

RESOLUTION NO. 16-2020

A RESOLUTION BY THE COUNCIL OF THE CITY OF NEW PHILADELPHIA, OHIO, AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY TO ENTER INTO A FIXED BASED OPERATOR LEASE WITH PROFESSIONAL AVIATION MUNICIPAL MANAGEMENT GROUP LTD., AN OHIO LIMITED LIABILITY COMPANY, A COPY OF WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE AS IF FULLY REWRITTEN, FOR THE OPERATION AND MAINTENANCE OF THE NEW PHILADELPHIA HARRY CLEVER AIRPORT, AND DECLARING AN EMERGENCY.

WHEREAS; the City has bid out for a fixed based operator for the New Philadelphia Harry Clever Airport and a bid was accepted from Professional Aviation Municipal Management Group Ltd.

WHEREAS, the Mayor has negotiated a fixed based operator lease with Professional Aviation Municipal Management Group Ltd., an Ohio Limited Liability Company, a copy of which is attached hereto and incorporated herein by reference as if fully rewritten, for the operation and maintenance of the New Philadelphia Harry Clever Airport; and

WHEREAS; said lease is necessary for the continued operation and maintenance of the New Philadelphia Harry Clever Airport.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF NEW PHILADELPHIA, OHIO, AS FOLLOWS:

SECTION 1. The Mayor of the City of New Philadelphia is hereby authorized and directed to act on the behalf of the City of New Philadelphia as a signature designee of the City to enter into a fixed based operator lease with Professional Aviation Municipal Management Group Ltd., an Ohio Limited Liability Company, a copy of which is attached hereto and incorporated herein by reference as if fully rewritten, for the operation and maintenance of the New Philadelphia Harry Clever Airport.

SECTION 2. This Resolution is hereby declared to be an emergency measure and its immediate passage is necessary in order to preserve, protect and maintain the health, safety and welfare of the citizens of the City of New Philadelphia;

SECTION 3. This Resolution shall take effect and be in force immediately upon its passage and approval.


PASSED: June 8, 2020

  
DONALD C. KEMP  
PRESIDENT OF COUNCIL

ATTEST:

  
JULIE COURTRIGHT  
CLERK OF COUNCIL

APPROVED:

  
MAYOR JOEL B. DAY

SPONSORED BY: SALARY COMMITTEE

## Fixed Base Operator Lease

This Lease and Operating Agreement (the "Agreement") entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of New Philadelphia ("Lessor"), and Professional Aviation Municipal Management Group Ltd., an Ohio Limited Liability Company with authority to do business in the State of Ohio ("Lessee").

Witnesseth:

WHEREAS, Lessor now owns, controls and operates the New Philadelphia Harry Clever Airport (the "Airport") in New Philadelphia and Tuscarawas County, State of Ohio;

WHEREAS, fixed base operation services are essential to the proper accommodation of general and commercial aviation at the Airport; and

WHEREAS, Lessor desires to make such services available at the Airport and Lessee is qualified, ready, willing and able to provide such services.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the parties hereby agree as follows:

### ARTICLE I

#### TERM

The term of this Agreement shall be for a period of five (5) years, commencing on the \_\_\_\_ day of \_\_\_\_\_, 2020, and continuing through the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the "Termination Date"), unless earlier terminated under the provisions of this Agreement. Lessee shall have one (1) option exercisable upon at least one hundred eighty (180), but not more than three hundred sixty-five (365) days' notice to Lessor prior to the Termination Date, to extend the term of the Agreement for an additional period of five (5) years from and after the Termination Date or Extension Date, upon the same terms and conditions as are contained in this Agreement.

### ARTICLE II

#### LEASED PREMISES

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the following premises, together with the right of ingress and egress for both vehicles and aircraft:

- A. New Philadelphia Harry Clever Airport
- B. All improvements on said real property, except large hangars or land currently under lease by the City to such operators. Lessor shall receive 50% of rents collected on current existing hangars and Lessee shall retain 50% of the same, with the following exceptions: The Fixed Base Operator shall not be entitled to any of the rent fees collected on either the new 12 Bay Door T-Hangars on Delaware Drive SE or for any new hangars

that should be built in the future, and instead the Lessor shall receive 100% of said rental fees collected on the same. Rent shall not be increased for hangars without airport commission approval ratified by council resolution.

- C. In consideration of these terms and conditions, the Lessee shall receive exclusive use of one Green Hangar.

