

**FIXED BASE OPERATOR'S (FBO) AND LEASE AGREEMENT  
BETWEEN  
SUPERIOR FLYING SERVICE, LLC  
AND  
THE CITY OF SUPERIOR, WISCONSIN**

THIS AGREEMENT made and entered into this 8<sup>th</sup> day of June, 2017, by and between the **CITY OF SUPERIOR**, State of Wisconsin, Douglas County, a municipal corporation existing by and under the authority of the laws of the State of Wisconsin, hereinafter referred to as the LESSOR, and **Superior Flying Service, LLC**, hereinafter referred to as the LESSEE.

Lessor owns and operates an airport which includes all aeronautical navigation facilities, said airport being known as the Richard I. Bong Airport, and said Lessor is desirous of leasing to Lessee certain premises hereinafter more fully described, located on said airport.

**I. PERMITTED USES**

Lessee may engage in the business of:

1. Selling aviation fuel, oil and lubricants;
2. Selling aircraft, engines, accessories and parts;
3. Providing storage space for aircraft;
4. Repairing and servicing of aircraft engines, accessories and parts;
5. Giving flying instructions and aircraft rental;
6. Providing pilots and carrying passengers or freight for hire.

**II. LEASE**

- A. For the consideration set forth below, the Lessor does hereby lease to the Lessee the following described premises:

**Office space in the south east corner of building A-2 and hangar and shop area located in the north west corner of building A-1, at the Richard I. Bong Memorial Airport, 4804 Hammond Avenue, Superior, WI, for the purpose of conducting aviation services.**

- B. It shall be the duty of the Lessee, unless otherwise mutually agreed between the Public Works Director and the Lessee, to provide and maintain all ingress and egress for the benefit of the public to the facility and such roads, taxiways and other items that might become involved in the operation of Lessee's business without expense to the Lessor. Provided further that Lessee shall, at their own expense, obtain any necessary easements for water and sewer installation to said facility and Lessee shall be responsible for all costs and assessments for the installation, connection and providing of water and sewer service to the facility.
  
- C. Ingress to and egress from the demised premises shall be limited to streets, taxiways, driveways and sidewalks designated for such purposes by the Lessor, which right shall extend to Lessee's employees, passengers, guests, invitees and patrons.

### III. RATES

- A. Rates for use of the premises described in Paragraph II (A) will be a total of five hundred dollars (\$500.00) per month, payable in monthly installments on or before the first of each and every month during the term of this agreement. The rent for these premises is subject to renegotiation at the end of every five (5) year period; and said amount shall be paid by Lessee to the Lessor monthly. Failure on the part of the Lessee to pay the rent hereunder within thirty (30) days after the same shall become due, except as provided in for the case of the airport being closed by any lawful authority, shall authorize the Lessor, at its option and without any legal proceeding, to declare this lease void, cancel the same, and re-enter and take possession of the premises.
- B. In addition, Lessee shall pay any and all utility costs incurred by this operation, such as, but not limited to, heat, electricity, and water. Lessee shall pay, in a timely manner, all taxes or assessments that may be levied against the personal property of the Lessee.

### IV. TERM

- A. The term of the lease for property described in Paragraph II (A), shall expire on December 31, 2021. It is expressly understood between the Lessor and the Lessee that the Lessee shall have the option of renewing this lease for subsequent five (5) year extensions subject

to the mutual agreement of terms and fees, unless terminated earlier in accordance with the terms and provisions to this agreement.

- B. If the Lessee during the term of this agreement ceases to provide the services described in Section I above, to the general public, the Lessor shall have the right to terminate this agreement upon ten (10) days written notice to the Lessee.

## V. INSURANCE

A. During the full term of this lease and during all extensions thereto the Lessee shall, at its sole cost and expense, maintain a policy or policies of insurance as follows:

1. *Commercial General Liability/ Premises Liability*  
One hundred thousand dollars (1,000,000.00) combines single limit (i.e., up to \$1,000,000.00 per occurrence for bodily injury and/or property damage arising out of a single loss, with no sub-limits).
  2. *Automobile Liability:*  
Minimum liability coverage required by Wisconsin Law, but not less than:
    - o Fifty thousand (\$50,000.00) for injury or death of one person;
    - o One hundred thousand (\$100,000.00) for injury or death or two or more people; and
    - o Fifteen thousand (\$15,000.00) for property damage.
- Underinsured and underinsured motorist coverage is also required, each with minimum limits of one hundred thousand (\$100,000.00)/ three hundred thousand (\$300,000.00) for bodily injury coverage.
3. *Workers Compensation Insurance:*  
If applies and as required under Wisconsin Law.
  4. *Hangar Keepers Liability:*  
Minimum liability coverage of \$100,000 each aircraft, \$100,000 each loss.
  5. *Aircraft Liability:*  
Minimum liability coverage of \$1,000,000 each occurrence, with Passenger Liability of \$100,000 each person.
  6. *Operations/Products Liability:*  
Minimum liability coverage of \$1,000,000 each occurrence.

