

ENROLLED ORDINANCE 172-037

APPROVE BLUE SKY FLIGHT ACADEMY LLC AS AN AERONAUTICAL SERVICE PROVIDER AT WAUKESHA COUNTY AIRPOR AND ITS OPERATING AGREEMENT

WHEREAS, Blue Sky Flight Academy LLC has applied to become a Flight Training, Aircraft Lease and Rental, and Aircraft Storage Aeronautical Service Provider (ASP) in accordance with the Waukesha County's Minimum Standards for Aeronautical Service Providers; and

WHEREAS, Section 9-58 of the Waukesha County Code of Ordinances requires all Aeronautical Service Providers to enter into a lease or other written agreement with the County; and

WHEREAS, the Waukesha County Airport, with review by the Airport Operations Commission and approval by the Waukesha County Board of Supervisors, creates agreements with Aeronautical Service Providers; and

WHEREAS, Blue Sky Flight Academy LLC has applied to the Airport Operations Commission to be designated as an ASP at the Waukesha County Airport to provide (1) aircraft lease and rental, (2) flight training, and (3) aircraft storage services; and

WHEREAS, Blue Sky Flight Academy LLC will invest \$350,000 in hangar and office infrastructure in the Terminal Ramp Development Area and hire 2 full-time employees with annual salaries averaging \$35,000 to operate the business; and

WHEREAS, an additional flight school will introduce a new land lease and fuel flow revenue to the Waukesha County Airport budget, assisting the airport in reducing its reliance on tax levy from Waukesha County; and

WHEREAS, the Airport Operations Commission recommended approval of Blue Sky Flight Academy's ASP Application and further recommended that Blue Sky Flight Academy LLC be granted a temporary twelve (12) month variance from the Minimum Standards for Aeronautical Service Providers relating to flight training aircraft as Blue Sky Flight Academy LLC currently operates one single engine aircraft and is in the process of acquiring another single engine aircraft; and

WHEREAS, Waukesha County Airport and Waukesha County Corporation Counsel have drafted an Operating Agreement; and

WHEREAS, the approval of the Operating Agreement will allow Blue Sky Flight Academy to operate on Waukesha County Airport; and

WHEREAS, Waukesha County agrees to amend the Hangar Land Lease Agreement between Waukesha County and RFG, LLC to allow Flight Training, Aircraft Lease and Rental, and Aircraft Storage as approved Aeronautical Services for three (3) years at which time Blue Sky Flight Academy LLC will complete a hangar in the Terminal Ramp Development Area which

already allows for Flight Training, Aircraft Lease and Rental, and Aircraft Storage to be performed.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that Blue Sky Flight Academy LLC is approved to become a Flight Training, Aircraft Lease and Rental, and Aircraft Storage Aeronautical Service Provider in accordance with Waukesha County's Minimum Standards for Aeronautical Service Providers.

BE IT FURTHER ORDAINED that the Operating Agreement between Blue Sky Flight Academy LLC is approved allowing a twelve (12) month variance from Waukesha County Airport Minimum Standards' requirement to have not less than two (2) properly certificated aircraft available for use in flight training.

BE IT FURTHER ORDAINED that Amendment No. 1 to the Hangar Land Lease Agreement between Waukesha County and RFG, LLC is approved.

BE IT FURTHER ORDAINED that the Waukesha County Airport Manager is authorized to execute the Operating Agreement, Amendment No. 1 to the Hangar Land Lease Agreement and any other necessary related documents on behalf of Waukesha County.

## FISCAL NOTE

### APPROVE BLUE SKY FLIGHT ACADEMY LLC AS AN AERONAUTICAL SERVICE PROVIDER AT WAUKESHA COUNTY AIRPORT AND ITS OPERATING AGREEMENT

This ordinance authorizes an agreement between Waukesha County and Blue Sky Flight Academy under which Blue Sky will provide flight instruction and aircraft storage and rental services at the airport. Blue Sky will initially be allowed to sublease space from an existing County tenant (RFG LLC), but will be required to build its own facility within three years of the agreement start date. The agreement runs from October 1, 2017 through September 30, 2022, with two optional five-year extension periods.

For the period during which Blue Sky occupies the subleased space, they will pay the County a fee of about \$1,572 annually, adjusted for inflation. This will be pro-rated for the final three months of 2017. The fee will end when Blue Sky occupies its new facility, at which point they will pay a 2017 rental fee of \$0.3203 per square foot, adjusted annually for inflation. The approximate area to be occupied is currently estimated at 17,000 square feet, which would extend to an annual rent of about \$5,445 at the 2017 rate.

Should Blue Sky fail to complete the new facility in three years, they will be required to pay the County three times the annual rent. The value of the facility is estimated at about \$350,000.

The operation of a flight school will have an impact on fuel flowage revenue for the County. For example, two aircraft operating 300 hours per year would generate about \$780 annually in fuel flowage fees.

*Lawrence M. Dahl*

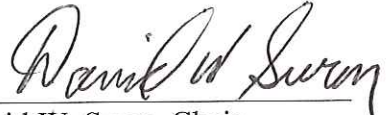
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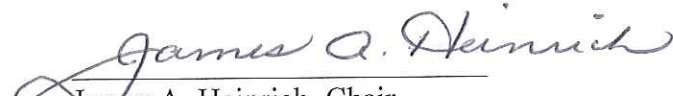
Lawrence M. Dahl  
Accounting Services Manager

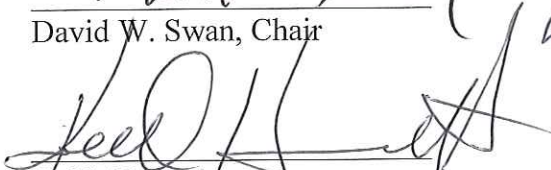
APPROVE BLUE SKY FLIGHT ACADEMY LLC AS AN AERONAUTICAL SERVICE PROVIDER AT WAUKESHA COUNTY AIRPORT AND ITS OPERATING AGREEMENT

