

ENROLLED ORDINANCE 170-97

APPROVE HANGAR LEASE AGREEMENT WITH QUAD/AIR, LLC  
AT WAUKESHA COUNTY CRITES FIELD

WHEREAS, Quad/Air, LLC and Waukesha County entered into a lease for certain properties located at Crites Field in Waukesha County, which expired on August 31, 2015 and now continues month to month on the same terms, and

WHEREAS, Quad/Air, LLC desires to remain at the Airport in its current location and enter into a new long-term lease, and

WHEREAS, Quad/Air, LLC and County representatives have negotiated over the terms of such a new long-term lease, and have reached an agreement for a new Hangar Lease Agreement beginning January 1, 2016 and expiring December 31, 2020, subject to the approval of the Waukesha County Board of Supervisors, and

WHEREAS, Quad/Air, LLC will have the option to extend the lease twice for five-year periods, and

WHEREAS, it is in the best interest of the citizens of Waukesha County to utilize the Waukesha County Airport as an economic development tool for the Waukesha County area and to embrace the needs of Waukesha County's corporate businesses, and a new Hangar Lease Agreement will further such interests.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the Hangar Lease Agreement between Waukesha County and Quad/Air, LLC, regarding an airport hangar at Crites Field is hereby approved.

FISCAL

APPROVE HANGAR LEASE AGREEMENT WITH QUAD/AIR, LLC AT WAUKESHA  
COUNTY CRITES FIELD

This ordinance approves a new agreement allowing Quad/Air, LLC (the lessee) to lease hangar space at the Waukesha County Airport for five years (2016 through 2020), with the option for the lessee to extend the agreement for two five-year periods.

The amount of space leased would remain the same as in the previous contract at 130,000 square feet. For the first 18 months of the contract (through June 2017), the lease rate would also remain the same at \$8,029 per month or about \$96,300 annually (about \$0.74 per square foot). Beginning in July 2017, the lease rate would increase to about \$8,589 per month or \$103,100 annually (about \$0.79 per square foot). If the lessee chooses to extend the lease at the end of 2020, lease rates will be adjusted annually for the Consumer Price Index. Lease revenues help reduce reliance on County tax levy for Airport operations.

Under this lease agreement, the lessee will continue to be responsible for maintaining the property at their expense. One new provision requires the lessee to replace the roof at their expense, if necessary; although there is a provision for the County to proportionally payback this expense if the lease ends before the useful life of the new roof.


*Lawrence M. Dahl*

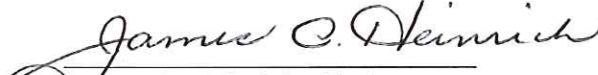
Lawrence M. Dahl  
Accounting Services Manager  
11/20/2015

APPROVE HANGAR LEASE AGREEMENT WITH QUAD/AIR, LLC  
AT WAUKESHA COUNTY CRITES FIELD

Presented by:  
Public Works Committee

Approved by:  
Finance Committee


  
David W. Swan, Chair


  
James A. Heinrich, Chair

  
Kathleen M. Cummings

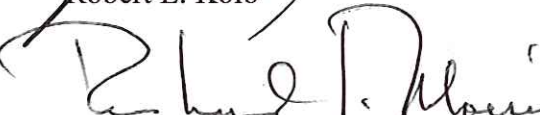
  
Eric Highum


  
Keith Hammitt

  
Richard Morris

  
Robert L. Kolb

  
Larry Nelson

  
Richard Morris

  
Duane E. Paulson

  
Carl Pettis

  
Steve Whittow

  
Steve Whittow

  
William J. Zaborowski

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

Date: 3/25/16,   
Kathleen Novack, County Clerk

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

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

Date: 3/28/16,   
Paul Farrow, County Executive

V

DATE-03/22/16

(ORD) NUMBER-1700074

- |                          |                         |
|--------------------------|-------------------------|
| 1 R. KOLB.....AYE        | 2 D. Zimmermann.....AYE |
| 3 R. MORRIS.....AYE      | 4 J. BATZKO.....AYE     |
| 5 J. BRANDTJEN.....AYE   | 6 J. WALZ.....          |
| 7 J. GRANT.....AYE       | 8 E. HIGHUM.....AYE     |
| 9 J. HEINRICH.....AYE    | 10 D. SWAN.....AYE      |
| 11 C. HOWARD.....AYE     | 12 P. WOLFF.....AYE     |
| 13 P. DECKER.....AYE     | 14 C. PETTIS.....AYE    |
| 15 B. MITCHELL.....AYE   | 16 M. CROWLEY.....AYE   |
| 17 D. PAULSON.....AYE    | 18 L. NELSON.....AYE    |
| 19 K. CUMMINGS.....AYE   | 20 T. SCHELLINGER...AYE |
| 21 W. ZABOROWSKI.....AYE | 22 P. JASKE.....AYE     |
| 23 K. HAMMITT.....AYE    | 24 S. WHITTOW.....AYE   |
| 25 G. YERKE.....AYE      |                         |