Each insurance policy shall identify the City as “additionally insured”.

The amount and type of insurance required under this section may be reviewed and adjusted at the end of each eight month period during this lease, provided that any increase in insurance coverage shall be reasonable.

The policy of insurance shall be approved by the City Attorney as to legal form before it is filed, and shall contain a provision that the same may not be canceled before the expiration of its term, except upon thirty (30) days written notice to the Lessor. Lessee shall not exercise its privilege to use the Airport for the herein referenced purpose; until and unless said insurance is in full force and effect.

Each policy shall be issued by a company licensed to do business in Wisconsin.

Lessee agrees to defend, indemnify and hold the City completely harmless from and against any and all claims, costs, (including attorney fees and litigation expenses), damages fines, judgments, liabilities and losses arising out of, resulting from, or in any way connected with the Lessee, Lessees' officer's, agents, employees, contractors, or customers use of or activities at the Airport. This includes, but is not limited to the presence or spill of hazardous substances.

This section shall survive the expiration of this Agreement.

B. The policy of insurance shall be approved by the City Attorney as to legal form before it is filed, and shall contain a provision that the same may not be canceled before the expiration of its term, except upon thirty (30) days written notice to the Lessor.

C. The cancellation or other termination of any insurance policy issued in compliance with this section shall automatically terminate the Lease, unless another policy has been filed and approved pursuant to this section and shall be in effect at the time of such cancellation or termination. Lessee shall not perform any of their permitted uses described in Section I without the aircraft liability and products insurance or other insurance coverage necessary to provide insurance coverage for such uses.

## VI. FAA REQUIRED PROVISIONS

A. Lessee for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be subjected to discrimination; (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, non-discrimination in Federally-assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

B. Lessee in the conduct of its authorized aeronautical business activities on said demised premises and on said airport, shall furnish prompt and efficient service adequate to meet the demands for its services at the airport, and shall furnish such service on a fair, equal and not unjustly discriminatory basis to all users thereof, and shall charge fair, reasonable, and not unjustly discriminatory prices for each unit of sale or service; provided, however, that Lessee shall be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchases.

C. Lessee shall have the right and privilege of engaging in and conducting a fixed base operation on the premises of the airport under the terms and conditions as set forth hereinafter, provided, however, that this agreement shall not be construed in any manner to grant Lessee or those claiming under it the exclusive right to use the premises and facilities of said airport other than those premises leased exclusively to Lessee hereunder.

D. Lessee shall offer proof, to City's reasonable satisfaction, that Lessee holds all required local, state and/or federal certificates, licenses or permits, including but not limited to a seller's permit. Lessee shall comply with all FAA regulations that pertain to the items in Section I.

E. It is clearly understood by the Lessee no right or privilege has been granted which would operate to prevent any person, firm or corporation operating aircraft on 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 with FAA Regulations.

## VII. ADDITIONAL LEASE PROVISIONS

A. Lessee may not at any time during the term of this lease, assign, sublease, hypothecate or transfer this agreement or any interests or rights under this agreement, without the consent of the Lessor.

B. Lessee will maintain the structure occupied by him and surrounding land premises in good order and make such repairs as are necessary. In the event of fire or any other casualty, the owner of such structure so affected shall either repair or replace the building or remove the damaged building and restore the leased area to its original condition; such action must be commenced within 120 days of the date the damage occurred and completed in a reasonable time thereafter. Upon petition by the Lessee, the Lessor may grant an extension of time if it appears such extension is warranted.

1. Lessee agrees to observe and obey during the term of this lease all laws, ordinances, rules and regulations promulgated and enforced by the Lessor and by any other proper authority having jurisdiction over the conduct of the operations at the airport. It is understood by the Lessee that the airport is directly regulated by the City of Superior, through its Airport Manager and in realizing this, the Lessee agrees to fully cooperate with the Airport Manager, inform the Airport Manager of any change in operations or proposals relating to the airport and provide the Manager with any such information regarding operations as the Manager may request.

2. Lessee agrees to hold the Lessor free and harmless from loss from each and every claim and demand of whatever nature, made on behalf of or by any person or persons, for any wrongful, careless or negligent act or omission and damages by reason of such acts or omissions.

3. So long as Lessee conducts his business in a fair, reasonable and workmanlike manner, Lessee shall peaceably have and enjoy the leased premises and all the rights and

privileges herein granted.

4. Lessee agrees that no signs or advertising matter may be erected without the consent of the Lessor, or that are not suitable to the Lessor.

5. Lessee agrees to permit the Lessor to install, maintain and operate proper obstruction lights on the tops of all buildings or structures to be placed on the premises by the Lessee and agrees to reimburse the Lessor for the cost of such installation.

6. During any period when the airport shall be closed by any lawful authority restricting the use of the airport in such a manner as to interfere with the use of same by Lessee for his business operation, the rent shall abate and the period of such closure shall be added to the term of this lease so as to extend and postpone the expiration thereof.