Presented by:  
Public Works Committee

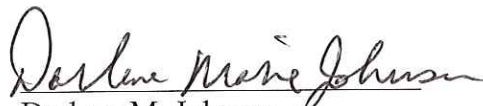
Approved by:  
Finance Committee

  
David W. Swan, Chair

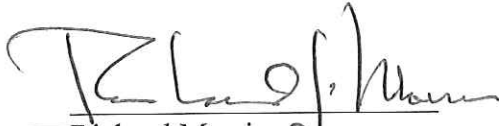
  
James A. Heinrich, Chair

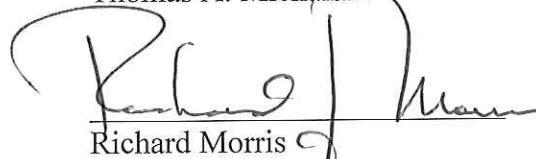
  
Keith Hammitt

  
Timothy Dondlinger

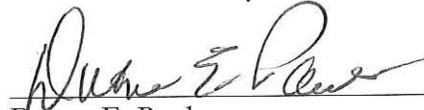
  
Darlene M. Johnson

  
Thomas A. Michalski

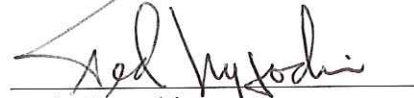
  
Richard Morris


  
Richard Morris

  
Thomas J. Schellinger

  
Duane E. Paulson

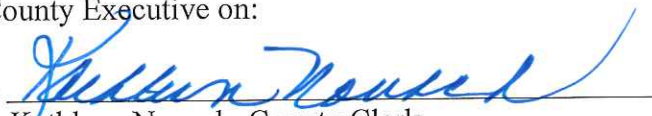
  
Steve Whittow

  
Ted Wysocki

  
Chuck Wood

  
Steve Whittow

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 9/26/17,   
Kathleen Novack, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X  
Vetoed: \_\_\_\_\_

Date: 10/3/17,   
Paul Farrow, County Executive

**BLUE SKY FLIGHT ACADEMY LLC  
OPERATING AGREEMENT**

This agreement (the "Agreement") is between Waukesha County (the "County"), a municipal corporation that owns the Waukesha County Airport (the "Airport"), and Blue Sky Flight Academy LLC ("Blue Sky"), a provider of aeronautical services.

WHEREAS, Blue Sky wishes to provide certain aeronautical services at the Airport.

WHEREAS, Division 3 of Article II of Chapter 9 of the Waukesha County Code of Ordinances entitled "Minimum Requirements for Aeronautical Services" (the "Minimum Standards"), including but not limited to Section 9-58 "Minimum Standards for all Aeronautical Service Providers," sets forth requirements and obligations for aeronautical service providers at the Airport. Among other things, the Minimum Standards require that the service provider enter into a lease or an agreement with the County.

WHEREAS, there is currently no lease between the County and Blue Sky, and this Agreement shall constitute the agreement required by the Minimum Standards.

NOW, THEREFORE, the County and Blue Sky (collectively, "the Parties") agree as follows:

**ARTICLE 1  
TERM**

This Agreement commences as of October 1, 2017 and ends on September 30, 2022 (the "Term"), unless terminated sooner.

This Agreement may be extended up to two additional five (5) year terms (each, an "Extended Term") by mutual agreement of the Parties. Blue Sky shall make a written request for any extension of this Agreement to the Airport Manager no fewer than sixty (60) days before the end of the then current Term or Extended Term, as the case may be. The County must accept the Extended Term by written acknowledgement in order for the Extended Term to become effective.

**ARTICLE 2  
CONTINGENT SUBLEASE**

This Agreement is contingent upon Blue Sky being the sublessee of the premises located at 2317 Aviation Drive and currently leased by the County to RFG, LLC ("County Tenant").

A written sublease between Blue Sky and County Tenant for the property leased (the "Sublease") has been reviewed and approved by the County. No amendment to the Sublease may be made without prior written approval from the Airport Manager, and the failure to obtain any such prior written approval gives the County the right to declare this Agreement terminated.

If the Sublease between Blue Sky and County Tenant is terminated, Blue Sky shall immediately notify the Airport Manager, and the County shall have the right to declare this Agreement terminated.

This Agreement allows Blue Sky to perform all aeronautical services authorized by this Agreement at the subleased premises. Provision of an authorized aeronautical service at a sublease location not approved for that service shall constitute a material breach of this Agreement entitling the County to immediately terminate this Agreement.

\*\*Any office space within the subleased premises may only be used for administrative/office purposes related to the aeronautical services authorized by this Agreement. Failure to follow this requirement will constitute a material breach of this Agreement entitling the County to terminate this Agreement.

## **ARTICLE 2A OBLIGATION TO LEASE/BUILD**

Blue Sky acknowledges that it is the County's desire, consistent with the Airport Master Plan and the Declarations of Covenants and Restrictions for Buildings and Structures of Waukesha County Airport Development District – New Terminal Area Ramp Development (on file with the Airport Manager), to require certain aeronautical service providers like Blue Sky to confine their area of operation to the New Terminal Area Ramp Development District (as defined therein), and that the County has approved Blue Sky's aeronautical service provider application and this Agreement on the express condition that Blue Sky agrees to lease a hangar lot within the New Terminal Area Ramp Development District and complete construction of a hangar from which to provide the aeronautical services authorized by this Agreement. Accordingly, upon execution of this Agreement, Blue Sky shall execute, perform and maintain with the County, a lease option agreement to lease the lot immediately East of the main terminal building (or similar lot) from the County within the New Terminal Area Ramp Development District (the "Hangar Parcel"). Within three (3) years from the commencement date of this Agreement, Blue Sky shall have executed a hangar land lease with the County for the lease of the Hangar Parcel and shall have completed construction of a hangar on the Hangar Parcel from which to provide its aeronautical services. Should Blue Sky fail to complete construction of a hangar on the Hangar Parcel within three (3) years from the commencement date of this Agreement and relocate all aeronautical services thereto, Blue Sky's authorization in this Agreement to perform the aeronautical services identified in Article 4 below shall automatically terminate and the County shall assess, and Blue Sky shall immediately pay to the County, an amount equal to the three (3) year rental rate for the Hangar Parcel. The annual rental rate shall be calculated at \$0.3203 per square foot in 2017 and thereafter be increased annually by CPI as defined in Article 5 below. Notwithstanding the foregoing, the annual increase shall not be less than three and one-half percent (3.5%) and not more than ten percent (10%).

Blue Sky shall be excused from the lease and build obligations of this Article 2A if, prior to the third anniversary of the commencement date of this Agreement: Blue Sky shall have purchased an existing hangar within the New Terminal Area Ramp Development District, the Airport Commission shall have approved Blue Sky's assumption of the corresponding land lease with a remaining term of at least (5) five years, and Blue Sky shall have relocated all of its

aeronautical services to said purchased hangar OR has relocated all of its aeronautical services to the New Terminal Area Ramp Development District.

### **ARTICLE 3 MINIMUM STANDARDS ORDINANCE**

The Minimum Standards Ordinance is attached hereto as Exhibit A and made a part of this Agreement. Whether set forth in this Agreement or not, all of the requirements, duties and obligations for an aeronautical service provider as contained in the ordinance are applicable to Blue Sky, except those which pertain *only* to aeronautical services that Blue Sky is not authorized to provide under the terms of this Agreement. As this Agreement authorizes two (2) or more aeronautical services, Section 9-72 of the Waukesha County Code, Multiple Services is also specifically applicable.