TOTAL AYES-24

TOTAL NAYS-00

CARRIED \_\_\_\_\_

DEFEATED \_\_\_\_\_

UNANIMOUS X

TOTAL VOTES-24

**HANGAR LEASE AGREEMENT**

**BETWEEN**

**WAUKESHA COUNTY**

**AND**

**QUAD/AIR, LLC  
N61 W23044 Harry's Way  
Sussex, WI 53089**

## TABLE OF CONTENTS

<u>ARTICLE</u>		<u>PAGE NO.</u>
1	TERM; EXTENSION	3
2	LEASED PREMISES; PURPOSE	3
3	FEES AND RENTALS	4
4	STANDARDS FOR GENERAL AVIATION OPERATORS	4
5	RIGHTS AND PRIVILEGES OF LESSEE	4
6	RIGHTS AND PRIVILEGES OF COUNTY	5
7	OBLIGATIONS OF LESSEE	6
8	SELF-FUELING	9
9	INSURANCE	12
10	INDEMNIFICATION AND HOLD HARMLESS	14
11	SUBLEASES; RESPONSIBILITY FOR SUBLESSEE	14
12	DEFAULTS AND REMEDIES	15
13	ADDITIONAL TERMINATION RIGHTS	16
14	FAIR MARKET VALUE	17
15	CANCELLATION BY LESSEE	18
16	WAIVER OF SUBROGATION	18
17	REMEDIES ARE CUMULATIVE; NO WAIVER	18
18	DAMAGE TO PROPERTY OF LESSEE AND OTHERS	19
19	DAMAGE TO PREMISES AND PROPERTY BY LESSEE AND OTHERS	19
20	COUNTY REPRESENTATIVE	19
21	SUBORDINATION	19
22	COMPLIANCE WITH LAW	19
23	GOVERNING LAW; VENUE FOR DISPUTES	20
24	COUNTERPARTS	20
25	SEVERABILITY	20
26	SURVIVAL OF OBLIGATIONS; SUCCESSORS AND ASSIGNS BOUND	20
27	ENTIRE AGREEMENT	21
28	NO ASSIGNMENT	21
29	RIGHTS UPON EXPIRATION, TERMINATION OR CANCELLATION	21
30	HOLDOVER POSSESSION OF PREMISES BY LESSEE	21
31	PARAGRAPH HEADINGS	21
32	NOTICES	22
33	LEASEHOLD MORTGAGES	22
34	MEMORANDUM OF LEASE	23

This Hangar Lease Agreement ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2016 but effective as of January 1, 2016, by and between WAUKESHA COUNTY, a municipal corporation, hereinafter referred to as the "County", and QUAD/AIR, LLC, a Wisconsin limited liability company, hereinafter referred to as "Lessee."

### **PRELIMINARY RECITALS**

The County is the owner and operator of Waukesha County Airport - Crites Field, an airport situated in Waukesha County, Wisconsin (the "Airport").

Lessee desires to lease from the County a parcel of land at the Airport together with the aircraft hanger facility and improvements located thereon.

NOW, THEREFORE, in consideration of the mutual promises of the County and Lessee as set forth below, the County and Lessee agree as follows:

### **ARTICLE 1 TERM; EXTENSION**

This Agreement shall commence on January 1, 2016 and shall terminate on December 31, 2020 (the "Initial Term"), unless terminated sooner as permitted by this Agreement or is extended as provided below.

Provided that this Lease is not in default, Lessee shall have the option to extend the term of this Agreement for two (2) separate, additional and consecutive periods of five (5) years each (the "First Extension Term" and "Second Extension Term" respectively) upon the same terms and conditions as set forth herein, except that the initial Monthly Rental as set forth in Article 3 below for the first year of the First Extension Term and the Second Extension Term (as the case may be) shall be equal to the Monthly Rental in effect in the final month of the proceeding term and adjusted each January 1 in accordance with the formula in Article 3.

Each of the options to extend shall be exercised, if at all, by written notice from Lessee to the County given not later than one hundred eighty (180) days prior to the expiration of the then current term. In the event Lessee fails to timely exercise the option for the First Extension Term, this Agreement shall terminate at the conclusion of the Initial Term, and Lessee shall not be permitted to exercise the option for the Second Extension Term.

### **ARTICLE 2 LEASED PREMISES; PURPOSE**

The County leases to the Lessee the following described portion of the Airport which, unless specifically stated otherwise, is referred to in this Agreement as the "Leased Premises":

The parcels of land which are more specifically shown on Exhibit 1 which is attached to and made a part of this Agreement together with the aircraft hangar facility and improvements located thereon. The Leased Premises shall be used for inside storage of aircraft, the storage of related materials and supplies, and office purposes. No commercial or manufacturing activities are permitted.

**ARTICLE 3  
FEES AND RENTALS**

The Lessee shall pay the following fees and rentals:

Initial Monthly Rental in the amount \$8,029.00 for each of the eighteen months of January 2016 through June 2017. Beginning with the payment due July 1, 2017, Monthly Rental shall be increased to \$8,589.43 for the remainder of the Initial Term.

The initial Monthly Rental due during the First Extension Term and Second Extension Term, if the right thereto is exercised, shall be the Monthly Rental in effect in the last month of the preceding term. Beginning with the Monthly Rental due January 1, 2021, Monthly Rental 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 2020 increased over the average for the prior twelve calendar months ending June 2019. Such adjustment in the amount of Monthly Rental shall be made annually each January 1 during the First Extension Term and the Second Extension Term thereafter according to the same formula for each succeeding year of First Extension Term and Second Extension Term (i.e., the Monthly Rental beginning January 1, 2022 will be calculated based upon the percentage increase of the index average from the twelve month average ending June 2020 to the twelve month average ending June 2021, and so on). For the avoidance of doubt, the annual Monthly Rental shall never be less than the Monthly Rental of the prior year.