### ARTICLE III

#### RIGHTS AND OBLIGATIONS OF LESSEE

- A. **Required Services.** Lessee is hereby granted, the non-exclusive privilege to engage in, and Lessee agrees to engage in, the business of providing full and complete fixed base operation services at the Airport, daylight hours, three hundred sixty-five (365) days per year, as follows:
1. Ramp service, including sale and into-plane delivery of aviation fuels, lubricants and other related aviation products.
  2. Apron servicing of, and assistance to, aircraft, including itinerant parking, storage and tie-down service, for both based and itinerant aircraft upon or within facilities leased to Lessee.
  3. Repair and maintenance of based and transient aircraft, during business hours by FAA licensed personnel. Lessee acknowledges that no right or privilege has been granted which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing service on its own aircraft, with its own regular employees, including maintenance and repair services, provided said work is performed in a suitable building and is leased from lessor and Article 3E is followed.
  4. Customary accommodations for the convenience of users, including pilot lounge area and informational services.
  5. Equipment and trained personnel to remove disabled aircraft with a gross landing weight of twelve thousand five hundred (12,500) pounds or less from the Air Operations Area, and Lessee shall perform such removal service on request. As used in this Agreement, "Air Operations Area" shall mean those portions of the Airport provided and made available by Lessor for aircraft and related operations, and shall include aircraft runways, taxiways, ramps, aprons and parking spaces, and areas directly associated therewith, which are not leased by Lessee or any other tenant on the Airport.
  6. Sales of avionic and engine parts and instruments and accessories.
  7. Lessee shall take full responsibility for any and all snowplowing on the Airport premises. The Lessee shall be provided by the City Service Director with an approved, insured vehicle for this purpose. The Lessee shall provide fuel, oil, and standard maintenance on the plow and the truck during snow season and each year thereafter. Lessor shall be responsible for all other maintenance - structural and mechanical issues - unless the Lessee is negligent in causing the structural or

mechanical issues. The vehicle provided shall not leave the Airport premises except for storage at the City Street Department garage and shall not be used for hauling purposes.

8. Lessee shall be solely responsible for collecting and submitting quotes on repairs needed at the Airport.
9. Lessee or its controlled subsidiary shall also act as the Airport Manager, which shall include, but may not be limited to, the following duties and responsibilities:
  - a. The Airport Manager is or shall become a qualified Airport Manager approved by the Ohio Division of Aviation.
  - b. The Airport Manager shall provide a qualified Assistant Manager, approved by the Lessor, who will perform the required services in the absence of the Airport Manager.
  - c. The Airport Manager or qualified Assistant Manager shall be on duty at the airport during daylight hours.
  - d. The Airport Manager and Assistant Manager's phone numbers shall be posted at the airport and they shall also maintain current phone numbers for after-hours contact with local F.A.A. Flight Service Station, the Ohio Division of Aviation, the Police Department, the Fire Department, and the Tuscarawas County Sheriff's Office.
  - e. The Airport Manager shall assure that aircraft operations at the airport are conducted within the regulations of the Federal Aviation Administration, the Ohio Division of Aviation, the Federal Communications Commission, and the Rules of Operation for Aeronautical Activities at the airport. The Airport Manager shall notify the Lessor immediately of any aircraft operations or operators not complying with these requirements.
  - f. The manager shall issue a "Notice to Airmen (NOTAMS) to the local F.A.A. Flight Service Station whenever any of the facilities are out of service or any conditions exist that would affect normal operations at the airport.
  - g. The Airport Manager or Assistant Manager shall supervise the operation of Radio Airport Advisory Service (UNICOM) during the hours of operation heretofore set forth herein.
  - h. The Airport Manager shall remove snow from the airfield pavement areas, with Lessor's equipment.
  - i. The Airport Manager shall cut grass on the airfield.
  - j. Conduct a daily inspection of the airfield pavement and marking to assure that they are in a satisfactory condition for safe aircraft operation. Notify the Lessor immediately of any problem areas.
  - k. Conduct a daily inspection of the airfield lighting systems to assure that they are functioning properly. Replace any lamps which do not work from spares provided by the Lessor. Notify the Lessor of any problem areas.
  - l. Conduct a monthly inspection of any VASI or PAPI system to check the aiming of these units and re-aim as necessary. Maintain a log of all inspections of this system.

- m. Manage the spare parts for the lighting systems provided by the Lessor and notify the Lessor when additional replacement parts must be ordered.
  - n. Maintain public areas within the administration building in a clean and presentable manner with supplies furnished by the Lessor.
  - o. Conduct a monthly inspection of all Lessor owned buildings to assure that they are safe and in good repair. Notify the Lessor of any problem areas.
  - p. Maintain accurate and acceptable records of all inspections, problems, written correspondence, visits by the Federal Aviation Administration or the Ohio Division of Aviation, NOTAMS, complaints and airport activity in files provided by the Lessor. Files to be kept in the area of the Administration Building set-aside for such information as shall be available for examination by the Lessor at all reasonable times.
  - q. Notify the Lessor of any written correspondence received at the airport requiring action by the Lessor.
  - r. Immediately notify the Lessor and the police and/or fire departments of any emergencies requiring a response by police or fire personnel.
  - s. Airport Manager shall have the right to deny use of the airport to anyone willfully or persistently violating regulations and rules of the Federal Aviation Administration, the Ohio Division of Aviation, the Federal Communications Commission, or the Lessor.
  - t. Airport Manager and Assistant Manager shall at all times promote the interests of the Lessor and the airport through communication with various professional corporate and civic organizations and shall act in a professional manner at all times during contact with the public.
  - u. Airport Manager or Assistant Manager shall attend regularly scheduled airport commission meetings of the Lessor.
  - v. Any and all other duties as would be reasonably needed by the Lessor for the proper management and upkeep of the airport.
10. Lessee shall give the City Service Director, or his/her designee, a 48-hour notice when the regular Airport Manager will be unavailable, as well as contact information whereby responsible personnel can be contacted in the event of an emergency.