Blue Sky is granted twelve (12) months from the date that the Waukesha County Board approved this Agreement in which to obtain a second aircraft which is a requirement for flight training pursuant to Section 9-65(b)1. of the Waukesha County Code. In the event that Blue Sky does not acquire a second aircraft that meets the requirements of Sec. 9-65(b)1. of the Waukesha County Code within twelve (12) months from the date the Waukesha County Board approved this Agreement, Blue Sky's authorization in this Agreement to perform the aeronautical services identified in Article 4 below shall automatically terminate and the County shall assess, and Blue Sky shall immediately pay to the County, an amount equal to the three (3) year rental rate for the Hangar Parcel. The annual rental rate shall be calculated at \$0.3203 per square foot in 2017 and thereafter be increased annually by CPI as defined in Article 5 below. Notwithstanding the foregoing, the annual increase shall not be less than three and one-half percent (3.5%) and not more than ten percent (10%).

If there is any conflict between any provision in the Minimum Standards and this Agreement, the County, in its sole discretion, will determine which provision shall control.

### **ARTICLE 4 PERMITTED AERONAUTICAL SERVICES; NO EXCLUSIVITY**

Blue Sky may perform the following, and only the following, aeronautical services at the Airport: (1) aircraft lease and rental; (2) flight training; and (3) aircraft storage ("Aircraft Management Services"). These services are more fully described in Sections 9-64, 9-65, and 9-70 of the Minimum Requirements for Aeronautical Services. Blue Sky agrees to perform these aeronautical services for the use and benefit of the public.

Blue Sky does not have an exclusive right to perform these aeronautical services at the Airport, and no person or entity at the Airport is obligated to use any of the aeronautical services that Blue Sky provides.

*Aircraft Service by Owner or Operator of Aircraft.* It is expressly understood by Blue Sky that no right or privilege has been granted through this Agreement or otherwise 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.

## **ARTICLE 5 ANNUAL FEE**

For the privileges extended to Blue Sky by the County throughout this Agreement, and in addition to any other amounts specified above, Blue Sky shall pay the County a prorated fee of \$393.04 for the balance of 2017, payable upon execution of this Agreement. For each calendar year thereafter beginning January 1, 2018, payment shall be made on January 1, adjusted as follows:

For the year 2018, and each year thereafter in the same manner using the applicable preceding year's values, the annual fee shall be adjusted on the basis of the percentage by which the average of the United States Consumer Price Index-Urban (or its successor or replacement index) ("CPI") for the previous twelve calendar months ending June, 2017 increased over the average for the prior twelve calendar months ending June, 2016, except as follows: (1) If the percentage decreased, or if the percentage increased by less than 2.5%, the annual fee shall be increased by 2.5%, and (2) in no event shall the annual fee be increased by more than 7.5%. This same adjustment to the annual fee shall be made in the same manner for each succeeding year, including during any Extended Term.

An annual invoice will be generated by the County and sent to Blue Sky. Payments shall be delivered to the Waukesha County Treasurer or as otherwise directed on the invoice.

## **ARTICLE 6 RIGHTS AND PRIVILEGES**

In addition to the other rights and privileges accorded to Blue Sky by this Agreement, Blue Sky shall be permitted to use, in common with others, existing and future aeronautical facilities at the Airport. This includes landing areas, roadways, aprons and any air navigation facilities or other conveniences for the flying, landing and taking-off of aircraft. The County may augment, modify or delete any such facilities.

Blue Sky and its suppliers, service providers, customers, visitors and invitees have the right of ingress and egress to Blue Sky's subleased premises, subject to the rules and regulations of the Airport Manager.

## **ARTICLE 7 GENERAL OBLIGATIONS**

Blue Sky shall not engage in any activity or business at the Airport, whether it is an aeronautical service or not, other than what is specifically allowed by this Agreement.

Blue Sky shall provide services in accordance with the requirements of the Minimum Standards for All Aeronautical Service Providers as set forth in Section 9-58 of the Minimum Standards and the Minimum Standards for each individual aeronautical service it provides, as those



sections may be amended from time to time. As a provider of multiple aeronautical services, consistent with the requirements of Section 9-72(b)2 of the Minimum Standards, Blue Sky shall provide the facilities, equipment and services required to meet the Minimum Standards for all aeronautical services Blue Sky is permitted to provide under this Agreement. Blue Sky shall, at a minimum, provide auto parking space within the subleased premises to accommodate ten (10) automobiles.

All services that Blue Sky provides must be performed by employees of Blue Sky or through a County-approved subcontract with another approved aeronautical service provider. As a multiple aeronautical service provider, Blue Sky shall have in its employ, and on duty during appropriate business hours, trained personnel in such numbers as are required to meet the Minimum Standards for each aeronautical service Blue Sky is authorized to provide under this Agreement. All employees shall be appropriately trained and shall meet the qualifications set forth in the Minimum Standards ordinance for the service that the employee provides. Except as provided in Section 9-72(b)4 of the Minimum Standards, an employee may provide more than one aeronautical service so long as the employee is trained for and meets the qualifications for each service.

Blue Sky shall observe and obey the rules and regulations governing the conduct and operations at the Airport as are promulgated from time to time by the Airport Manager.

Blue Sky shall comply with all laws of the United States and the State of Wisconsin, all applicable local ordinances, and all rules and requirements of any law enforcement, fire department or other municipal agency. At its expense, Blue Sky shall obtain any and all permits and licenses that may be necessary for any activity at the Airport for which a license or permit is required. If Blue Sky is notified of any activity that is in violation of or prohibited by any law, ordinance, rule, regulation, requirement, permit or license, it will immediately desist from the activity or cause it to be corrected. Failure to immediately correct the violation shall be grounds for termination of this Agreement.

The storage of flammable and combustible liquids in containers that have a capacity of greater than sixty gallons of liquid shall be limited to such areas as designated by the Airport Manager. The storage of flammable and combustible liquids in containers that have a capacity of sixty gallons or less of liquid shall be in an approved steel locker that is appropriately labeled. The Airport Manager may, in his discretion, prohibit or restrict the storage of such materials if he determines that the storage is a safety hazard. No hazardous chemicals, flammable liquid, combustible liquid and waste product of such materials may be disposed of on the Airport premises.

Blue Sky shall not create or permit any disturbance, noise, vibration or condition that would unreasonably interfere with the use of the Airport by others.

## ARTICLE 8 COUNTY RIGHTS

*Access to Premises.* To the extent necessary to protect the rights and interests of the County, or to investigate compliance with this Agreement and with any Sublease or related underlying lease with a County Tenant, the Airport Manager or his designee shall at any and all times have the right to inspect the facilities, equipment and operations of Blue Sky, including all buildings, structures and improvements from which Blue Sky provides services authorized by this Agreement.