Monthly Rental shall be payable in advance on or before the first day of each month during the term of this Lease. During any holdover period pursuant to Article 30 of this Lease, rent shall be paid monthly on the first day of each month at the Monthly Rental rate which would otherwise be due under the formula set forth in this Article 3.

**ARTICLE 4  
STANDARDS FOR GENERAL AVIATION OPERATORS**

The provisions set forth in Exhibit 2, entitled Waukesha County Airport Minimum Standards for Aeronautical Service Providers, are made a part of this Agreement as are any amendments thereto made from time to time. If this Agreement and the Waukesha County Airport Minimum Standards for Aeronautical Service Providers are in conflict in what they require of the Lessee, or in what they obligate the Lessee to do or not to do, the Waukesha County Airport Minimum Standards for Aeronautical Service Providers shall control.

**ARTICLE 5  
RIGHTS AND PRIVILEGES OF LESSEE**

Subject to the terms and conditions hereinafter set forth, Lessee is hereby given the following rights and privileges during the term of this Agreement.

1. Storage – Lessee has the right to store its own owned or leased aircraft on the Leased Premises. Lessee shall not engage in any other business or operation from the Leased Premises without the written consent of the County, including but not limited to any business or operation which would be in



competition with the services offered by a fixed base operator or aeronautical service provider as defined in the Waukesha County Airport Minimum Standards for Aeronautical Service Providers. Lessee understands that a violation of this paragraph is a material default and breach of this Agreement, which gives the County the rights set forth in Article 12 of this Agreement.

2. Aeronautical Facility Use - Lessee shall be permitted to use, in common with others, existing and future aeronautical facilities at the Airport as they may exist or be modified, augmented, or deleted from time to time. These facilities shall include, but not be restricted to the landing areas, their extensions and additions, roadways, aprons, and any air navigation facilities or other conveniences for the flying, landing, and taking-off of aircraft. Nothing herein shall prohibit the County from modifying, augmenting, or deleting any such facilities.
3. Ingress and Egress - Subject to rules and regulations governing the use of the Airport as may be established by the Airport Manager, the Lessee, its employees, suppliers of materials, furnishers of service, sublessees (to the extent permitted or allowed hereunder), business visitors, and invitees shall have the right of ingress and egress to and from the Leased Premises leased exclusively to Lessee.
4. Quiet Enjoyment - The County covenants that upon paying the rent and performing the covenants and conditions herein contained, Lessee shall peacefully and quietly have, hold, and enjoy the Leased Premises for the term of this Agreement. Lessee agrees that temporary inconveniences, such as noise, disturbances, traffic detours and the like, caused by or associated with the construction of Airport improvements or Airport events shall not constitute a breach of quiet enjoyment of the Leased Premises. Notwithstanding the foregoing, the Lessee understands that such right is subject to the right of the Airport Manager to close Airport operations when required by federal or state law, when extreme weather conditions necessitate closure, or when runway safety requires closure.

## ARTICLE 6 RIGHTS AND PRIVILEGES OF COUNTY

In addition to the other rights and privileges herein retained by it, the County has and reserves the following rights and privileges:

1. Airport Development - The County has the right, but shall not be obligated to Lessee, to develop or improve the landing areas and other portions of the Airport as it sees fit, regardless of the desires or views of the Lessee, and without interference or hindrance. If the development of the Airport requires it, the County has the right to substitute another comparable parcel of land and hangar for the Leased Premises, and relocate Lessee's improvement(s) to that new parcel at no cost to the Lessee. In the event of a substitution and relocation as permitted by this section, the County shall have no liability to the Lessee for any loss, expense, damage or cost of any nature whatsoever that results from or is occasioned by the substitution and relocation, unless such loss is incurred by Lessee as a direct result of the gross negligence or intentional misconduct of the County.
2. Aerial Approaches - 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 the Lessee or any sub-lessee 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.

3. War, National Emergency, Riot, or Natural Disaster - During time of war, national emergency, riot or natural disaster, the County shall have the right to lease the entire Airport or any part thereof to the United States or State of Wisconsin for military or National Guard use and, in such event, the provisions of this Agreement, insofar as they are inconsistent with the provisions of any lease to any such unit of government, shall be suspended for the term of such government lease.
4. Access to Leased Premises - To the extent necessary to protect the rights and interests of the County, or to investigate compliance with the terms of this Agreement, the Airport Manager or his designee shall at any and all times have the right to inspect the Leased Premises, including all buildings, structures, and improvements erected thereon.
5. 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.
6. Unrestricted Right of Flight - The County, for the use and benefit of the public, has a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the Airport.

#### **ARTICLE 7 OBLIGATIONS OF LESSEE**

Except as otherwise specifically provided herein, Lessee shall have the following obligations during the term of this Agreement.

1. Condition of Leased Premises - Lessee accepts the Leased Premises in its present condition and, without expense to the County, will maintain any installations thereon.
2. Maintenance, Exterior Storage, and Housekeeping - Lessee shall at its expense, keep, maintain, and repair the Leased Premises, any improvements thereto, and all equipment and buildings in a presentable and operable condition, consistent with good business practices, and in a manner to preserve and protect the general appearance and value of other premises in the immediate vicinity. This shall include, but not be limited to: roof, exterior painting, all doors on the Leased Premises, and paved areas, lighting, grass, and landscaped areas within lease lines immediately adjacent to and exclusively serving the Leased Premises. If replacement of the roof shall become necessary, Lessee shall be responsible for roof replacement. If this Lease is not extended or renewed, or if this Lease is terminated, prior to the end of the useful life of the replacement roof, then the County shall reimburse Lessee an equitable portion of the replacement cost expended based upon the proportion of the remaining useful life of the replacement roof.