7. Failure on the part of the Lessee to pay the rent hereunder, within thirty (30) days after same shall become due, except as provided in the preceding paragraph, shall authorize the City, at its option and without any legal proceedings, to declare this Lease void, cancel the same and re-enter and take possession of the premises, upon giving a ten (10) day notice by registered mail. Lessee shall promptly pay all taxes or assessments that may be levied against the personal property of the Lessee or the building on lands leased to it exclusively under this Lease. For purposes of the assessment of personal property taxes, Lessee acknowledges to be in charge and possession of the building/s located on the leased premises and the contents contained therein and, therefore, accepts personal liability for the assessment of personal property taxes. Failure to timely pay personal property taxes pursuant to Wisconsin Statutes ' ' 74.11(4) shall constitute a breach of this agreement on the part of the Lessee and shall authorize the City to cancel the agreement without initiating a legal proceeding and to re- enter and take possession of the premises upon providing a ten (10) day written notice by registered mail.

8. If Lessee shall violate any of the restrictions in this lease, or shall fail to keep any of its covenants after written notice to cease such violation and shall fail to correct such violation within thirty (30) days, the Lessor may at once, if he so elects, terminate the same and take possession of the premises.

9. The Lessor reserves the right to enter upon the premises at any reasonable time for the purpose of making any inspection it may deem expedient to the proper enforcement of any of the covenants or conditions of this agreement.

10. The Lessor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of Lessee, and without interference or hindrance. If the physical development of the airport requires the relocation of the Lessee, the Lessor agrees to provide a comparable location and agrees to relocate all buildings or provide similar facilities of Lessee in this regard.

11. The Lessor reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of Lessee in this regard.

12. During the time of war or national emergency, the Lessor shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use, and if such lease is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended.

13. Force Majeure. Neither Lessee nor the City shall be held liable for any failure to perform the obligations outlined in this agreement where such failure is a result of acts of Nature such as floods, earthquakes or other natural disasters, nor due to acts of war, invasion, hostilities, terrorist activities, etc., nor by government sanction, embargos, nationalization, etc. Lessee or the City may elect to terminate this agreement as a result of these conditions upon mutual consent.

13. The Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of the Lessor, would limit the usefulness of the airport or constitute a hazard to aircraft.

14. Obstructions at Richard I. Bong Airport; the Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against



obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of the Lessor, would limit the usefulness of the airport or constitute a hazard to aircraft. Lessee shall, upon approval by the Lessor and prior to any construction of any nature within the boundaries of the airport, prepare and submit to the Federal Aviation Administration, Great Lake Regional Office, Attention AGL-530, 2300 E. Devon Avenue, Des Plaines, Illinois, 60018, one (1) executed set (four copies) of FAA Form 7460-1, "Notice of Proposed Construction or Alteration", as required by Federal Aviation Regulations, Part 77. This notice must be submitted at least thirty (30) days prior to the date of the proposed construction or alteration of the date that an application for a construction permit is filed, whichever is earlier.

15. Lessee agrees to maintain operations during a schedule of hours, which schedule shall be filed with and approved by the Airport Manager. Hours of operation shall not be reduced below the minimum without written consent of the Airport Manager, except during any period when the airport is closed by any lawful authority restricting the use thereof in such a manner as to interfere with the use of the same by the Lessee for its operation.

16. The Lessee shall keep the premises clean, neat and in good order, free from garbage, debris, salvage or junk. No junked or non-operating vehicles, airplanes, or parts thereof, shall be kept outside the hangar.

17. Non-Appropriation. To the extent that State and/or Federal funds are used for airport operations, the City will not be held liable for any damages incurred due to changes in State or Federal funding, including, but not limited to, a reduction in services offered or closure of the airport.

C. This lease shall be subordinate to the provisions of any existing or future agreement between the Lessor and the United States, relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the airport.

D. Upon termination of this lease, Lessee shall remove all buildings and improvements

constructed by Lessee within sixty (60) days after the lease termination date and restore the premises described herein to its original condition, free and clear of all debris. Said removal and restoration shall be subject to the approval and inspection of the Building Inspector of the City of Superior. Prior to commencement of said removal, Lessee shall deposit with the City Clerk of the City of Superior, a bond in the amount of five thousand dollars (\$5,000) to guarantee performance in accordance with this provision. Said bond shall have, as surety herein, a corporation licensed by the State of Wisconsin Insurance Commission to act as surety. If said improvements are not removed in said sixty (60) day period, the Lessor shall thereupon obtain title to said improvements or remove them at Lessee's expense at the option of the Lessor.

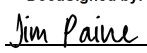
IN WITNESS WHEREOF, the parties have herein set their hands this 8th day of June, 2017.

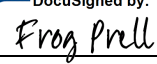
LESSEE:

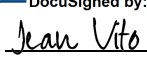
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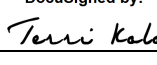
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Calvin Kramp, President, Superior Flying Service, LLC

CITY OF SUPERIOR, WISCONSIN

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Approved at the June 6, 2017 City of Superior Common Council meeting.