*Airport Development.* The County has the right, but shall not be obligated, to develop or improve the landing areas and other parts of the Airport as it sees fit, regardless of the desires or views of Blue Sky, without interference or hindrance. If any such development or improvement requires a change in the location(s) from which Blue Sky provides its services, the County has the unilateral right to relocate Blue Sky to a new site at the Airport, and will move all buildings or provide similar facilities for Blue Sky at no cost to Blue Sky, or to purchase from Blue Sky its building(s) and/or structures at fair market value.

*Airport Maintenance and Repair.* The County has the right, but shall not be obligated, 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 Blue Sky in this regard.

*Aerial Approaches and Transitions.* The County has the right to take any action it considers necessary to protect the aerial approaches and transition surfaces of the Airport against obstruction; together with the right to prevent Blue Sky or its landlord or subcontractor from erecting or permitting to be erected any building or other structure on the Airport, which, in the opinion of the Airport Commission would limit the usefulness of the Airport or constitute a hazard to aircraft.

*War, National Emergency, Riot, or Natural Disaster.* During a time of war, national emergency, riot or natural disaster, the County shall have the right to lease the entire Airport or any part of it to the United States or the State of Wisconsin for military or National Guard use. In such event, any provision in this Agreement that is inconsistent with any provision in the government lease shall be suspended during the term of the government lease.

*Unrestricted Right of Flight.* For the use and benefit of the public, the County has a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Airport, and the right to cause in this airspace any noise that may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the Airport.

## ARTICLE 9 COUNTY AUDIT RIGHTS

Blue Sky shall allow the County, through the Airport Manager or any designated agent, representative or employee, at all reasonable times, to inspect and audit Blue Sky's books and

papers regarding this Agreement to enable the County to verify the amount of fees due or to verify all other conditions of this Agreement, any sublease with a County Tenant, or any County Tenant's lease with the County. It is the intention of the parties that the County's audit will be on an annual basis; however, the County reserves the right to make the audit at any time.

#### **ARTICLE 10 INSURANCE**

For each of the aeronautical services described in Article 4, Blue Sky shall provide the corresponding insurance as set forth in the Minimum Requirements for Aeronautical Services ordinance and its Schedule 1. Waukesha County and its boards, commissions, agencies, appointed and elected officials, employees, agents and representatives shall be named as additional insureds on all required coverages.

As a provider of multiple aeronautical services, pursuant to Section 9-72(b)3 of the Minimum Standards, Blue Sky shall obtain, as a minimum, that insurance coverage which is equal to the highest individual insurance requirement of all aeronautical services permitted to be performed by Blue Sky under this Agreement.

All required insurance coverages shall be maintained throughout the term of this Agreement. If any coverage will be reduced or cancelled, Blue Sky shall provide the County with not less than thirty (30) days' advance notice and shall obtain a new policy that will meet the insurance requirements.

Upon execution of this agreement, and annually thereafter prior to expiration of any required insurance policy, Blue Sky shall furnish the County with a certificate of insurance evidencing the required insurance policies. The certificates shall reference this agreement and additional insured status.

To the extent that Blue Sky is authorized by the Airport Commission pursuant to Section 9-73 of the Waukesha County Code of Ordinances to provide an aeronautical service required by this Agreement through an approved sublease or subcontract with another approved aeronautical service provider ("Subservice Provider"), Blue Sky shall require that said Subservice Provider maintain insurance of the types and in the amounts required for provision of that aeronautical service under the Minimum Standards. Waukesha County and its boards, commissions, agencies, appointed and elected officials, employees, agents and representatives shall be named as additional insureds on all required coverages.

#### **ARTICLE 11 NONDISCRIMINATION; EQUAL SERVICES AFFIRMATIVE ACTION**

Blue Sky, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration for this Agreement, does hereby covenant and agrees that (1) no person on the grounds of race, sex, color, physical handicap, disability or national origin will be denied employment opportunities with Blue Sky, denied the services that Blue Sky will make available

to the public, denied the benefits of or otherwise subjected to discrimination in the use of Blue Sky's facilities or otherwise be discriminated against by Blue Sky, and (2) it will conduct its operations at the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as amended from time to time.

Blue Sky agrees to furnish good, prompt and efficient service adequate to meet all demands for its services at the Airport; to furnish said services on a fair, equal, and nondiscriminatory basis to all users thereof; and to charge fair, reasonable, and nondiscriminatory prices for each unit of sale or service, provided however that Blue Sky is allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers or classes of purchasers.

Blue Sky will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, sex, creed, color or national origin be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Blue Sky promises that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Blue Sky also promises that it will require that its covered suborganizations, if any, provide assurances to it that they will also undertake such affirmative action programs and require the same from their suborganizations, if any.

## **ARTICLE 12 HOLD HARMLESS AND INDEMNITY**

Blue Sky shall hold the County harmless, defend and indemnify the County in all acts, errors and omissions by Blue Sky. Blue Sky will not hold the County liable for any damage to property or injury or death to person when such damage, injury or death is in any way related to Blue Sky's presence at the Airport or the services Blue Sky is allowed to perform at the Airport, unless the damage, injury or death was the result of an intentional or reckless act of the County.

If any demand, claim, lawsuit or proceeding is brought against the County and is in any way related to Blue Sky's presence at the Airport or the services Blue Sky is allowed to perform at the Airport, Blue Sky shall (1) fully defend the County against the demand, claim, lawsuit or proceeding, and (2) pay all expenses, costs, losses, damages, fees (including attorney fees), fines, forfeitures, judgments and awards that are a result.

The County shall give Blue Sky prompt notice of any demand, claim, lawsuit or proceeding as described in this Article. The County shall have the right, but not the duty, to investigate and settle any such demand, claim, lawsuit or proceeding and participate in the defense.

In this Article, "County" includes Waukesha County, the Waukesha County Airport Commission, and all of their boards, commissions, agencies, appointed and elected officials, employees, officers, representatives, members and agents.

**ARTICLE 13**  
**ASSIGNMENT AND SUBCONTRACT; CHANGE OF CONTROL**

Neither this Agreement nor any part of this Agreement may be assigned or subcontracted by Blue Sky to any person or entity without the prior, written consent of the County. Any such approved assignment or subcontract shall not excuse in any way Blue Sky from its obligations under this Agreement.

The Airport Commission shall have the right to review and approve any change in control of the principals of Blue Sky. Failure to obtain approval for a change in control shall be grounds for the termination of this Agreement.

**ARTICLE 14**  
**RELATIONSHIP OF PARTIES**

Nothing in this Agreement is intended to nor shall be construed as creating or establishing between the County and Blue Sky a partnership relationship, or to make Blue Sky the employee, agent, or representative of the County.