Lessee further agrees that there will be no outside storage of equipment, materials, supplies, or damaged or partially dismantled aircraft on the Leased Premises, and will remove at its expense all trash, garbage, and oil, and not deposit the same on any part of the Airport except temporarily in conjunction with collection or removal.

In the event Lessee does not keep the Leased Premises in a presentable condition, the County has the right to issue a written notice to remedy the condition forthwith. Should Lessee fail to perform satisfactorily within ten (10) days of such notification, or show cause for extension of said time period, the County shall have the right to perform, or have performed by an outside contractor the necessary work without liability, and Lessee agrees to pay the County one hundred twenty-five percent (125%) of such expenses within fifteen (15) days upon invoice receipt.

In the event of fire or any other casualty to buildings or other structures, Lessee shall either repair or replace the building to its original condition; such action must be accomplished within one hundred eighty (180) days of the date the damage occurred. Upon petition by Lessee, the County may grant an extension of time if it appears such extension is warranted.

3. Additions or Alterations - Lessee is prohibited from making alterations, attaching external fixtures, or making other changes to the hanger facility unless approved in advance in writing by the Airport Manager, such approval not to be unreasonably withheld.
4. Signage and Illumination - Lessee shall not paint upon, attach, exhibit or display in or about said Leased Premises any sign without the written consent of the Airport Manager first obtained regarding the nature and construction of said sign, provided always that the Lessee may erect across the front of the building an appropriate sign containing the name of the Lessee with Airport Manager approval, said approval not to be unreasonably withheld.
5. Utilities - Lessee agrees to provide its own connections with utilities and to make separate arrangements with the agencies responsible for these utilities. Lessee shall pay for all utility service supplied to the Leased Premises, and if required by the utility agencies as a condition of providing the services, Lessee will install and pay for standard metering devices for the measurement of such services. In the event it shall become necessary to make utility service or facility changes, Lessee will either make such changes and installations, at its expense, as directed and required by the utility organizations, or pay the utility organization for such changes made. The County shall have the right, without cost to Lessee, to install and maintain in, on or across the Leased Premises, sewer, water, gas, electric, and telephone lines, electric substations, or other installations necessary to the operation of the Airport, or to service other tenants of the County; provided, however, that the County shall carry out such work and locate any above-ground structures in a manner so as not to unreasonably interfere with Lessee's use of the Leased Premises.
6. Discrimination - Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration thereof, does hereby covenant and agree that a) no person on the grounds of race, sex, color, physical handicap, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said Leased Premises, b) that in

the construction of any improvements on, over, or under such Leased Premises and the furnishings of services, thereon, no person on the grounds of race, sex, color, physical handicap, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and c) that the Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

7. Costs of Enforcement - Lessee covenants and agrees to pay and discharge all reasonable costs, attorneys' fees, and expenses that shall be made and incurred by the County in enforcing the covenants and agreements of this Agreement.
8. Taxes, Licenses, and Permits - Lessee shall obtain and keep current all municipal, County, State and Federal licenses and permits that may be required in its operation. Also, Lessee will bear, pay, and discharge all taxes, assessments and levies of every nature and kind which may be taxed, charged or assessed lawfully against the Leased Premises and improvements thereon, or which may be lawfully levied or imposed upon the leasehold by a governmental agency.
9. Liens - Lessee agrees to promptly pay all sums legally due and payable on account of any labor performed on, or materials furnished for the Leased Premised. Lessee shall not permit any liens to be placed against the Leased Premises on account of labor performed or material furnished, and in the event such a lien is placed against the Leased Premises, Lessee agrees to save the County harmless from any and all such asserted claims and liens and to remove or cause to be removed any and all such asserted claims or liens as soon as reasonably possible.

Notwithstanding the foregoing, Lessee may grant a lien or security interest in its own personal property located upon the Leased Premises, or its interests in the Leased Premises conferred by this Agreement in the manner set forth in Article 33, to a bonafide lending institution.

10. Parking - Lessee agrees to prohibit vehicle parking on the Airport premises other than those vehicles specifically associated with the use of the Leased Premises, and no other. Lessee, its employees, approved sub-lessees, guests and invites shall park only on Lessee's Leased Premises, or other publicly designated parking areas. Lessee, its agents or guests are expressly prohibited from operating any vehicle on any area of the Airport designated as a "movement area". Lessee shall at all times comply with posted signs regulating the movement of vehicles.
11. Laws, Ordinances, Rules and Regulations - Lessee agrees to observe and obey the rules and regulations governing the conduct and operation of the Airport facilities promulgated from time to time by the Airport Manager, Airport Commission, and/or Waukesha County Board. Lessee shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, including all applicable Federal Aviation Administration orders, regulations and advisory circulars that pertain to any conduct or operation at the Airport.
12. Storage of Flammable Fluids - Lessee agrees that the storage of gasoline or other flammable fluids in

bulk quantities shall be limited to the Airport Fuel Farm or to such area as designated by the Airport Manager. Lessee agrees that the storage of all other gasoline or flammable fluids shall be in an approved steel locker labeled "FLAMMABLE". The Airport Manager may, in his discretion, prohibit or impose restrictions on the storage of said materials if, in the Manager's opinion, the storage is determined a safety hazard. The disposal of any hazardous chemicals or fluids on the Airport premises is prohibited and is considered a material breach of this Agreement.

