, Lessee understands any future improvements would be required to be made in compliance with the Airport's Development Standards as contained in the PMCDs.

6. RENTS AND FEES

Initial Rent

- 6.1.1. The annual rent for the Premises for the first year of the Original Term of this Agreement shall be one hundred and fifty seven thousand seven hundred and seventeen dollars (\$157,717) (the "Base Rate").

Rent Adjustments

- 6.1.2. During the Original Term and any renewal terms, the annual rent shall be adjusted upwards by 2% on the anniversary on the Commencement Date each year for the duration of this Agreement.

Fees and Other Charges

- 6.1.3. Lessee shall pay applicable fees and other charges identified in the City's Fee, Bond and Insurance Schedule (Schedule) which are subject to change from time to time based upon resolutions of the Battle Creek City Commission amending the Schedule or in accordance with the Airport's General Aviation Leasing/Rents and Fees Policy as contained in the PMCDs, to Lessor when due and owing if the specific fee is not addressed in the Schedule.

Payments

- 6.1.4. Payment of rents, fees, and other charges shall be made promptly without notice or demand, in legal tender of the United States of America. Fees are generally charged for Lessee demanded or requested services and invoices are issued to Lessee for such charges. Payments shall be made by check, ACH, wire or money order, payable to the City of Battle Creek. Payments shall be delivered or mailed to the Battle Creek Executive Airport at Kellogg Field at 15551 South Airport Road, Battle Creek, Michigan 49015 or to such other location as may be directed in writing by Lessor. Payments shall be made without any abatement, deductions, reductions, offsets, or counterclaims of any kind, except as otherwise provided herein.

- 6.1.4.1. Payment of rent shall be made by Lessee to Lessor either (i) monthly, in installments equal to one-twelfth (1/12) of the annual rent, in advance on or before the first (1st) day of each month, or (ii) annually, in a single lump sum payment on or before the first (1st) day of each lease year. If Lessee elects to pay in a lump sum, Lessee must notify Lessor in writing at least thirty (30) days before the start of the lease year. This payment method shall remain in effect until Lessee notifies Lessor in writing of a change, which must also be made at least thirty (30) days before the start of the lease year in which the change is to take effect. The rent for any partial month shall be prorated.

- 6.1.4.2. Payment of fees and other charges shall be made by Lessee to Lessor monthly on or before the tenth (10th) day of each month for the previous month.



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Late Charges

6.1.5. Lessee does not contractually agree to pay any set fee for late payments, but is bound by Michigan's Prompt Payment Act (Act 279 of 1984), which requires state agencies (including Lessee) to pay invoices within 45 days of receipt. MCL 17.51 et seq. If Lessee fails to pay Lessor undisputed and invoiced amounts within this time frame, the Prompt Payment Act will allow Lessor to include reasonable interest in their next payment request.

7. IMPROVEMENTS

7.1.1. Lessee shall not make any Alterations to the Premises, except for (a) alterations, additions or improvements which are reasonably expected to cost less than \$250,000.00; (b) the Approved Alterations mentioned in this Lease; and (c) any alterations, additions, and improvements occurring within the buildings located on the Premises, without obtaining Lessor's prior written consent, which will not be unreasonably withheld. Any such work so approved by Lessor shall be performed only in accordance with plans and specifications therefor approved by Lessor. Lessee shall procure at Lessee's sole expense all necessary permits and licenses before undertaking any work on the Premises and shall perform all such work in a good and workmanlike manner employing materials of good quality and so as to conform with all applicable zoning, building, fire, health and other codes, regulations, ordinances and laws and with all applicable insurance requirements.

7.1.1.1. Lessor may require Lessee to modify the Alterations to Lessor's satisfaction if such Alterations are made without Lessor's consent (not including the Approved Alterations already approved in this Lease). In such case, Lessor shall provide Lessee with written notice of the same and the modifications requested.

7.1.1.1.1. If Lessee fails to comply with such notice within thirty (30) calendar days (or such compliance reasonably requires more than thirty (30) days, the amount of time reasonably required using diligent efforts), Lessor may affect the modification of said Improvements and Lessee shall pay one hundred ten percent (110%) of the costs and expenses thereof within thirty (30) calendar days upon receipt of an invoice from Lessor.

8. LESSEE'S RIGHTS AND PRIVILEGES

Use of the Airport

8.1.1. Lessee is allowed to use the Airport, its appurtenances, and all access roads to the Premises and Airport together with all Public Areas and facilities, in common with others, on a non-exclusive basis and subject to the terms and conditions of this Agreement. Lessor's lease of the Premises to Lessee includes the right of Lessee to use the Airport facilities including, without limitation, all runways, taxiways, ramps, and access roads, which shall be the sole responsibility of Lessor to construct and maintain in a safe and reliable condition for the operation of aircraft. Lessor also agrees to maintain and operate the facilities necessary for aircraft to operate at night and during inclement weather and under instrument meteorological conditions or instrument flight rules. Lessor shall maintain licensure of the Airport as a General Utility Airport, pursuant to Mich. Admin. Code R. 259.244 and all applicable federal regulations, or any equivalent or increased licensure under state or federal law.

8.1.2. Lessee shall be liable (and shall reimburse Lessor) for all reasonable costs and expenses incurred by Lessor for the repair of any damage caused by Lessee to the



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Airport and its appurtenances and/or Public Areas or facilities, excluding ordinary and reasonable wear and tear.

Ingress and Egress

8.1.3. Lessee, its representatives, officers, agents, employees, guests, suppliers, vendors, invitees, contractors, and subcontractors shall have the right of ingress and egress to and from the Premises. However, if the privileges granted by this provision adversely affect or conflict with others, Lessor may request the right to restrict and/or limit the manner in which such ingress and/or egress may be exercised (including for example, for Air Show activities), but in no case shall Lessor restrict or prevent Lessee from having access to the buildings located on the Premises even if Lessor is required to close the Airport.

Quiet Enjoyment

8.1.4. Subject to the terms and conditions of this Agreement, Lessee shall peacefully and quietly have, hold, and enjoy the Premises free from hindrance or unreasonable interruption by Lessor or others under Lessor's control. Lessee understands that there are annual events that take place routinely at the Airport and agrees temporary inconveniences such as noise, disturbances, large crowds, vendors, traffic detours and the like resulting from, caused by, arising out of, or associated with Lessor's construction, maintenance, and/or repair of Airport improvements or special events, including, but not limited to, Field of Flight and Balloon Fest (which takes place for a period of approximately five (5) days immediately preceding and including July 4th, and immediately following the 4th), airshows, conferences, Aircraft Owners and Pilots Association (AOPA) Fly-in's, etc. shall not constitute a breach of this section; provided, however, if Lessee provides to Lessor in writing specific reasons Lessee believes the temporary inconveniences previously described would materially interfere with Lessee's use of the Premises, the Lessor shall work in good faith with Lessee to lessen or alleviate the inconveniences but shall under no circumstances have an obligation to cancel the work or event.

Fixtures and Equipment

8.1.5. Lessor shall have no liability or responsibility for any theft, misappropriation, or damage to any fixtures or equipment belonging to Lessee or others unless caused by Lessor.

Other

8.1.6. Unless otherwise stated in this Agreement, Lessee's rights and privileges are limited strictly to the Premises, no other rights or privileges are being granted by Lessor to Lessee for any other premises, uses or any other properties owned by Lessor.

8.1.7. Unless otherwise stated, this Agreement does not: (a) modify any other agreements between the Parties (the Parties acknowledging that the prior leases for the Premises have expired) or (b) extend any rights or privileges to Lessee in any other agreements between the Parties.

9. LESSOR'S RIGHTS AND PRIVILEGES

Rights – Lessor reserves the following rights:

9.1.1. Nothing contained in this Agreement shall be construed, in any way, to limit the use of the Airport by Lessor, its Police Department, Fire Department, FAA or other regulatory agencies performing official duties at the Airport.