**ARTICLE 15**  
**SUBORDINATION**

This Agreement shall be subordinate to the provisions of any existing or future agreement between the County and the United States Government and all of its agencies and departments regarding the operation or maintenance of the Airport, the execution of which agreement has been or may be required as a condition precedent to the expenditure of state or federal funds for the development of the Airport.

**ARTICLE 16**  
**GOVERNING LAW; VENUE FOR DISPUTES**

This Agreement has been made in Wisconsin and shall be construed according to the laws of Wisconsin. Any lawsuit related to or arising out of disputes under this Agreement shall be commenced and tried in the circuit court of Waukesha County, Wisconsin, and the County and Blue Sky submit to the jurisdiction of such court for lawsuits.

**ARTICLE 17**  
**NOTICES**

All notices under this Agreement will be in writing and will be deemed given when delivered. All notices shall be delivered personally or by certified U.S. Mail addressed to the applicable party at the address set forth below or at such other address as either party shall designate in writing from time to time.

Notices to Blue Sky shall go to: Mr. Anthony Drake, Blue Sky Flight Academy LLC, 2317 Aviation Drive, Waukesha, WI 53188.

Notices to the County shall go to: Mr. Kurt S. Stanich, Waukesha County Airport, 2525 Aviation Drive, Waukesha, WI, 53188.

**ARTICLE 18  
NOTICE OF DEFAULT**

The County may not terminate this Agreement without (i) first providing, pursuant to Article 17 hereof, written notice to Blue Sky of any alleged default or breach of this Agreement by Blue Sky or any alleged condition by which the County is seeking termination of this Agreement and (ii) allowing Blue Sky ten (10) days after delivery of such notice to cure any monetary default and thirty (30) days to cure any nonmonetary default. Provided that Blue Sky is diligently pursuing a cure of a nonmonetary default, but said cure cannot be reasonably accomplished within thirty (30) days, and Blue Sky provides notice to the County of that fact prior to the expiration of thirty (30) days along with an estimate of the additional time necessary to accomplish the cure, then said right to cure shall be extended for the amount of time reasonably necessary to complete said cure, not to exceed an additional thirty (30) days.

Dated this \_\_\_ day of \_\_\_\_\_, 2017.

Dated this \_\_\_ day of \_\_\_\_\_, 2017.

BLUE SKY FLIGHT ACADEMY LLC

WAUKESHA COUNTY

By: \_\_\_\_\_  
Anthony Drake  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Kurt S. Stanich  
Airport Manager

This document was drafted by  
Attorney Kimberly K. Haines  
Principal Assistant Corporation Counsel  
Waukesha County Corporation Counsel Office  
515 W. Moreland Blvd., Room AC-330  
Waukesha, WI 53188

**EXHIBIT A**  
**MINIMUM STANDARDS ORDINANCE**

**Sec. 9-58 Minimum Standards for All Aeronautical Service Providers.**

The following shall apply to all prospective individuals or entities wishing to become an Aeronautical Service Provider at the Waukesha County Airport.

1. Leases shall be for a term to be mutually agreed upon between the parties with due consideration for the financial investment and the need to amortize improvements to the leasehold.
2. A person shall have such business background and shall have demonstrated his business capability to the satisfaction of, and in such manner as to meet with the approval of the Airport Commission.
3. Any prospective Aeronautical Service Provider seeking to conduct an aeronautical activity at the Airport should demonstrate that they have adequate resources to realize the business objectives agreed to by the Airport Commission and the applicant. The prospective Aeronautical Services Provider shall provide a financial statement for the service provider and its principals and a written bank letter of credit to allow the Airport Commission to make a judgement on the adequacy of the resources, and/or any other information the Airport Commission shall require in this regard.
4. Unless otherwise specified herein, the prospective Aeronautical Service Provider shall lease ground space from the Owner on which shall be erected a building, or sublease from an entity which has an existing building, to include space for an office, customer lounge and rest rooms, which shall all be properly heated and lighted, and shall provide public telephone facilities for customer use. The prospective Aeronautical Service Provider shall demonstrate to the Airport Commission that it will/has leased/subleased adequate space to provide the desired aeronautical service(s). The Aeronautical Service Provider shall also provide, in the leased area, paved parking for the Aeronautical Service Provider=s customers and employees to meet applicable municipal standards.
5. The prospective Aeronautical Service Provider shall have his premises open and services available eight (8) hours per day, five (5) days per week, fifty-two (52) weeks per year for a specific aeronautical service, unless another period of time is specified herein, and shall make provisions for someone to be in attendance in the office at all times during the required operating hours.
6. All prospective Aeronautical Service Providers shall demonstrate to Waukesha County's satisfaction evidence of its ability to acquire insurance coverage as stipulated for each particular type of operation. An Aeronautical Service Provider should make its own analysis to determine if more is needed; however, such policies of insurance shall be maintained in full force and effect during all terms of existing leases, agreements or business licenses or renewals or extensions thereof with a 30-calendar day notice of cancellation to the Airport Manager. Such policies shall not be for less than the amounts listed at Schedule 1, unless another amount is specified

herein; however, in all cases, amounts of policies must meet the statutory requirements of applicable governmental agencies and be approved in writing by Waukesha County.

7. As the law may require and the County desires, each lease, contract, or agreement entered into between the County and Aeronautical Service Provider shall include but not be limited to the following provisions:

- A. Fair and Nondiscriminatory Provisions;
- B. Affirmative Action Assurances;
- C. Civil Rights Assurances;
- D. Nonexclusive Rights Statement;
- E. Review and approval by the Airport Commission for change in control of the principals of any Aeronautical Service Provider; and
- F. Any other mandated provisions required by State or Federal governments. The most current amendment or form of such mandatory lease provisions shall be included in each lease, contract, or agreement at the time of execution.

8. All personnel required to hold Federal Aviation Administration certificates and ratings shall maintain such certificates and ratings.

9. Any construction required of any Aeronautical Service Provider shall be in accordance with design and construction requirements of the County, State, Federal, and local regulations and applicable codes. All plans and specifications shall be submitted to the Airport Commission for approval. The Aeronautical Service Provider shall be responsible for securing all necessary permits prior to commencing construction.

10. The Aeronautical Service Provider shall provide adequate paved auto parking space in accordance with all municipal standards within the leased area sufficient to accommodate all activities and operations. Additionally, the Aeronautical Service Provider shall provide a paved aircraft apron to accommodate aircraft movement from the Aeronautical Service Provider to a taxiway or access to a taxiway to be provided by the Aeronautical Service Provider.

11. All leases between Waukesha County and an Aeronautical Service Provider covering the performance by an Aeronautical Service Provider of any aeronautical service as hereinafter provided shall be in writing.

12. Aeronautical Service Provider shall provide a performance bond insuring the completion of any building to be erected on the leasehold, as the Commission may request.