13. Snow Plowing - Lessee agrees to be responsible for the plowing of snow within its Leased Premises including parking lot(s) and aircraft parking ramp(s). Snow plowing adjacent to or in aircraft parking ramp(s) area(s) will be consistent the requirements of the FAA as established in Advisory Circular Airport Winter Safety and Operations or its successors. The County shall provide snow removal on all movement areas consistent with priorities established and specified in the Waukesha County Airport Snow and Ice Control Plan.
14. Covenants – Lessee acknowledges receipt of a copy of the Waukesha County Airport Covenants that apply to its Leased Premises and shall comply with the requirements of these Covenants.

## ARTICLE 8 SELF-FUELING

Notwithstanding Article 7, paragraph 12, "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 \$10,000 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 \$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 \$0.10 (10 cents) 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: The dates, quantities and supplier of all fuel brought onto the Airport for the purpose of self-fueling. 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 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, and 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 comes sooner.
7. Fueling Personnel Requirements - No individual may perform a fueling operation unless the individual meets all of the following requirements and does all of the following things:
  - 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 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 Commerce 10 Flammable and Combustible 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 9 INSURANCE

Lessee shall, at its expense, maintain insurance in full force and effect during the terms of this Agreement in such amounts and coverages as to meet the minimum limits of liability specified below, and insurance shall be placed with companies or underwriters authorized to do business in the State of Wisconsin satisfactory to the County. The County, its boards, commissions, agencies, appointed and elected officials, employees, and representatives shall be named as additional insureds. Certificates of Insurance evidencing

the required insurance shall be filed with the County's Airport Manager and upon request certified copies of the required insurance policies shall also be filed. The Certificates of Insurance and all such policies shall contain a provision that coverages will not be canceled or non-renewed during the term of this Agreement unless thirty (30) days advance notice in writing has been given to the County in the manner specified in this Agreement.

1. Commercial General Liability

Lessee shall maintain commercial general liability insurance with the policy written to provide coverage for, but not be limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual and independent contractors. The County, its boards, commissions, agencies, officers, employees and representatives shall be named as additional insured and stated as such on the certificate of insurance.

Limits - The limits of liability shall be not less than \$1,000,000 per occurrence and \$1,000,000 aggregate.

2. Automobile Liability

Comprehensive Automobile Liability or Business Auto Policy form covering all owned, hired and non-owned private passenger autos and commercial vehicles, including vehicles that are used in any way related to self-fueling.

Limit - \$1,000,000 combined single limit, each occurrence. Bodily injury and property damage.

3. Hangar Keepers Liability

Limit - Total value of aircraft stored, each accident.

4. Workers Compensation and Employers Liability

Lessee shall maintain statutory worker's compensation benefits and employers' liability insurance with a limit of liability of not less than \$100,000 each accident for employees of Lessee who are engaged in any operations on the airport, including self-fueling.

5. Property Insurance (for all property on the Leased Premises).

Limit - Lessee shall carry sufficient all-risk property insurance on owned and leased buildings and equipment, including aircraft and self-fueling equipment at the Airport.

6. 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.

7. Aircraft Liability (for all owned/leased aircraft which are operated at Airport)

Limit – \$1,000,000 combined single limit, each occurrence. Bodily injury and property damage.

It is expressly understood that the County has no responsibility for Lessee's owned or leased equipment.

The County may require reasonable increased limits of liability for the above insurance coverages if it determines that the stated limits are inadequate based on insurance industry standards, legal considerations or risk exposure review.

The Lessee shall require that any entity that delivers bulk fuel to Lessee's fuel storage tank provide Lessee with a certificate of insurance which certifies and shows that the entity maintains the insurance coverages noted in numbers 1, 2, 4 above 6. The Lessee shall provide the County with a copy of any such certificate upon request.

The County may elect, at its option, to terminate this Agreement upon the cancellation or other termination of any insurance policy issued in compliance with this Article, unless another policy has been filed and approved pursuant to this Article, and shall have been in effect at the time of such cancellation or termination.

**ARTICLE 10  
INDEMNIFICATION AND HOLD HARMLESS**

The Lessee will not hold the County liable for any damage to property or injury or death to person when the damage, injury or death is in any way connected or related to the Lessee's obligations under or its performance of this Agreement, its use or occupancy of the Leased Premises, or any of its operations permitted or required by the Agreement. This hold harmless provision will not apply if the damage, injury or death was caused by 1) an intentional act of the County, or 2) a negligent act of the County, in which case the County's liability shall be limited to the percentage of negligence attributable to it.

If any demand, claim, lawsuit or proceeding is brought against the County and is in any way connected or related to the Lessee's performance of, or its obligations under this Agreement, its use or occupancy of the Leased Premises, or the operations permitted or required by this Agreement, Lessee shall fully defend the County against the demand, claim, lawsuit or proceeding. The County shall give the Lessee prompt notice of any such demand, claim, lawsuit or proceeding. If such demand, claim, lawsuit or proceeding is brought the County shall have the right, but not the duty, to (1) investigate and settle the demand, claim, lawsuit or proceeding, and (2) participate in the defense of the demand, claim, lawsuit or proceeding.

If a demand, claim, lawsuit or proceeding as described in the preceding paragraph is brought, the Lessee shall pay all expenses, costs, losses, damages, fees, including attorney fees, fines, forfeitures, judgments and awards that result from the demand, claim, lawsuit or proceeding. If the demand, claim, lawsuit or proceeding was settled by the County, the Lessee shall have no payment obligation unless it approved the settlement.