9.1.2. Subject to 8.1.3, Lessor reserves the right to designate specific areas of the Airport (not including the Premises) to be used for specific purposes and/or



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conducting/engaging in specific activities such as special events as described by way of example but not by limitation in above 8.1.4.

- 9.1.3. Lessor reserves the right to develop and make any improvements, repairs, restoration, or replacement on, at, or to the Airport it deems necessary. Lessor will provide advance notice of the date and time of such projects. Lessor shall not be obligated or required to reimburse or compensate Lessee for any inconvenience that may result from, arise out of, or be associated in any way with such projects, provided that Lessor shall use best efforts to avoid interfering with Lessee's ordinary operations.
- 9.1.4. Lessor (and its representatives, officers, officials, employees, agents, and volunteers) shall not be responsible for loss, injury, or damage to persons or Property at the Airport resulting from, caused by, arising out of, or associated in any way with any acts of nature, natural disasters, or illegal activity (provided that such illegal activity is not that of Lessor).
- 9.1.5. During time of war or national emergency, Lessor shall have the right to enter into an agreement with the United States Government for military use of part or all of the Airport and its facilities. If any such agreement is executed, any agreement between Lessor and Lessee, insofar as it is inconsistent with the agreement between Lessor and the United States Government, shall be suspended, without any liability to Lessor; provided, however, that if such agreement materially interferes with the right, title or interest of Lessee to the Premises, or with Lessee's use and occupancy of the Premises for the Activities, Lessee shall have the right to terminate this Agreement on written notice to Lessor or to stop paying rent and other charges due under this Agreement during any period of such interference.
- 9.1.6. Lessor will not relinquish the right to take any action Lessor considers necessary to protect the aerial approaches of the Airport against obstruction or to prevent any person from erecting or permitting to be erected any facility or structure which might limit the usefulness of the Airport or constitute a hazard to Aircraft.
- 9.1.7. Lessor will not waive any sovereign, governmental, or other immunity to which Lessor may be entitled nor shall any provision of this Agreement or any other agreement with Lessor be so construed. Similarly, Lessee is a Michigan constitutionally created public institution of higher education and retains all rights, immunities, and defenses provided under the Michigan and U.S. Constitutions and applicable federal and state law with regard to any claim, demand or action arising out of this Lease.
- 9.1.8. Lessor will not submit to the laws of any state other than those of the State of Michigan.
- 9.1.9. Lessor is under no obligation to obtain or provide financing or funding, make any improvements to the Airport, and/or facilitate any development proposed by Lessee or others aside from fulfilling its obligations under the Airport Sponsor Assurances, to comply with Regulatory Measures, or to satisfy its obligations under this Lease.
- 9.1.10. Lessor reserves the right to take such actions as it may deem necessary to protect the safety and security of the public.
- 9.1.11. Lessor shall have no responsibility or liability to furnish any services to Lessee (except as set forth in this Agreement), however Lessee may request the provision of services and if agreed upon, shall pay Lessor the amount of Compensation agreed upon by the Parties.
- 9.1.12. Nothing contained in this Agreement shall be construed, in any way, as restricting or limiting the powers of Lessor to fully exercise its governmental functions and/or



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authority or fulfill its obligations under the Airport Sponsor Assurances or comply with Regulatory Measures.

Privileges – Lessor shall have the following privileges:

9.1.13. Access to the Premises

9.1.13.1. Upon advance written notice, Lessor shall have the right to enter in, upon, or under the Premises during regular business hours, with forty-eight (48) hours prior written notice for the purpose of inspecting the condition of the Premises and ensuring Lessee's compliance with the terms and conditions of this Agreement including, but not limited to, Section 4. Lessor agrees that it will avoid unreasonable interference with Lessee's operations in connection with any such entry. Lessor shall not be permitted to enter into any buildings located on the Premises without a representative of Lessee present and only after such entry is scheduled unless in case of emergency when the same shall not be required.

9.1.13.2. Lessor shall have the right to enter the Premises at any time in the event of an apparent or actual emergency (e.g., fire, flood, or failure of an Improvement, utility, etc.).

9.1.14. Performance of Acts

9.1.14.1. All acts performable under this Agreement by Lessor may, at the option of Lessor and without right of objection by Lessee, be performed by a qualified and authorized representative of Lessor.

9.1.14.2. Lessor shall be responsible for the conduct of its representatives, officers, officials, employees, agents, guests, and volunteers on the Premises. Upon receipt of a written complaint, Lessor shall take action to immediately address and/or resolve the complaint.

9.1.14.3. Lessor's personnel shall cooperate with Lessee, its representatives, officers, officials, employees, and agents in dealing with emergencies on the Premises and at the Airport.

9.1.15. Exercising Rights

9.1.15.1. No exercise of any rights reserved by Lessor pursuant to the terms and conditions of this Section 9 shall be deemed or construed, in any way, as grounds for any abatement of rents, fees, or other charges nor serve as the basis for any claim or demand for damages of any nature whatsoever except as otherwise set forth in this Agreement.

10. LESSEE'S OBLIGATIONS

Conduct

- 10.1.1. Lessee shall be responsible for the conduct, demeanor of its representatives, officers, officials, employees, agents, and volunteers and guests on the Premises. Upon receipt of a written complaint, Lessee shall take action to immediately address and/or resolve the complaint.
- 10.1.2. Lessee's personnel shall cooperate with Lessor, its representatives or with Agencies in dealing with emergencies on the Premises and at the Airport.

Disturbance

- 10.1.3. Lessee shall conduct its Activities in an orderly and proper manner so as not to disturb or interfere with the rights of Lessor and other lessees and will not in any manner interfere with Aircraft operations or create a hazard to Aircraft, other lessees or the public.



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10.1.4. Lessee shall not cause or permit any hazardous material, as defined in one or more of the Environmental Laws to be released, stored, produced, emitted, disposed of or used upon, about, or beneath the Premises except in compliance with all applicable Environmental Laws.

Taxes, Assessments, and Fees

10.1.5. Unless Lessee shall file property tax exemption paperwork with the City (and County if applicable), Lessee shall pay and discharge all taxes, assessments (if any), and other fees, without offset or abatement, whether general or special, ordinary or extraordinary, charged by any government or quasi-governmental entity during the term of this Agreement for the Premises or Lessee's buildings located on the Premises.

Maintenance and Repair

10.1.6. Lessee shall, at its sole risk, cost, and expense, diligently keep and properly maintain the street or land side of the Premises, in good condition and in a clean, neat, and orderly state, including mowing, maintaining plantings/landscaping, and snow plowing. This obligation does not include snowplowing any public roads leading to the Airport and Premises. Additionally, Lessee may snowplow a ten-foot wide buffer on the airport side of the Premises. Lessor shall be responsible for: (a) the prompt snowplowing of all aspects of the Airport (including, without limitation, runways, taxiways, and ramps) pursuant to its Snow and Ice Control Plan on file with and approved by the FAA; (b) timely snowplowing the public roads leading to the Airport and Premises; and (c) all other mowing, planting maintenance and landscaping of the Airport and Premises including as necessary to maintain compliance with its Wildlife Hazard Management Plan. Lessor shall also maintain, repair and replace all Airport facilities including, without limitation, runways, taxiways, and ramps as well as all access roads, parking lots and driveways located around the Airport (including those within the Premises) and used by Lessee to access the Premises and buildings located on the Premises. For the first year of this Lease, the Parties have agreed to repave the access roads located around the Airport and used by Lessee to access the Premises and buildings, which Lessee has identified to be in disrepair and are depicted on the attached Exhibits D-1 and D-2. If in the future, Lessee desires to have Lessor undertake additional capital repairs, Lessee shall give Lessor at least twelve (12) months' notice of such request. Lessor's obligations under this paragraph shall be at Lessor's cost and expense and without reimbursement from Lessee.