13. No individual or entity shall operate commercially, or perform an aeronautical activity from the Waukesha County Airport without entering into a written lease or agreement with Waukesha County.



**SCHEDULE 1**

Minimum Insurance Policy Limits

Worker's Compensation and Employer's Liability	\$100,000	Limit sufficient to provide benefits as defined in Chapter 102, Wisconsin Statutes. Each accident.
Aircraft Liability	\$1,000,000	Combined single limit - each occurrence. Bodily injury and property damage. Coverage for all owned and leased aircraft.
Comprehensive General Liability	\$1,000,000	Combined single limit - each occurrence. Bodily injury and property damage. Coverage required: Premises and operations; Products and completed operations; and Blanket contractual liability.
Hangar Keepers= Liability	Total Value of Aircraft Stored	Each accident.
Automobile Liability	\$1,000,000	Combined single limit - each occurrence. Bodily injury and property damage. Comprehensive Automobile Liability or Business Auto Policy form covering all owned, hired and non-owned private passenger autos and commercial vehicles.
Environmental Impairment Liability	\$1,000,000	Combined single limit - each occurrence. Bodily injury and property damage including environmental restoration.
Student and Renters Liability	\$500,000	Each accident.
Property Insurance		Each Aeronautical Service Provider must carry sufficient all-risk property insurance on both owned and leased buildings and equipment, including aircraft, at the Airport. It is expressly understood that the County has no responsibility for

Aeronautical Service Provider=s  
owned or leased equipment.

AMENDMENT NO. 1  
To  
HANGAR LAND LEASE AGREEMENT  
BETWEEN  
WAUKESHA COUNTY  
AND  
RFG, LLC  
2317 AVIATION DRIVE  
WAUKESHA, WI 53188

WHEREAS, Waukesha County ("County") as landlord and 428 Partners as tenant are parties to that certain Hangar Land Lease Agreement dated April 8, 2011 (the "Lease") pursuant to which Lessee currently leases from County certain land at the Waukesha County Airport, Crites Field ("Airport") as more particularly described in Article 2 of the Lease (the "Leased Premises");

WHEREAS, 428 Partners has organized into a Wisconsin limited liability company as of July 7, 2011 under the name "RFG, LLC" ("Lessee");

WHEREAS, 428 Partners agrees to assign its interest in the Lease to Lessee;

WHEREAS, among other things, the Lease currently authorizes Lessee to perform only those certain aeronautical services identified in Article 2 of the Lease in accordance with the requirements of the Waukesha County Airport Minimum Standards for Aeronautical Service Providers upon the Leased Premises;

WHEREAS, in addition to those aeronautical services Lessee is authorized to perform under the Lease, Lessee has sublet a portion of the Leased Premises to Blue Sky Flight Academy LLC ("Sublessee") which desires and has applied to provide at the Airport the aeronautical services of Aircraft Lease and Rental as defined in Section 9-64 of the Waukesha County Code, Flight Training as defined in Section 9-65 of the Waukesha County Code and Aircraft Storage as defined in Section 9-70 of the Waukesha County Code;

WHEREAS, in order to permit Sublessee to lease and rent aircraft; provide flight training; and, storage of aircraft other than those owned by Lessee, it is necessary to amend the Lease to permit Lessee to provide these aeronautical services; and

WHEREAS, the County, through the Waukesha County Airport Commission, has approved Sublessee's application to become an Aircraft Lease and Rental Provider Flight Training Provider and Aircraft Storage Provider.

NOW, THEREFORE, the County and Lessee agree to the amendment of the Lease as follows:

1. Article 2 of the Lease is deleted in its entirety and replaced in total as follows:

**ARTICLE 2  
LEASED PREMISES; PURPOSE**

The County leases to the Lessee the following described portion(s) of the Airport which, unless specifically stated otherwise, is referred to in this Agreement as the “Leased Premises”.

- A. A parcel of land approximately 80 feet wide by 100.5 feet long (Parcel A) and containing approximately 8,040 square feet, located at 2317 Aviation Drive, and a parcel of land approximately 18 feet wide by 40 feet long (Parcel B) and containing approximately 720 square feet and commonly known as 2651 Aviation Drive (“Hangar Parcel”), which is more specifically shown on Exhibit 1 which is attached to and made a part of this Agreement. Parcel A will be used for the inside storage of aircraft owned by Lessee and the storage of related materials and supplies.
- B. The portion of the Hangar Parcel sublet to Sublessee may be used only for one or more of the following purposes: (1) the inside storage of aircraft, (2) the storage of related materials and supplies, (3) flight training, and (4) aircraft lease and rental. These services are more fully described in the Minimum Requirements for Aeronautical Services ordinance. These permitted uses apply only to Sublessee at its portion of the Leased Premises, and these permitted uses shall terminate upon Sublessee’s vacation of its portion of the Leased Premises.
- C. Lessee does not have an exclusive right to perform the stated aeronautical services at the Airport, and no person or entity at the Airport is obligated to use any of the aeronautical services that Lessee provides.

2. Article 6 of the Lease is amended to add the following at its conclusion:

**ARTICLE 6  
RIGHTS AND PRIVILEGES**

6. Government Use of Airport – This Agreement shall be subordinate to the provisions of any existing or future agreement between the County and the United States Government, 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.

3. Article 7 of the Lease is amended to add the following at its conclusion:

16. Compliance with Minimum Standards. Lessee shall provide all aeronautical services authorized by this Agreement in accordance with the requirements of Section 9-58 of the Minimum Standards and the Minimum Standards for each individual aeronautical service it provides, as those sections may be amended from time to time. As a provider of multiple aeronautical services, consistent with the requirements of Section 9-72(b)(2) of the Minimum Standards, Lessee shall provide facilities, equipment and services required to meet the Minimum Standards for all aeronautical services Lessee is permitted to provide by this Agreement.

4. Article 8 of the Lease is amended to add the following:

4. Hangar Keeper's Liability\*

Limit - Total value of aircraft stored, each accident.

\*only required if leasing hangar space to others for storage

5. Pollution Liability and Environmental Impairment Insurance\*\*

Lessee shall maintain pollution liability and environmental impairment insurance for sudden and nonsudden occurrences for aircraft fuel storage, handling and dispensing operations at the Airport which cause injury or damage, including environmental restoration. The limits of liability shall be not less than \$1,000,000 per occurrence or per claim and \$1,000,000 aggregate. For claims-made coverage, the retroactive date of coverage for policies in force during the Agreement shall be no later than the date on which the Agreement commences, unless the policy in force on the commencement date is extended indefinitely to cover all acts. Coverage shall be extended beyond the Agreement termination date and policy year by a supplemental extended reporting period for at least one year after the Agreement is terminated with no less coverage. The policy shall state that such extended reporting coverage is automatic at the time of policy termination or non-renewal. The retroactive date and automatic extended reporting coverage shall be stated on the certificate of insurance. Any deductibles or self-insured retentions must be declared on the certificate of insurance and must not exceed \$10,000.