In this Article, "County" includes Waukesha County and the Waukesha County Airport Commission and all of their members, employees, officials, officers and agents.

**ARTICLE 11  
SUBLEASES; RESPONSIBILITY FOR SUBLESSEE**

The Lessee shall not sublease the Leased Premises, nor any part of the Leased Premises without the express written consent of the County, such consent to not be unreasonably withheld. At a minimum, the County will require that any sublease agreement be in writing and that it include: that the agreement be subject to the terms and conditions of this Agreement; that sublessees maintain aircraft liability insurance in the amounts the County sees fit; that sublessees maintain other insurance coverages and amounts as the County prescribes; and that sublessees hold the County harmless.

Lessee shall accept full responsibility and liability for the acts and omissions of its sublessees. Lessee shall not be released from any liability under this Agreement in the event of any sublease(s) of the Leased Premises in whole or in part.

**ARTICLE 12**  
**DEFAULTS AND REMEDIES**

The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by the Lessee.

1. The filing by Lessee of a voluntary petition in bankruptcy.
2. The institution of proceedings in bankruptcy against Lessee and the adjudication of Lessee as a bankrupt pursuant to such proceedings.
3. The taking by a court of Lessee and its assets pursuant to proceedings brought under the provisions of any Federal Reorganization Act.
4. The filing of any lien against the Airport or any of its property as the result of any act or omission of Lessee, if the lien is not discharged or contested in good faith by Lessee (as determined by the County) within thirty (30) days of Lessee's receipt of notice of the lien, unless Lessee posts a bond within this time period equal to the amount of the lien.
5. The voluntary abandonment by Lessee of its operations at the Airport for a period of thirty (30) days or more.
6. The appointment of a receiver of Lessee's assets, or any general assignment for the benefit of Lessee's creditors.
7. The transfer of Lessee's interest herein by other operation of law.
8. The failure by Lessee to make any payment required by this Agreement the time such payment becomes due, where such failure continues for a period of fifteen (15) days after written notice from the County.
9. The falsification by the Lessee of any of its records or figures so as to deprive the County of any of its rights under this Agreement.
10. The failure by Lessee to perform any of the covenants, conditions, or obligations imposed on it by this Agreement where the failure continues for a period of thirty (30) days after written notice from the County, provided however that in the event the failure would reasonably take longer than thirty (30) days to cure, then Lessee shall such additional time as reasonably necessary to cure the default provided Lessee promptly commences and diligently prosecutes the cure.
11. A sale or other transfer of stock in Lessee's corporation which divests the present stockholders of controlling interest such that Lessee is no longer a publically traded company without the written approval of the County, such approval not to be unreasonably withheld.
12. Except as otherwise permitted by this Lease, the transfer or assignment, or attempted transfer or assignment of this Agreement by Lessee, without securing prior written approval of the County, such approval not to be unreasonably withheld. It shall be understood for the purpose of this part that negotiations by Lessee for the assignment or transfer of this Agreement shall not be construed as "attempted transfer".

In the event of a breach of this Agreement by Lessee, the County shall be entitled to any and all legal and equitable remedies available to it under applicable law. Without limitation, these remedies shall include the following, which are cumulative and not exclusive:

1. Specific performance of any obligation of Lessee.

2. Declaratory and injunctive relief.
3. The recovery of all damages of any nature that result from the Lessee's breach, which damage include unpaid rent, fees and other payments, and the loss of future rent, subject to any legal duty of the County to mitigate its damages.
4. Reasonable attorney fees for services related to Lessee's breach of this Agreement, including fees for attorneys who are County employees.
5. The termination of the Agreement and repossession of the Leased Premises by the County upon thirty (30) days written notice of termination for a payment default and sixty (60) days written notice of termination based upon all other defaults provided that the breach serving as the basis for termination is not sooner fully cured. If the breach serving as the basis for termination (other than a default in the payment of money due hereunder) is capable of cure, and cure has been promptly commenced but cannot with due diligence be completed within the sixty (60) day cure period, then upon written request, the County may extend the cure period for a reasonable time in its sole discretion. If this Agreement is terminated, the Lessee shall remove all property owned by it from the Leased Premises and restore and surrender the Leased Premises to the County in the same condition as when originally received. If the Lessee fails to remove its property and to restore and surrender the Leased Premises as required, the County may do so and the Lessee shall be liable to the County for all expenses of removing the property (including storage fees, if any) and restoring the Leased Premises.

The failure of the County to declare this Agreement terminated for any of the reasons set out above shall not bar the right of the County to subsequently terminate this Agreement for any of the reasons set out above. Further, the acceptance of rental or fees by the County for any period after a default by Lessee shall not be deemed a waiver of any right on the part of the County to terminate this Agreement. In the event of termination, the County shall be obligated to make reasonable efforts to re-rent the Leased Premises and otherwise mitigate damages.

Any bonafide lending institution with a security interest or lien permitted under Article 7, paragraph 9 hereof, or the holder of a Leasehold Mortgage authorized by Article 33 hereof, shall be entitled to receive any notice of default or termination delivered by the County to the Lessee, provided that the bonafide lending institution has made a written request to the County to receive such notices and has provided the County with its notice address. Such bonafide lending institution shall have the same, but no greater, rights as Lessee to cure the default within the time periods set forth above for cure.