10.1.7. In the event either Party fails to comply with Section 10.1.6, the other Party may provide notice to the non performing Party to correct the condition within thirty (30) calendar days of the written notice (or such longer reasonable time as may be agreed to in writing by the Parties given the circumstances). If the non performing Party does not dispute or correct the condition within the time required, then the other Party may perform any necessary maintenance, repair, restoration, replacement, or cleaning and the non-performing Party shall pay one hundred ten percent (110%) of the costs and expenses thereof to the performing Party within fourteen (14) calendar days upon receipt of an invoice or, in the case of Lessee, the Lessee may deduct it from any future rent payments until repaid in full. If the non performing Party disputes the condition, then the Parties shall work in good faith to reach a resolution and failing reaching a resolution may follow the dispute resolution procedures set forth in this Agreement.

Utilities, Costs, Expenses, and Other Charges

10.1.8. Lessee shall pay for all utilities serving the buildings located on the Premises and for all other costs, expenses, and other charges of every kind and nature whatsoever



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relating to Lessee's flight school activities on the Premises during the term of this Agreement.

Based Aircraft Report

- 10.1.9. It is expressly a condition of this Lease that Lessee shall maintain and furnish on or before the tenth (10th) of January each year (or upon request of Lessor) a report identifying all Based Aircraft on all leaseholds between Lessor and Lessee on Battle Creek Executive Airport at Kellogg Field property. The report shall identify the aircraft owner, contact information, registration number, year, make, and model of the Aircraft. Lessee shall promptly provide an updated report of any changes to the Based Aircraft report.

On-Going Business.

- 10.1.10. Lessee shall be responsible for maintaining on-going Activities at the Airport and complying with the PMCDs, currently in effect or as may be amended with notice to Lessee, throughout the term of this Agreement.

Business Status.

- 10.1.11. Lessee shall notify Lessor immediately of any significant changes to Lessee's Activities or status or if Lessee's authorization to conduct the Activities at the Airport, in the State, or in the United States will be (or has been) suspended or revoked.

Signage and Lighting

- 10.1.12. Any signage located on the Premises shall comply with all relevant requirements of Lessor's ordinances and regulations provided such ordinances are published or Lessee is given written notice of same.

Special Events

- 10.1.13. Lessee shall not conduct or hold Special Events or filming activities without obtaining the prior written consent of Lessor. Prior written consent for filming activities shall not be unreasonably withheld so long as they are in compliance with City ordinances, applicable covenants, FAA regulations and Airport Rules and Regulations.

Security

- 10.1.14. **Contacts.** Lessee shall comply with the City's security requirements and/or best practices regarding any guests brought to the Premises by Lessee provided such requirements and practices have been published or provided to Lessee in writing. Lessee shall designate a responsible person for the coordination of security procedures and communications, communicate information regarding that designee to the City, including point-of-contact information for both primary and secondary contacts / designees. Contact information shall include telephone numbers where Lessee's contact(s) / designee(s) may be reached twenty-four (24) hours a day, seven (7) days a week. Likewise, Lessor shall designate a responsible person or persons with whom Lessee can communicate regarding Premises and Airport security. Lessor shall provide Lessee with contact information for those person(s) including telephone numbers where Lessor's designee(s) may be reached twenty-four (24) hours a day, seven (7) days a week.
- 10.1.15. Lessee shall develop and maintain a Security Plan for the Premises and Lessee's Activities. Lessee shall make a copy of the Security Plan available for the City to review no later than thirty (30) calendar days prior to commencement of Activities; Lessee shall update the Security Plan as necessary and shall promptly provide the updated versions to the City. Upon request, Lessee must demonstrate to authorized City representatives that Lessee's Activities and its



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use of the Premises are in compliance with all relevant and applicable TSA requirements.

- 10.1.16. All fencing, doors, gates, lighting, and locks which are part of the Premises must be maintained and kept in good working condition by Lessor. Any doors, gates, lighting or locks on the buildings located on the Premises must be maintained and kept in good working condition by Lessee. Gates or doors which provide access to Airside must remain closed, locked, and secured except when in use.

11. REQUIRED FAA CLAUSES

Non-Exclusive Use

- 11.1.1. Lessor hereby grants Lessee the non-exclusive use of the Airport (together with all appurtenances thereunto) in common with Lessor and others, except such land and/or Improvements as may be leased by Lessor exclusively to others. The areas leased exclusively to others are as follows: _____ (if left blank there are no areas leased exclusively to others).
- 11.1.2. This Agreement and all of the provisions hereof shall be subject to whatever right the United States Government has now or may have in the future or may acquire affecting the control, operation, regulation and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.
 - 11.1.2.1. If any agreement is executed between Lessor and the U.S. Government regarding the Government's control, operation, regulation, taking over of the Airport or the exclusive or non-exclusive use of the Airport, the provisions of this Agreement shall be subordinate to the provisions of such agreement between Lessor and the United States relative to the Airport; provided, however, that if Lessee no longer has use of the Premises then Lessee shall have no obligation to pay rent or any other charges under this Agreement.
- 11.1.3. It is clearly understood by Lessee that no right or privilege has been granted herein 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 employees (including but not limited to, fueling, maintenance, and repair) that it may choose to perform.

Non-Discrimination

- 11.1.4. Each Party, for itself, its heirs, successors, and assigns, as a part of the consideration hereof, agrees to abide by its policies regarding non-discrimination, which prohibit discrimination or harassment that violates the law or that limits opportunities of admission, employment or education based on legally protected classes such as race, color, religion, national origin, sex, pregnancy, sexual orientation, gender identity, age, protected disability, protected veteran status, genetic information, height, weight or marital status.

12. DEFAULTS AND REMEDIES

Default by Lessee

- 12.1.1. In addition to the defaults and breaches identified in this Agreement, the occurrence of any one or more of the following events shall constitute a default or breach:
 - 12.1.1.1. The filing by Lessee of a voluntary petition in bankruptcy.
 - 12.1.1.2. The assignment of substantially all of Lessee's assets for the benefit of Lessee's creditors.
 - 12.1.1.3. A court making or entering any decree or order:



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- 12.1.1.3.1. adjudging Lessee to be bankrupt or insolvent,
- 12.1.1.3.2. approving a properly filed petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof,
- 12.1.1.3.3. appointing a receiver, trustee, or assignee of Lessee in bankruptcy or insolvency or for its Property, or
- 12.1.1.3.4. directing the winding up or liquidation of Lessee and such decree or order shall continue for a period of sixty (60) calendar days.
- 12.1.1.4. The filing of any lien against the Premises resulting from any act, error, omission, or negligence of Lessee which is not discharged or contested in good faith as determined by Lessor by proper legal proceedings within sixty (60) calendar days of receipt of actual notice by Lessee, unless Lessee posts a bond within this time period equal to the amount of the lien.
- 12.1.1.5. The voluntary abandonment by Lessee of the Premises or Lessee's failure to maintain the on-going Aeronautical Activity on the Premises for a period of ninety (90) calendar days or more, unless caused by circumstances beyond Lessee's control.
- 12.1.1.6. The transfer of Lessee's interest herein by operation of law.
- 12.1.1.7. Lessee becomes in arrears in its payment of the whole or any part of the amount(s) agreed to be paid under this Lease for a period of thirty (30) calendar days after receipt of Lessor's written notice to Lessee of same.
- 12.1.1.8. The failure by Lessee to perform any of the conditions, obligations, privileges, and agreements contained herein where the failure continues for a period of thirty (30) calendar days after written notice from Lessor stating the nature and extent of the default; provided, however, that if such failure cannot reasonably be cured within thirty (30) calendar days, Lessee will not be in default so long as Lessee begins to cure such thirty (30) calendar day period and diligently attempts to cure, which determination shall be in the sole and reasonable discretion of Lessor.
- 12.1.1.9. The sale, assignment, or transfer or the attempted sale, assignment, or transfer of this Agreement by Lessee. Negotiations by Lessee for the sale, assignment, or transfer of this Agreement or Lessee's rights hereunder, shall not be construed as an "attempted" transfer.