\*\*only required if self-fueling pursuant to Article 8

5. Article 10 of the Lease is amended to include the following sentence to the end of the second paragraph:

Lessee shall not be released from any liability under this Agreement in the event of any subleases of the Leased Premises in whole or in part.

6. Articles 31, 32, 33 and 34 are added as follows:

**ARTICLE 31  
SELF-FUELING**

Notwithstanding Article 7, paragraph 13, "Storage of Flammable Fluids," upon issuance of a permit for self-fueling, the Lessee shall be entitled to transfer fuel into aircraft owned or leased exclusively to it. For all matters related to self-fueling, the Lessee must comply with each and every obligation and requirement below and of the Waukesha County Airport Self Fueling Ordinance. The Waukesha County Airport Self Fueling Ordinance, hereafter referred to as "Ordinance," is attached as Exhibit 3 and made a part of this Agreement, as are any amendments thereto made from time to time.

1. Location and Installation of Tank and Components – The entire tank fueling system and components shall be positioned and constructed in a manner consistent with requirements set forth in the Ordinance for the type of system being used.
2. Security Deposit – At the time of execution and issuance of a self-fueling permit, the Lessee shall deposit with the County the sum of Ten Thousand and 00/100 Dollars (\$10,000.00) per fuel tank (or such greater amount as may be set forth in the then-current version of the Ordinance) plus the amount of any self-insured retention (deductible) in the pollution liability and environmental impairment insurance that the Lessee will be required to supply, to be held by the County as security for and against any loss, cost or expense incurred by the County as a result of any activity related to self-fueling engaged in by the Lessee, including Lessee's failure to pay the fuel flowage fee required by the Ordinance. If the self-insured retention exceeds Five Thousand and 00/100 Dollars (\$5,000.00) (or such greater amount as may be set forth in the then-current version of the Ordinance), it may be satisfied by an irrevocable letter of credit in favor of the County in a form acceptable to the County. The County will pay Lessee interest on the money deposited with it, at a rate to be determined by the County based upon any actual rate of return received payable annually. Unless it is used as permitted in the following paragraph, this money shall be returned to Lessee following the completion of all of its obligations under this Agreement including any payment obligations.

If Lessee fails to make any payment to the County required by this Agreement, including charges for maintenance and repair and for damage to property, or if Lessee otherwise defaults with respect to any provision of this Agreement, the County may use, apply or retain so much of the deposit as necessary to fulfill the payment obligation, cure the default or otherwise compensate the County for damage or loss sustained by it resulting from Lessee default. Such use of the deposit by the County in no way limits its right to pursue the remedies given to it by this Agreement. Lessee shall be required to, within ten (10) days of receipt of written notice to do so, fully replenish all security deposit funds so applied.

3. Fuel Flowage Fee – The Lessee shall pay a fuel flowage fee of ten cents (\$0.10) for each gallon of fuel delivered to Lessee's fuel tank system (or such greater amount as may be set forth in the then-current version of the Ordinance). Payment of the fee shall be made to the Airport Manager on the 20th day of each month for fuel that was delivered or

transferred during the previous month. Any late payment shall be subject to interest in the amount per month set forth in the then-current version of the Ordinance. With each payment, the Lessee shall furnish the Airport Manager with a statement and documentation showing the number of gallons delivered or transferred for the applicable payment period. **The Lessee understands and agrees that if the Waukesha County Board of Supervisors amends the Ordinance by changing the amount of the fuel flowage fee, the Lessee shall pay the new fee.**

4. Inspection and Maintenance – Lessee shall perform daily, weekly and monthly inspections, maintenance and testing of any fuel tank system and fuel servicing vehicles it operates as required by the system and component manufacturers, local, state and federal laws, codes, ordinances rules and regulations and FAA Advisory Circulars and Orders now or hereafter in force and effect. Lessee shall maintain written records required by this paragraph for a minimum of six (6) years and shall be made available to the Airport Manager upon request.
5. Record Keeping and Audits – Records kept by Lessee shall include but not be limited to the following: dates, quantities and supplier of all fuel brought onto the Airport for the purpose of self-fueling; and, fuel product quantity monitoring reports generated by an underground fuel tank monitoring system which reports must clearly identify the tank owner, hangar location and tank contents. Reports shall be provided to the Airport Manager every three (3) months. Records required by this paragraph shall be maintained for a minimum of six (6) years.

In addition to the records required by this paragraph, the Lessee shall provide the Airport Manager with information and records which are requested for the purpose of determining compliance with the Ordinance including, but not limited to, records pertaining to business organization and ownership; ownership of equipment; and, employee status. Further, Lessee shall promptly forward to the Airport Manager copies of any fire or safety inspection reports, underwriting audits or insurance company reviews that relate to its self-fueling operations at the Airport, including its fuel tank system and aircraft fuel servicing vehicles. The Lessee shall also allow the Airport Manager, or his designee, to inspect the Lessee's fuel tank system and aircraft fuel servicing vehicles for the purpose of determining compliance with the Ordinance.

The Lessee shall keep training records for the employees who perform fueling operations for a minimum of six (6) years and shall make the training records available to the Airport Manager upon request.

The County shall have the right, during reasonable hours and upon reasonable advance notice, to audit Lessee's records regarding its self-fueling operations at the Airport.

6. Tank Removal – Lessee shall be required to remove tank system and restore the site upon expiration of the land lease, upon permit expiration or revocation, or upon the expiration of the manufacturer's warranty period, whichever occurs first.
7. Fueling Personnel Requirements - No individual may perform a fueling operation unless

the individual meets all of the following requirements:

- a. Remains with the fueling apparatus at all times during the fueling operation;
  - b. Exercises extreme caution to prevent a fuel spill, and if a fuel spill occurs, immediately ceases fueling operations and notifies the Airport Manager;
  - c. Is an employee of the Lessee, but this requirement does not apply to an individual delivering fuel into a fuel storage tank;
  - d. For any fueling operation that results in the transfer of fuel into an aircraft, can demonstrate that he or she is authorized, trained and fully qualified to operate the fuel transfer equipment by having completed, or been trained by an individual who has completed, an accepted FAA training program, and carrying with him or her an identification card issued by the employer which certifies his or her qualifications;
  - e. Complies with all National Fire Protection Association (“NFPA”) and FAA requirements regarding fuel transfers for aircraft fuel servicing.
8. Compliance with other Laws - Lessee shall comply with all local, federal and state laws, codes, ordinances, rules and regulations now or hereafter in force and effect applicable to any activity associated with the storage and transfer of aircraft fuel. This includes, but is not limited to, compliance with ordinances of the City of Waukesha and rules of administrative agencies of the State of Wisconsin, including Wisconsin Administrative Code Chapter ATCP 93 Flammable, Combustible and Hazardous Liquids, and the Natural Resources Chapters. Lessee shall also comply with all covenants of the Waukesha County Airport and all FAA Advisory Circulars and Orders pertaining to the storage, handling and dispensing of aircraft fuel and all amendments and revisions thereto. A violation of any law, code, ordinance, rule, regulation, circular or order referred to herein is a material breach of this Agreement.