### **ARTICLE 13 ADDITIONAL TERMINATION RIGHTS**

In addition to the termination rights set forth in the preceding Article, the County or Lessee may also terminate this Agreement if any of the following events occur:

1. A determination by the Waukesha County Board of Supervisors, by resolution or ordinance, that termination is necessary to secure federal funding for Airport development. In this event, the County

shall use all reasonable efforts to give Lessee sixty (60) days advance written notice of its intent to terminate the Agreement. It is understood that the length of this advance written notice may be dependent upon federal or state government requirements pertaining to funding, but at no time shall such notice be less than thirty (30) days. At the expiration of the notice period, title to any and all improvements made by Lessee upon any Airport land shall immediately vest in the County without further proceedings or conveyances, and the County may immediately enter and take possession. However, in such event, the County shall make payment to Lessee in a sum sufficient to cover the fair market value of any structure or improvement it owns and has erected upon such land, minus depreciation within thirty (30) days of final determination of Fair Market Value. Fair market value shall be determined as specified in Article 14, Fair Market Value.

2. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport and facilities, or any substantial part of parts thereof, in such manner as to substantially restrict Lessee, for a period of at least sixty (60) days, from its operations.

Lessee alone shall have the additional right to terminate this Lease effective at the conclusion of year three of the initial term (December 31, 2018) without cause by providing the County with written notice at any time prior to October 2, 2018 expressly referencing termination under this Article 13 and paying the applicable termination fee as set forth below:

<u>Amount of Notice Prior to 12/31/18</u>	<u>Termination Fee</u>
At least 90 days	8 months' rent
At least 180 days	3 months' rent
At least 270 days	1 months' rent

The termination fee shall be based upon the Monthly Rental rate in effect at the time written notice of termination under this Article 13 is given and shall accompany said written notice.

#### ARTICLE 14 FAIR MARKET VALUE

If the Lessee and the County are unable to agree on the fair market value of a structure or improvement required to be reimbursed under Article 13 above, 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 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 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 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/or improvements 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 15  
CANCELLATION BY LESSEE**

In addition to the events set forth in Article 13, Lessee may cancel this Agreement at any time that it is not in default in its obligations by giving the Airport Manager thirty (30) days written notice to be served as hereinafter provided after the happening of any of the following events, if such event materially impairs the conduct of Lessee's normal business on the Airport:

1. The issuance by a court of competent jurisdiction of any injunction in any way preventing or restraining normal use of the Airport or any substantial part of it, and the remaining in force of such injunction for a period of sixty (60) consecutive days, such injunction not being the result of any fault of Lessee;
2. The inability of Lessee to use, for a period of six (6) consecutive months, the Airport, the Leased Premises or any substantial part of either due to any restriction or right reserved by the County under this Lease, due to the enactment or enforcement of any law or regulation, because of fire, earthquake or similar casualty or Acts of God or the public enemy.

Failure of Lessee to declare this Agreement canceled for any of the reasons set out above shall not operate to bar or destroy the right of Lessee to cancel this Agreement by reason of any subsequent occurrence of the described events.

**ARTICLE 16  
WAIVER OF SUBROGATION**

The County and Lessee hereby release each other from any and all responsibility to the other for any loss of damage to property caused by fire or other peril if the property is insured for such loss or damage in any policy of insurance, even if such loss or damage is caused by the fault or negligence of the other party or anyone for whom such party is responsible. The County and the Lessee agree that to the extent any such policy of insurance provides a right of subrogation in the insurer, or to the extent a right of subrogation exists independent of such policy, each will indemnify and hold the other harmless for any loss, claim or expense suffered as the result of any action taken pursuant to the right of subrogation. To the greatest extent possible, the County and the Lessee will, in furtherance of the intent of this provision, make every effort to obtain from its insurance carrier a waiver of subrogation for the matters here described in any such policy of insurance.

**ARTICLE 17  
REMEDIES CUMULATIVE; NO WAIVER**

All of the rights and remedies given in this Agreement are cumulative and no one is exclusive of any other. A party shall have the right to pursue any one or all of such remedies or any other remedy or relief that may be provided by law, whether stated in this Agreement or not.

The failure of a party to take action with respect to any breach of any covenant, condition or obligation in this Agreement shall not be a waiver of such covenant, condition or obligation or a subsequent breach of the same or any other covenant, condition or obligation. The acceptance by the County of any rent or other payment shall not be a waiver by it of any breach by Lessee of any covenant, condition or obligation.

**ARTICLE 18  
DAMAGE TO PROPERTY OF LESSEE AND OTHERS**

The County shall have no liability to the Lessee or its sublessees, contractors, guests or invitees for any damage to their property caused by fire, tornado, earthquake, windstorm or other casualty, and not for any damage caused by the act or omission of a third party, unless such damage was the result of the negligence of the County. Nothing in this section shall be construed as a waiver by the County of any statutory immunity, limitation of liability, limitation on the amount recoverable, or other protections available to the County under Wis. Stat. Chapter 893, or any other applicable statute or law.

**ARTICLE 19  
DAMAGE TO PREMISES AND PROPERTY  
BY LESSEE AND OTHERS**

If any part of any Airport property is damaged by the act or omission of the Lessee, its agents, officers, employees, contractors, invitees, sublessee and subcontractors, the Lessee shall pay to the County within thirty (30) days upon demand, any amount which the County reasonably determines is necessary to repair or replace the property.

**ARTICLE 20  
COUNTY REPRESENTATIVE**

The Airport Manager is the official representative of the County for the administration and enforcement of this Agreement.