Remedies of Lessor

- 12.1.2. In the event a default or breach of this Agreement by Lessee that is not cured within thirty (30) calendar days of receiving notice from Lessor, or if such default or breach cannot reasonably be cured with thirty (30) calendar days, Lessee fails to begin to cure during such thirty (30) calendar day period and diligently attempts to cure thereafter, which determination of diligence shall be in the sole and reasonable discretion of Lessor, Lessor may, in addition to any other remedies available to Lessor, terminate this Agreement, in whole or in part.
- 12.1.3. If this Agreement is terminated for any default or breach by Lessee, any payments made to Lessor shall be forfeited to Lessor and Lessee shall have no right to recover any payments. This forfeiture shall not diminish Lessor's right to recover such damages resulting from the default or breach by Lessee.



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- 12.1.4. In addition to the termination and forfeiture right described in the preceding paragraph, Lessor shall have the following rights and remedies upon Lessee's uncured default or breach:
 - 12.1.4.1. the recovery of any unpaid rent, fees, and other charges due and owing at the time of termination, plus any unpaid rent, fees, or other charges that would have been earned or made if Lessee had not defaulted or breached this Agreement;
 - 12.1.4.2. the recovery of any damages, fees, costs, and/or expenses incurred by Lessor as a result of the default or breach of this Agreement, including court fees, costs, and expenses;
 - 12.1.4.3. the removal, storage, and/or disposal of personal property from the Premises at Lessee's sole risk, cost, and expense and without any liability to Lessor for resulting damage in which case Lessee shall pay one hundred ten percent (110%) of the costs and expenses thereof to Lessor within fourteen (14) calendar days upon receipt of an invoice from Lessor (provided Lessee has first been given notice and at least 120 days to remove the personal property); and
 - 12.1.4.4. any other right or remedy, legal or equitable, that Lessor is entitled to under applicable law including, but not limited to, injunctive relief.
- 12.1.5. Notwithstanding the foregoing, no failure to perform or delay in performance by a Party which is caused by Force Majeure shall be deemed an event of default or breach that Party.
- 12.1.6. No termination shall relieve Lessee of the obligation to deliver and perform any outstanding requirements and agreements prior to the effective date of the termination and/or continue to be liable for same under this Agreement.
- 12.1.7. In the event of any such termination enumerated herein, Lessor shall have the right, at once and without further notice, to enter and peacefully take full possession of the Premises. Upon termination of this Agreement for any reason, Lessee shall peacefully surrender the Premises to Lessor in the same condition as when received, with exception of ordinary and reasonable wear and tear, subject to Sections 8.1.2 and 27 herein.
- 12.1.8. All of the rights and remedies given to Lessor in this Agreement are cumulative and no one is exclusive of any other. Lessor shall have the right to pursue any or all remedies available to Lessor, whether legal or equitable in nature, whether stated in this Agreement or not.

Default by Lessor; Remedies of Lessee

- 12.1.9. The following shall be considered a "Lessor Default":
 - 12.1.9.1. If Lessor defaults in the performance of any of the covenants on the part of Lessor to be kept or performed and such default continues for thirty (30) calendar days after receipt of written notice from Lessee stating the nature and extent of the default or, if such default cannot reasonably be cured within thirty (30) calendar days, if Lessor fails to begin to cure during such thirty (30) calendar day period and diligently attempt to cure thereafter; or
 - 12.1.9.2. If any warranty or representation expressly set forth by Lessor in this Agreement is untrue and remains untrue thirty (30) calendar days after receipt of written notice from Lessee specifying such untruth.
 - 12.1.9.3. In the event of a Lessor Default, Lessee may, in addition to all other rights and remedies provided at law or in equity, (a) terminate this Agreement or (b) cure the



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default, including, but not limited to, the making of any repairs or replacements to the Premises, and Lessor shall reimburse Lessee, on demand, for one hundred ten percent (110%) of Lessee's actual costs and expenses incurred thereby, such sum to be set off against rent next coming due until fully repaid. If this Agreement is terminated for any default or breach by Lessor (in accordance with Section 12 of this Agreement), any payments made to Lessor shall be prorated such that any amounts paid in advance for periods of time after the date of termination shall be refunded to Lessee. Any amounts paid and related to periods of time before the date of termination shall be retained by Lessor. In the event of a Lessor Default, Lessee shall also be entitled to recovery of any court fees, reasonable attorney fees, and other expenses.

12.1.9.4 All of the rights and remedies given to Lessor and Lessee in this Agreement are cumulative and no one is exclusive of the other. Lessee shall have the right to pursue any or all remedies available to Lessee whether legal or equitable in nature.

13. TERMINATION BY LESSEE

- 13.1.1. If current on its rent payment obligations, and subject to providing written notice to Lessor, Lessee may terminate this Agreement after the occurrence of one (1) or more of the following events in which case any unearned rent shall be returned to Lessee:
 - 13.1.1.1. permanent abandonment or closure of the Airport, including for a closure of the Airport that is not permanent but is in effect for longer than ninety (90) calendar days.
 - 13.1.1.2. the lawful assumption by the United States Government, or any authorized Agency of the operation, control, use, or occupancy of the Airport, or any substantial part or parts thereof, in such manner as to substantially restrict Lessee from conducting the Activities authorized in this Agreement for a period of at least ninety (90) calendar days.
 - 13.1.1.3. the default or breach by Lessor of any conditions, obligations, privileges, and agreements contained herein required to be performed by Lessor and the failure of Lessor to remedy such default or breach for a period of thirty (30) calendar days after receipt from Lessee of written notice while Lessee is in good standing.

14. CONDEMNATION OR EMINENT DOMAIN

General

- 14.1.1. In the event of the acquisition by Condemnation or the exercise of the power of eminent domain (by any governmental or other permitted Agency other than Lessor to take Property for public use) of interest in all or a portion of the Premises, Lessee shall not institute any action or proceeding or assert any claim against Lessor for Compensation or consideration of any nature whatsoever and any provision contained herein contrary to the provisions of this Section shall have no force or effect.
- 14.1.2. All Compensation or consideration awarded or paid upon a total or partial acquisition of the Premises (which for these purposes shall not include Compensation or consideration from Lessor) shall belong to and be the Property of Lessor without any participation by Lessee.
 - 14.1.2.1. Nothing contained herein shall be construed or preclude Lessee from recovering directly from the condemning Agency the value of any claim, that may exist, or depreciation, damage, or costs or expenses of removal, or for the value of Lessee's personal property including, without limitation, the



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buildings and improvements located on the Premises, which are owned by Lessee.

Total

14.1.3. In the event of the acquisition by Condemnation or eminent domain of all interest in the Premises, Lessee's obligation to pay rent and the leasehold estate created shall cease and terminate as of the date Condemnation or eminent domain is asserted to the governmental or other permitted Agency taking the Premises for public use.

Substantial and Partial

14.1.4. In the event of the acquisition by Condemnation or eminent domain of a portion of interest in the Premises, Lessee's obligation to pay rent shall cease and terminate as it pertains to the specific portion of the Premises taken as of the date Condemnation or eminent domain is asserted, date title of the Premises is transferred to the governmental, or other permitted Agency taking the Premises for public use.

14.1.4.1. In the event of partial Condemnation or eminent domain, rent shall be adjusted accordingly according to the portion of the Premises taken by Condemnation versus the portion that Lessee is able to continue to lease under this Agreement.