## **ARTICLE 32 FAIR MARKET VALUE**

If the Lessee and the County are unable to agree on the fair market value of a structure, each shall obtain an appraisal of the fair market value and send the appraisal to the other party. The failure to send an appraisal to the other party within sixty (60) days of Lessee’s receipt of the written notice of termination or written notice of intent to purchase constitutes an acceptance of the other party’s fair market value appraisal. If the Lessee’s fair market value appraisal and the County’s fair market value appraisal vary by less than ten percent (10%) from the average of the two appraisals, then the average of the two appraisals shall be the fair market value of the structure for which the County shall make payment. However, if the Lessee’s fair market value appraisal and the County’s fair market value appraisal vary by more than ten percent (10%) from the average of the two appraisals, then the two appraisers shall select a third appraiser.

The third appraiser shall appraise the fair market value of the structure, and his appraisal shall be final and binding so long as it is no greater than the higher and no lower than the lesser of the two appraisals. The County and Lessee will share the cost of the



third appraisal. Each appraiser used shall be certified by the State of Wisconsin or shall have a temporary practice permit issued by the State.

### **ARTICLE 33 LEASEHOLD MORTGAGES**

1. Lessee shall have the right from time to time to mortgage, pledge, encumber, hypothecate or assign as security the "Leasehold Estate" (as defined herein) upon approval of the Airport Commission (such approval not to be unreasonably withheld). For purposes of this Agreement, the term "Leasehold Estate" shall mean Lessee's interest in this Agreement and the leasehold estate created hereby and shall exclude any and all interests of the County in the land and the Leased Premises.

2. IN NO EVENT SHALL THE COUNTY BE OBLIGATED TO SUBORDINATE ITS FEE INTEREST IN THE LEASED PREMISES TO ANY LEASEHOLD MORTGAGE NOR SHALL ANY LEASEHOLD MORTGAGE ATTACH TO THE FEE INTEREST IN THE LEASED PREMISES ANY SUCH MORTGAGE BEING LIMITED TO LESSEE'S LEASEHOLD ESTATE, LESSEE'S INTEREST IN ANY AND ALL IMPROVEMENTS CONSTRUCTED BY OR ON BEHALF OF LESSEE AND LESSEE'S RIGHTS AND INTERESTS IN AND UNDER THIS AGREEMENT.

3. Whenever the County shall send Lessee any written notice related to this Agreement, the County shall also send a duplicate copy of such written notice contemporaneously to each of Lessee's lenders who hold a Leasehold Mortgage (hereafter "Lender") of which the County has received written notice.

4. Upon any Lender's receipt of a notice of default or termination, the Lender shall have the right, but not the obligation, to cure such default or avoid such termination on behalf of Lessee in the same manner and within the same amount of time as permitted to the Lessee, and the County shall not have the right to terminate this Agreement in the event that the Lender completes the cure within such time permitted. The County agrees that it shall not terminate this Agreement nor shall the Leasehold Estate be surrendered due to the occurrence of any default so long as any Lender (i) notifies the County prior to expiration of the cure period that it intends to foreclose its leasehold mortgage, and (ii) pays all delinquent rent and other sums then due and owing prior to the expiration of the cure period and continues to pay all rent and other sums thereafter coming due under this Agreement and performs all other obligations of Lessee as and when the same are due throughout the duration of the foreclosure proceedings.

5. Any sale, assignment or transfer of the Leasehold Estate to any Lender or its affiliate or a third party in any foreclosure proceedings (or the assignment or transfer of this Agreement and the Leasehold Estate by Lessee in lieu of any such foreclosure) and, also, if to any Lender or its affiliate, the subsequent sale, assignment or transfer to a third party, shall require the County's consent, which consent shall not be unreasonably withheld. A purchaser, assignee or transferee pursuant to this paragraph shall acquire no greater rights than those set forth in this Agreement for Lessee.

6. A mortgage, pledge, encumbrance, hypothecation or assignment as allowed by this Article shall be expressly made subject to all of the County's rights and privileges set forth in this Agreement.

**ARTICLE 34  
MEMORANDUM OF LEASE**

Upon request of Lessee, the County and Lessee shall execute, and Lessee shall have the right to record with the Office of the Register of Deeds of Waukesha County a memorandum of this Agreement in a form prepared by Lessee and approved by the County which approval shall not be unreasonably withheld.

7. All other provisions of the Lease not modified by this amendment shall remain in full force and effect.

This AMENDMENT NO. 1 is entered into and effective as of this \_\_\_\_ day of September, 2017.

WAUKEHSA COUNTY

RFG, LLC

BY: \_\_\_\_\_  
Kurt S. Stanich  
Airport Manager

BY: \_\_\_\_\_  
Patricia Groh  
Owner/Member

**ACKNOWLEDGEMENT & CONSENT  
OF LENDER**

The foregoing AMENDMENT NO. 1 to the First Amended and Restated Hanger Land Lease Agreement dated April 8, 2011 between Waukesha County and RFG, LLC is acknowledged and consented to by Lessee's lender, \_\_\_\_\_ ("Lender"). Lender acknowledges and agrees that any lien of mortgage or otherwise it may have with respect to loans made to Lessee in no way attach to the fee simple interest of the County in the Leased Premises.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017.

(Lender's Name inserted here)

BY: \_\_\_\_\_  
Name:  
Title:

D1 - Kolb	AYE	D14 - Wood	AYE
D2 - Zimmermann	AYE	D15 - Mitchell	AYE
D3 - Morris	AYE	D16 - Crowley	AYE
D4 - Batzko	AYE	D17 - Paulson	AYE
D5 - Dondlinger	AYE	D18 - Nelson	AYE
D6 - Walz	AYE	D19 - Cummings	AYE
D7 - Grant	AYE	D20 - Schellinger	AYE
D8 - Michalski	AYE	D21 - Zaborowski	AYE
D9 - Heinrich	AYE	D22 - Wysocki	AYE
D10 - Swan	(M) AYE	D23 - Hammitt	(2) AYE
D11 - Howard	Notified	D24 - Whittow	AYE
D12 - Wolff	AYE	D25 - Johnson	AYE
D13 - Decker	AYE		

172-0-037

Passed (24 Y - 0 N - 1 Absent)

Majority Vote