**ARTICLE 21  
SUBORDINATION**

This Agreement is and shall be subordinate to any existing or future Agreement between the County and the United States regarding the operation or maintenance of the Airport.

**ARTICLE 22  
COMPLIANCE WITH LAW**

At its own expense, the Lessee 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 applicable to its use of the Leased Premises. At its own expense, the Lessee shall obtain any and all permits and licenses which may be necessary for any activity of Lessee at the Airport for which a license or permit is required. The Lessee shall not do or allow to be done anything at the Airport which is in violation of, or prohibited by any law, ordinance, rule, requirement, permit or license. If the attention of the Lessee is called to any such violation, the Lessee will immediately desist from or cause to be corrected such violation.

**ARTICLE 23**

**GOVERNING LAW;  
VENUE FOR DISPUTES**

This Agreement shall be deemed to have been made in, and shall be construed in accordance with the laws of the State 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 the Lessee submit to the exclusive jurisdiction of the circuit court for such lawsuits.

**ARTICLE 24  
COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be taken to be an original, and all collectively but one instrument.

**ARTICLE 25  
SEVERABILITY**

In the event that 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 provision in this Agreement, provided that the invalidity of any such provision does not materially prejudice either the County or Lessee in their respective rights and obligations contained in the valid provisions of this Agreement.

**ARTICLE 26  
SURVIVAL OF OBLIGATIONS/  
SUCCESSORS AND ASSIGNS BOUND**

The obligations of Lessee under Article 10 shall survive the termination of this Agreement. Additionally, any payment obligation and repair obligation that exists as of the termination or cancellation of this Agreement arising prior to termination shall survive the termination of this Agreement.

All of the provisions, covenants, and stipulations in this Agreement shall extend to and bind the successors and assigns of the respective parties.



**ARTICLE 27  
ENTIRE AGREEMENT**

This Agreement, together with any exhibits, contains and embodies the entire Agreement between the County and the Lessee and supersedes and replaces any and all prior agreements, understandings and promises on the same subject, whether they are written or oral.

**ARTICLE 28  
NO ASSIGNMENT**

This Agreement may not be assigned, nor may any part of it be assigned, without the express written consent of the County, which consent shall not be unreasonably withheld. Any assignment of this Agreement shall not release Lessee from liability under this Agreement. Notwithstanding the foregoing, Lessee shall specifically be permitted to assign its interests in the Agreement, and all of its rights and duties hereunder, and the leasehold estate created hereby, to a bonafide lending institution for security purposes as provided in Article 33 hereof.

**ARTICLE 29  
RIGHTS UPON EXPIRATION, TERMINATION OR CANCELLATION**

Upon expiration of this Agreement or upon termination/cancellation of this Agreement, the Lessee shall return possession of the Leased Premises, and all improvements to the Leased Premises, to the County in the same condition in which it was delivered to Lessee, reasonable wear and tear excepted. It is expressly acknowledged that Lessee makes no claim against any structures on the Leased Premises or any improvements thereto, whether made by Lessee or not, except as expressly set forth in Article 13 of this Agreement.

**ARTICLE 30  
HOLDOVER POSSESSION OF PREMISES BY LESSEE**

In the event that Lessee should hold over and remain in possession of the Leased Premises after the expiration of this Agreement or termination for any cause, the holding over shall be deemed not to operate as a renewal or extension of this Agreement and shall create a tenancy from month to month which may be terminated at any time by the Airport Manager or Lessee, upon notice as required to end month to month tenancies.

**ARTICLE 31  
PARAGRAPH HEADINGS**

All paragraph and subparagraph headings contained in this Agreement are for convenience in reference only, and are not intended to define or limit the scope of any provision.

**ARTICLE 32**

## NOTICES

Notices to the County or Lessee provided for in this Agreement shall be hand delivered or sent by certified mail, postage prepaid, addressed to:

County  
Airport Manager  
Waukesha County Airport  
2525 Aviation Drive  
Waukesha, WI 53188

Lessee  
Quad/Air, LLC  
c/o Quad/Graphics, Inc.  
N61 W23044 Harry's Way  
Sussex, WI 53089  
Attn: Nathan Ganfield

or to such other addresses as the parties may designate to each other in writing from time to time, and such notices shall be deemed to have been given when so sent.

All payments shall be made payable to the Waukesha County Airport and sent to the attention of the Airport Manager at the County's address stated above.

## 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) to a bonafide lending institution without obtaining the County's prior consent provided that written notice of such encumbrance/assignment is delivered to the County within ten (10) days of the effective date of the grant of security. 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. Nothing in this paragraph shall be construed as permitting an assignment to an entity other than a bonafide lending institution for security purposes, and this paragraph gives any lender who acquires such an interests no right to further assign this Agreement without full compliance with the assignment and consent provisions of Article 28 hereof.

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. Any security interest that the County may have or acquire in any leasehold improvement or other personal property of the Lessee shall be subordinate to any pre-existing liens upon such property/interests.

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 Lease 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, conditioned or delayed. 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 Lease in a form prepared by Lessee and approved by the County, which approval shall not be unreasonably withheld.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have hereto have caused this Agreement to be executed by their proper officers this \_\_\_ day of \_\_\_\_\_, 2016, but effective as of the 1st day of January, 2016.

Signed in the Presence of:

WAUKESHA COUNTY:

\_\_\_\_\_

By:

\_\_\_\_\_  
Name:

Title:

Signed in the Presence of:

LESSEE:

\_\_\_\_\_

By:

\_\_\_\_\_  
Name:

Title:

Quad/Air, LLC