14.1.5. In the event of substantial Condemnation or eminent domain which prevents or substantially impairs the conduct of Lessee's Activities or which equates to fifty percent (50%) or more of the total Premises, Lessee may, at Lessee's option, terminate this Agreement in which case the obligation to pay rent and the leasehold estate shall cease and terminate as of the date Condemnation or eminent domain is asserted to the governmental or other permitted Agency taking the Premises for public use.

14.1.5.1. If terminating this Agreement, Lessee shall notify Lessor of termination within thirty (30) calendar days of receiving notice of Condemnation or eminent domain.

14.1.5.2. If Lessee does not notify Lessor of termination, the Condemnation or eminent domain shall be considered a partial acquisition.

15. FORCE MAJEURE

15.1.1. If either Party shall be delayed, hindered in, or prevented from, the performance of its conditions, obligations, privileges, and agreements contained herein by reason of war, national emergency, act of nature, pandemic, epidemic, government shut down, natural disaster, or any other cause beyond a Party's reasonable control and is not the fault of such Party (Permitted Delay), such Party shall be excused for the period of time equivalent to the delay caused by such Permitted Delay.

15.1.2. Notwithstanding the foregoing, any extension of time sought by Lessee or Lessor for a Permitted Delay shall be conditioned upon it providing written notice of such Permitted Delay to the other Party within fourteen (14) calendar days of the event causing the Permitted Delay.

15.1.3. In no event shall Lessee be relieved of its obligations to pay Lessor the rents, fees, or other charges due and owing by reason of Force Majeure, as set forth in this Agreement.

16. NO WAIVER

16.1.1. No failure on the part of Lessor or Lessee to enforce any of the conditions, obligations, privileges, and agreements contained herein shall be construed as or deemed to be a waiver or a relinquishment of the right to enforce such conditions, obligations, privileges, and agreements.



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16.1.2. The acceptance by Lessor of any payment shall not be construed as or deemed to be a waiver by Lessor of any default or breach by Lessee of any condition, obligation, privileges, or agreement contained herein and shall not be construed as or deemed to be a waiver of Lessor's right to terminate this Agreement. Likewise the payment of any rental amount or other fee to Lessor shall not be construed as or deemed to be a waiver by Lessee of any default or breach by Lessor of any condition, obligation, privileges, or agreement contained herein and shall not be construed as or deemed to be a waiver of Lessee's right to terminate this Agreement.

17. LICENSES, CERTIFICATES, AND PERMITS

17.1.1. Lessee, at its sole risk, cost, and expense, shall obtain any and all required licenses, certificates, permits, or other authorizations from any and all Agencies having jurisdiction necessary to conduct the Activities authorized in this Agreement. Lessor represents and warrants that it has all required licenses, certificates, permits, or other authorizations for the Airport.

17.1.2. Lessee shall not engage in or permit others to engage in activities on the Premises in violation of any of Lessee's licenses, certificates, permits, or other authorizations.

17.1.3. If the attention of Lessee is called to any such violation, Lessee will immediately notify Lessor and cease and desist from and immediately cause to be corrected such violation. Lessee shall pay all penalties, fines, costs, or expenses associated with any such violation or correction.

18. INSURANCE

18.1.1. Lessee shall procure, maintain, and pay all premiums throughout the term of this Agreement for the applicable insurance coverages and amounts reasonably required by the City of Battle Creek and in conformance with Regulatory Measures.

18.1.1.1. Such insurance shall be kept in full force and effect at all times during the term of this Agreement.

18.1.1.2. Such liability insurance shall name Lessor as additional insured.

18.1.1.3. Current Certificates of Insurance shall be provided to Lessor to this effect.

18.1.2. Liability policies shall contain, or be endorsed to contain, the following provisions.

18.1.2.1. "City of Battle Creek and the Battle Creek City Commission, individually and collectively, and its representatives, officers, officials, employees, agents, and volunteers are to be covered as additional insured with respect to: liability arising out of activities performed by or on behalf of entity (with the exception of gross negligence and or intentional torts); premises owned, leased, occupied, or used by entity; or vehicles, equipment, or aircraft owned, leased, hired, borrowed, or operated by entity. Such insurance shall provide primary coverage and shall not seek any contribution from any insurance or self-insurance carried by agent or the City of Battle Creek."

18.1.2.2. "Such insurance, as to the interest of the City of Battle Creek only, shall not be invalidated by any act or neglect (or default or breach of contract) of entity. Any failure to comply with reporting or other provisions of the policies, including any breach of warranty, shall not affect coverage provided to the City of Battle Creek and the Battle Creek City Commission, individually and collectively, and its representatives, officers, officials, employees, agents, and volunteers. Entity's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability."



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18.1.2.3. "Coverage shall not be suspended, voided, or cancelled by either party or reduced in coverage or in limits except after thirty (30) calendar days prior written notice (or fourteen (14) calendar days prior written notice for cancelation for non-payment of premium) by certified mail, return receipt requested, has been given to the City of Battle Creek."

19. DAMAGE

19.1.1. Both Lessee and Lessor shall be solely responsible to insure their own respective interests in the Premises, the Airport, and its associated Improvements and personal property against risk of physical loss. Lessee and Lessor hereby release the other and each other's shareholders, members, directors, officers, managers, employees, agents and representatives from any and all liability or responsibility (to the other or anyone claiming, through or under them by way of subrogation or otherwise) for any loss or damage the Premises, the Airport and its associated Improvements and personal property.

20. INDEMNIFICATION

20.1.1. Lessor, as owner of the Premises, releases Lessee from any cost, expense, or liability arising from responding to, complying with, defending and paying for any and all environmental actions, requests for action, claims, damages, enforcement actions, administrative actions, environmental assessments, investigation, studies, remedial actions, response activities, clean ups, fines, penalties, costs, etc. of whatever kind or nature, resulting from any environmental contamination or pollution (including a release or threat of a release of a hazardous substance as defined in one or more of the Environmental Laws), which is on, emanating from, escaping from, arising from the Airport or Premises, or migrating to the Premises, and to the extent they are the result of actions of third parties, including without limitation, the City, its officials, employees, agents or contractors.

20.1.2. Nothing herein shall constitute a waiver of any protection available to Lessor, individually and collectively, and its representatives, officers, officials, employees, agent, and volunteers under the State of Michigan's sovereign, governmental, or other immunity acts or similar statutory provisions, if any. Similarly, the Parties acknowledge that Lessee is a Michigan constitutionally created public institution of higher education and retains all rights, immunities and defenses provided under the Michigan and U.S. Constitutions and applicable federal and state laws with regard to any claim, demand or action arising out of this Lease.

21. SUBLICENSE

21.1.1. Lessee shall not sublease any portion of the Premises without prior written approval from the Lessor, which shall not be unreasonably withheld.

22. SALE, ASSIGNMENT, OR TRANSFER

22.1.1. Lessee shall not sell, assign, transfer, or hypothecate its interest in the Premises or this Agreement without prior written approval from the Lessor, which shall not be unreasonably withheld.

23. ENCUMBRANCES

23.1.1. Lessee shall have no authority, express or implied, to create (or consent to the creation of) any lien, charge or encumbrance upon the Premises and Lessee shall not permit the Premises to be or become subject to any lien (including mechanic's liens), charge, or encumbrance without prior written approval from the Lessor at Lessor's sole discretion.



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24. MORTGAGE

- 24.1.1. Lessee shall not mortgage, pledge, assign as collateral, voluntarily or otherwise, its interest in the Premises or this Agreement without prior written approval from the Lessor at Lessor's sole discretion. At the end of the term of this Lease, or at any other time that this Lease is terminated, there shall be no assumption of any mortgages, notes, or bonds of Lessee by Lessor.
- 24.1.2. This Agreement will not be subject or subordinate to any mortgage placed on the Premises by Lessor unless the at-issue lender (Lender) executes an SNDA that is in a form and content reasonably acceptable to Lessee and such Lender, and which substantially provides that, as long as Lessee is not in default under this Agreement: (i) Lessee will not be named or joined as a party in a proceeding arising from the liens of such Lender; (ii) any such proceeding shall not in any way affect or impair Lessee's rights under this Agreement; (iii) such Lender will affirmatively recognize the validity of this Agreement and Lessee's rights under this Agreement; and (iv) such Lender will assume Lessor's obligations under this Agreement on foreclosure of such Lender's liens or on obtaining title to the Premises by deed in lieu thereof. Lessor will present such an instrument to Lessee with Lessor's current Lender, if any, prior to the execution of this Agreement, which Lessor, Lessee and Lessor's current Lender will execute simultaneously with the execution of this Agreement.
At the request of Lessee, Lessor will, within fourteen (14) calendar days, deliver to Lessee, or Lessee's designee, a certificate stating and certifying under oath as of its date (i) the date to which rent under this Agreement has been paid; (ii) if true, that this Agreement is unmodified and in full force and effect (or if there have been modifications, the specific nature of such modifications) and that neither party is in default under any provision of this Agreement (or if a party is in default, the specific nature of such default); and (iii) such other information that Lessee may reasonably request in connection with landlord-tenant relationship established by this Agreement.

25. RELOCATION

- 25.1.1. **Intentionally Deleted.**

26. BOOKS AND RECORDS - **Intentionally Deleted**

27. SURRENDER PREMISES

At least one year in advance of the expiration of the term of this Agreement or upon the earlier termination of this Agreement the Parties shall negotiate in good faith for a disposition of the Premises or the buildings located on the Premises, which may include any of the following: (a) the Parties entering into a new lease for the Premises; (b) the surrender of the Premises and the buildings located on the premises from Lessee to Lessor; (c) the Parties agreeing to a sale of the Premises by Lessor to Lessee, if legally permissible; (d) the sale of the buildings located on the Premises by Lessee to Lessor; (d) Lessee's sale of the buildings to a third party and Lessor entering into a lease of the Premises with the third party or (e) any other mutually acceptable alternative. Where applicable under the options identified above, Lessee shall vacate and surrender possession of the Premises to Lessor reasonable wear and tear excepted.

Lessor also grants to Lessee a right of first offer related to the Premises. In the event Lessor intends to sell the Premises during the term of this Lease, Tenant shall have the right to first offer to purchase the Premises on the terms and conditions at which Lessor proposes to sell



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the Premises to a third-party. Lessor shall give Lessee written notice by certified mail of its intent to sell, and shall indicate the terms and conditions, including the sale price, upon which the Lessor intends to sell the Premises to a third-party. Lessee shall thereafter have ten (10) days to elect in writing to purchase the Premises and execute a purchase agreement, and shall have an additional sixty (60) days to close on the acquisition of the Premises. If Lessee does not elect to purchase the Premises, then Lessor shall be free to sell the Premises to a third-party provided such third party agrees to assume Lessor's obligations under this Lease.

28. HOLDOVER POSSESSION

- 28.1.1. If Lessee, upon expiration of the term of this Agreement remains in possession of the Premises, such holding over shall be regarded as a month-to-month tenancy (not as an extension of this Agreement) which may be terminated at any time by Lessor or Lessee by providing not less than thirty (30) calendar days written notice. The rents, fees, and other charges that shall be paid during the holding over period shall be equal to one hundred ten percent (110%) of the monthly rents, fees, and other charges that were being charged by Lessor at the time the term of this Agreement expired. The holdover period shall be subject to all of the terms and conditions of this Agreement. This provision shall not be construed as Lessor's permission for Lessee to hold over. Acceptance of rents, fees, and other charges shall not constitute an extension of this Agreement.

29. INDEPENDENT ENTITIES

- 29.1.1. Nothing in this Agreement is intended to nor shall it be construed, in any way, as creating or establishing a relationship of partners between the Parties or as constituting Lessee as a representative, officer, official, employee, agent, or volunteer of Lessor for any purpose or in any manner whatsoever.

30. BINDING EFFECT

- 30.1.1. This Agreement shall be binding on and inure to the benefit of the heirs, successors, and assigns of the Parties. Whenever a reference is made to either Party, such reference shall be deemed to include, wherever applicable, a reference to the heirs, successors, and assigns of such Party, as if in every case so expressed.

31. SUBORDINATION

- 31.1.1. This Agreement is subject and subordinate to the provisions of any existing or future agreements between Lessor and the United States, the State of Michigan, or any other entity pertaining to the planning, development, operation (including maintenance and repair), and management of the Airport. If requested by Lessee, Lessor agrees to share a copy of any such agreements with Lessee to the extent they require Lessee to abide by the terms of such agreements. Lessor represents and warrants that any such existing agreements do not materially interfere with Lessee's ability to use the Premises and Airport for the Activities contemplated by this Agreement.

32. GOVERNING LAW AND VENUE

- 32.1.1. This Agreement shall be deemed to have been made in, and shall be construed in, accordance with the laws of the State of Michigan without regard to conflicts of law principles.
- 32.1.2. Any claims, demands, or actions arising under this Lease and or asserted against Lessee shall be brought in the Michigan Court of Claims or a court with subject matter jurisdiction sitting in the State of Michigan and the Parties expressly waive



COMMERCIAL LEASE AND USE AGREEMENT

any objections to the same on any grounds including, but not limited to venue and forum non conveniens.

32.1.3. Should any lawsuit be commenced between the Parties concerning the terms of this Agreement, or the rights and duties of the Parties hereto, the prevailing Party or Parties in such proceeding shall be entitled, in addition to such other relief as may be granted, to payment of all of their costs, expenses (including, but not limited to, expert fees), and reasonable attorneys' fees incurred in connection therewith. Prevailing Party shall mean the Party that receives a favorable judgment (either by trial or dispositive motion that closes the action) or the Party that obtains substantially what was sought in the lawsuit.

33. PARAGRAPH HEADINGS

33.1.1. All section, paragraph, and subparagraph headings contained in this Agreement are inserted only as a matter of convenience or reference only, and are not intended to define, limit, or describe the scope of this Agreement or any provision contained herein.

34. SEVERABILITY

34.1.1. If any provision in this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provisions in this Agreement, provided that the invalidity of any such provision does not materially prejudice either Party with regard to the respective rights and obligations of each Party contained in the valid provisions of this Agreement.

35. COUNTERPARTS

35.1.1. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

36. MODIFICATION

36.1.1. Any change or modification to this Agreement shall not be valid unless made in writing, agreed to, and signed by both Parties.

37. TIME OF ESSENCE

37.1.1. It is mutually agreed by the Parties that time is of the essence in the performance of all conditions, obligations, privileges, and agreements to be kept and performed under the terms of this Agreement.

38. MUTUAL DRAFTING

38.1.1. This Agreement is the joint product of Lessor and Lessee and each provision has been subject to the mutual consultation, negotiation, and agreement of the Parties, any rule of construction that a document shall be construed against the drafter of such document shall not be applicable.

39. NO THIRD PARTY BENEFICIARY

39.1.1. Nothing contained in this Lease will be construed so as to confer upon any other party the rights of a third-party beneficiary.

40. ENTIRE AGREEMENT

40.1.1. This Agreement contains and embodies the entire understanding and agreement between the Parties and supersedes and replaces any and all prior understandings and agreements, written or oral, expressed or implied, relating to this Agreement.

41. DISPUTE RESOLUTION

41.1.1. In the event there is a dispute between the parties and related to this Agreement, including without limitation, a dispute over a capital improvement request made by



COMMERCIAL LEASE AND USE AGREEMENT

Lessee to Lessor or a dispute related to a future FAA or MDOT agreement that in Lessee's opinion materially interferes with Lessee's use of the Premises and Airport, then the senior executive(s) of the parties will meet and use reasonable efforts and will act in good faith to find a resolution to the dispute. In such case, the parties will not institute litigation to resolve any dispute until after the dispute has been elevated to the parties' senior executive(s) and either concludes that resolution is unlikely or there is a failure to respond within fifteen business days. The parties may, however, institute formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy.

41.1.2. If the attempt to resolve the dispute by these informal proceedings is not successful, then the claim shall be settled by litigation. A force majeure event shall not impact the requirement that the parties meet in an effort to try to resolve any dispute by the informal proceedings outlined in these paragraphs.

42. NOTICES

42.1.1. Whenever any notice is required by this Agreement to be made, given or transmitted to the Parties, such notice shall be hand delivered or sent by registered or certified mail (postage prepaid), courier, or overnight carrier, and addressed to:

Lessor

City of Battle Creek
Aviation Director
15551 S. Airport Rd
Battle Creek, MI 49015

with a copy to:

City of Battle Creek
City Attorney
10 N. Division St.
Battle Creek, MI 49014

Lessee

Western Michigan University
Attention: Keith Hahn
Office of General Counsel
1903 W. Michigan
Kalamazoo, MI 49008-5134

with a copy (which shall not constitute service) to:

Rachel J. Foster
Warner Norcross + Judd LLP
180 E. Water Street, Suite 7000
Kalamazoo, MI 49007

And also a copy to:

Dr. Raymond Thompson
WMU College of Aviation
209 Helmer Road North
Battle Creek, MI 49037

42.1.2. The date of service of notice shall be the date such notice is actually delivered to the intended recipient or the date delivery is refused by the intended recipient.

42.1.3. The Parties may, from time to time, designate to each other in writing a different address or different entity or entities to which all such notices, communications, or payments shall be given or made.

43. **CONTINGENCY FOR BOARD APPROVAL.** The enforceability of this Lease is wholly contingent upon its approval by the Board of Trustees of Western Michigan University (the "BOT") at their next



COMMERCIAL LEASE AND USE AGREEMENT

regularly scheduled, properly noticed meeting, including documentation thereof by the BOT Secretary. Failing such approval, this Lease shall be deemed null and void.

44. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

- 44.1.1. Each Party represents and warrants to the other Party that:
 - 44.1.1.1. It is duly organized and validly existing under the laws of its jurisdiction, incorporation, or establishment;
 - 44.1.1.2. Subject to approval by its relevant governing Board of Trustees (BOT) or City Commission, it has the power and the authority to enter into and perform its conditions, obligations, privileges, and agreements contained herein and to pay the rents, fees, or other charges required under this Agreement;
 - 44.1.1.3. Subject to approval by the BOT or City Commission, this Agreement will have been duly authorized, executed, and delivered by Lessee and assuming the due authorization, execution and delivery hereof by the Parties hereto, constitutes a legal, valid, and binding obligation of it enforceable against it in accordance with the conditions, obligations, privileges, and agreements contained herein, subject to applicable bankruptcy, insolvency, and similar laws affecting creditor's rights generally, and subject, as to enforceability, to general principles of equity regardless of whether enforcement is sought in a proceeding in equity or at law;
 - 44.1.1.4. Its execution and delivery of this Agreement and its performance of its conditions, obligations, privileges, and agreements contained herein do not and will not constitute or result in a default, breach, or violation of, its charter or by-laws (or equivalent organizational documents), or, to the best of each Party's knowledge, any other agreement, instrument, law, ordinance, regulation, judgment, injunction, or order applicable to it or the Premises;
Upon obtaining BOT or City Commission approval, all consents, authorizations, and approvals requisite for its execution, delivery, and performance of this Agreement have been obtained and remain in full force and effect and all conditions, obligations, privileges, and agreements thereof have been duly complied with, and no other action by, and no notice to or filing with, any governmental authority or regulatory body is required for such execution, delivery, or performance; and
 - 44.1.1.5. Each Party has not received any written notice of any proceeding pending or threatened against it, at law or in equity, or before any governmental instrumentality or in any arbitration, which would materially impair its ability to perform its conditions, obligations, privileges, and agreements contained herein and there is no such proceeding pending against it which purports or is likely to affect the legality, validity, or enforceability of this Agreement.

<Signatures on Next Page>



COMMERCIAL LEASE AND USE AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth herein. This Agreement is effective as of the date of the last executed signature below ("Effective Date").

CITY OF BATTLE CREEK:

Amanda E. Zimmerlin, City Manager

NOTARY:

[NAME OF NOTARY]

Commission Expires: _____

SEAL

BOARD OF TRUSTEES OF
WESTERN MICHIGAN UNIVERSITY
ON BEHALF OF ITS COLLEGE OF
AVIATION :

By:

NOTARY:

[NAME OF NOTARY]

Commission Expires: _____

SEAL

33109604-11

ATTEST:

[NAME OF SECRETARY], Executive Assistant

Date:

Approved as to form and content by:

William Y. Kim
Attorney for the City of Battle Creek

ATTEST:

[NAME], [TITLE]

Date: _____



EXHIBIT A – DEFINITIONS

Aeronautical Activity/Activities (or Activity/Activities), Any activity or service that involves, makes possible, facilitates, is related to, assists in, or is required for the operation of Aircraft. Any activity which contributes to, or is required for, the safety of such operations. Any activities which have a direct relationship to the operation of Aircraft or the operation of the Airport.

Agency or Agencies, Any federal, state, or local governmental entity, unit, organization, or authority.

Agreement, A written contract (e.g., lease agreement, permit, etc.), enforceable by law, executed by both parties, between the City and Lessee transferring rights or interest in land and/or Improvements and/or otherwise authorizing the conduct of certain Activities.

Aircraft, A device that is used or intended to be used for flight.

Airport, All land, Improvements, and appurtenances within the legal boundaries as it now exists on the Airport Layout Plan (or Exhibit A of the most recent FAA grant) and as it may hereinafter be modified at the Battle Creek Executive Airport at Kellogg Field (BTL).

Airport Layout Plan, (or ALP), The FAA approved and City adopted drawing, as may be amended from time to time, which reflects an agreement between the FAA and City depicting the physical layout of an airport and identifying the location and configuration of current and proposed Runways, Taxiways, buildings, roadways, utilities, navaids, etc.

Airport Sponsor Assurances, Those contractual obligations that are described by law in 49 U.S.C. 47107 and are undertaken by a public airport sponsor as a condition of receipt of federal airport development grants or federal surplus Property.

Airside, The Runways for landing and taking off of Aircraft, designated helipads, Taxiways and Taxilanes for ground movement of Aircraft, and Ramp for parking, loading, unloading, fueling, and servicing of Aircraft.

Aviation Director, That person (or designated representative thereof), appointed by the City, responsible for the administration and day-to-day operation and management of the Airport, all City owned Property, Vehicles, equipment, material, financial assets, and Employees at the Airport, and all employees assigned to the Airport.

Based Aircraft, An Aircraft which has been or will be stored at the Airport for more than one hundred eighty-three (183) calendar days over a one-year period (including days that the Aircraft is operating off the Airport and not paying Based Aircraft storage rents or fees at another airport).

Certificates of Insurance, A certificate provided by and executed by an Operator's, Lessee's, or Sublessee's insurance company providing evidence of the insurance coverages and policy limits of the Operator, Lessee, or Sublessee.

Commercial, For the purpose of securing earnings, income, Compensation (including exchange or barter of goods and services), and/or profit.

Compensation, Any form of reimbursement for goods or services such as monetary, exchange, barter, favors, gratuity, etc.

Condemnation, The taking of land and/or Improvements for any public or quasi-public use under any Regulatory Measure or by the right of eminent domain.

Department of Transportation (or DOT), The Cabinet department of the United States Government concerned with transportation. It was established by an act of Congress on October 15, 1966 and began operation on April 1, 1967. It is administered by the United States Secretary of Transportation.

Environmental Laws: Includes all Regulatory Measures relating to the use, storage or management of hazardous or toxic materials or substances, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; the Resource Conservation and Recovery Act, as amended; the Clean Air Act, as amended, the Clean Water Act, as amended; and their state and local counterparts or equivalents.



EXHIBIT A – DEFINITIONS

Equipment, All Property and machinery, together with the necessary supplies, tools, and apparatus required for the proper conduct of the Activity being performed.

Federal Aviation Administration (or FAA), The Agency within the Department of Transportation of the United States Government that has the responsibility of regulating Aeronautical Activities. It was established by an act of Congress on April 1, 1967.

Fire Department (or Fire Department), The City of Battle Creek Fire Department provides fire services to the City.

General Utility Airport, A facility classified under the State of Michigan Aeronautics Commission General Rules to operate as a public airport and meeting the criteria set forth in Mich. Admin. Code R. 259.244.

Improvements, All buildings, structures, additions, and facilities including pavement, fencing, and landscaping constructed, installed, or placed on, under, or above any land on the Airport.

Land Use Plan, A document approved by the FAA as part of the Airport Layout Plan used to guide land use surrounding the Airport.

Master Plan, An assembly of documents and drawings (which have been approved by the FAA and adopted by the City) covering the development of the Airport from a physical, economic, social, and political jurisdictional perspective. The Airport Layout Plan is part of the Master Plan.

Police Department (or Police Department), The City of Battle Creek Police Department provides law enforcement services as well as several other community services to the City.

Primary Management and Compliance Documents (PMCDs), A compendium of Airport policies, standards, guidelines, rules, and regulations that govern the development, operation, and management of an airport, that may be promulgated by the City, and may be amended from time to time, including General Aviation Leasing/Rents and Fees Policy, General Aviation Minimum Standards, Rules and Regulations, and Design Standards.

Property, Any tangible or intangible possession that is owned by an entity or a person.

Public Area, Those areas normally used by the general public. Such areas include, restrooms, General Aviation Passenger Terminal Building lobbies, hallways, passage ways, roadways, walkways, sidewalks, and Vehicle parking lots. Public areas do not include the areas owned and/or leased by Commercial businesses unless such businesses so designate certain areas as public use areas. Public Areas do not include the AOA, Restricted Areas, and employee parking lots.

Ramp, Those Paved areas of the Airport within the AOA designated by the City for parking, loading, unloading, fueling, or servicing of Aircraft.

Regulatory Measures, All applicable federal, state, county, and local laws, codes, ordinances, policies, rules, and regulations, including the PMCDs.

Rules and Regulations, The rules and regulations set forth by the City for the safe, secure, orderly, and efficient use of the Airport, as may be amended from time to time.

Security Plan, A document developed by Operators to ensure the safety and security of people and property at the Airport.

Security Deposit, A security and damage deposit as security for the return of the premises at the expiration of the term of the agreement in as good condition as when Lessee took possession, normal wear and tear excepted, as well as the complete performance of all other terms, conditions, and covenants of the lease agreement.

Special Event, Any event at the Airport whereby individuals have unescorted access to the AOA or any event that may or will require: the assistance of City staff (outside the realm of typical duties); the closure of any portion of any roadway, walkway, Vehicle parking area, Ramp, Taxilane, Taxiway, or Runway; and/or the issuance of an airspace waiver or NOTAM.



EXHIBIT A – DEFINITIONS

Sublease, An agreement entered into by an entity with an Operator or Lessee that transfers rights or interests in the Operator's or Lessee's Premises and for which, the City has given proper consent.

Sublessee, An entity that has entered into a Sublease with an Operator or Lessee who is authorized (by the City) to engage in Subleasing.

Transportation Security Administration (or TSA), The Agency within the Department of Homeland Security of the United States Government responsible to safeguard United States transportation systems and ensure secure travel. It was established by the Aviation and Transportation Act passed on November 19, 2001.



EXHIBIT B PREMISES

[see next page]



Need to insert updated Exhibit from City



EXHIBIT C **APPROVED ALTERATIONS**

- Lessee is currently working a project with Meade and Hunt to do initial design work on renovation and expansion of the flight operations and fleet maintenance buildings. Plus, adding a new storage hangar in the space in between those two buildings. The project may also include additional parking lots as well.



EXHIBIT D-1

WMU-College-of-Aviation—Roads-in-Poor-Condition

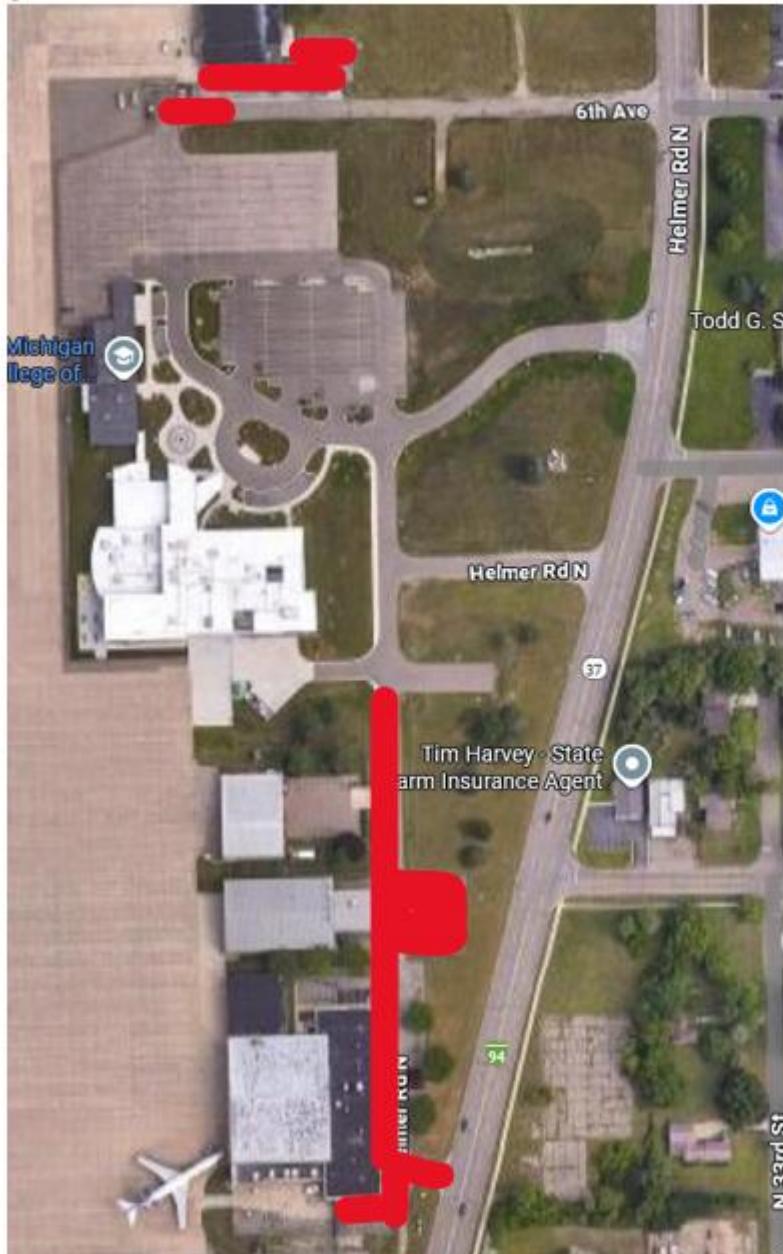




EXHIBIT D-2



WMU				
Mobilization, 10%	3.00	\$5,068.00	\$5,068.00	
Milling	5200.00	\$1.50	\$7,800.00	
HMA, 4EL	429.00	\$95.00	\$40,755.00	
Pavement Markings ylw, 6 in	1700.00	\$1.25	\$2,125.00	
				Total
				\$55,748.00