- B. **Authorized Services.** In addition to the services required to be provided by Lessee pursuant to Paragraph A, above, Lessee is authorized, but not required, to provide the following services and to engage in the following activities:
- 1. Ramp service at the Main Terminal or other Airport locations, including into-plane delivery of aircraft fuel, lubricants and other related aviation products; loading and unloading of passengers, baggage, mail and freight; and providing of ramp equipment, aircraft cleaning and other services for air carriers and other persons or firms.
  - 2. Special flight services, including aerial sight-seeing, aerial advertising and aerial photography.
  - 3. The sale of new and used aircraft.

4. Flight training, including ground school.
5. Aircraft rental.
6. Aircraft charter operations, conducted by Lessee or a subcontractor of Lessee.

C. **Operating Standards.** In providing any of the required and/or authorized services or activities specified in this Agreement, Lessee shall operate for the use and benefit of the public and shall meet or exceed the following standards:

1. Lessee shall furnish service on a fair, reasonable and non-discriminatory basis to all users of the Airport. Lessee shall furnish good, prompt and efficient service adequate to meet all reasonable demands for its services at the Airport. Lessee shall charge fair, reasonable, and non-discriminatory prices for each unit of sale of service; provided, however, that Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions.
2. Lessee shall select and appoint a full-time manager of its operations at the Airport. The manager shall be qualified and experienced, and vested with full power and authority to act in the name of Lessee with respect to the method, manner and conduct of the operation of the fixed base services to be provided under this Agreement. The manager shall be available at the Airport during regular business hours and during the manager's absence a duly authorized subordinate shall be in charge and available at the Airport.
3. Lessee shall provide, at its sole expense, a sufficient number of employees to provide effectively and efficiently the services required or authorized in this Agreement.
4. Lessee shall control the conduct, demeanor and appearance of its employees, who shall be trained by Lessee and who shall possess such technical qualifications and hold such certificates of qualification as may be required in carrying out assigned duties. It shall be the responsibility of Lessee to maintain close supervision over its employees to assure a high standard of service to customers of Lessee.
5. Lessee shall meet all expenses and payments in connection with the use of the Premises and the rights and privileges herein granted, including taxes, permit fees, license fees and assessments lawfully levied or assessed upon the Premises at any time situated therein and thereon. Lessee may, however, at its sole expense and cost, contest any tax, fee or assessment, and Lessee shall only be responsible for assessments arising out of lessee's operations.
6. Lessee shall comply with all federal, state and local laws, rules and regulations which may apply to the conduct of the business contemplated, including rules and regulations promulgated by Lessor and Lessee shall keep in effect and post in a prominent place all necessary and/or required licenses or permits.
7. Lessee shall be responsible for the maintenance and repair of the interior premises and shall keep and maintain the interior premises in good condition, order and repair, and shall surrender the same upon the expiration of this Agreement, in the condition in which they are required to be kept, reasonable wear and tear and damage by the elements not caused by Lessee's negligence excepted. Lessor shall maintain in good repair and condition all exteriors and all HVAC units when notified by Lessee.

It is expressly understood and agreed that, in providing required and authorized services pursuant to this Agreement, Lessee shall have the right to choose, in its sole discretion, its vendors and suppliers.

- D. **Signs.** During the term of this Agreement, Lessee shall have the right, at its expense, to place in or on the premises a sign or signs identifying Lessee. Said sign or signs shall be of a size, shape and design, and at a location or locations, approved by Lessor and in conformance with any over-all directional graphics or sign program established by Lessor. Lessor's approval shall not be withheld unreasonably. Notwithstanding any other provision of this Agreement, said sign(s) shall remain the property of Lessee. Lessee shall remove, at its expense, all lettering, signs and placards so erected on the premises at the expiration of the term of this Agreement.
- E. **Non-Exclusive Right.** It is not the intent of this Agreement to grant to Lessee the exclusive right to provide any or all of the services described in this article at any time during the term of this Agreement. Lessor reserves the right, at its sole discretion, to grant others certain rights and privileges upon the Airport which are identical in part or in whole to those granted to Lessee. However, Lessor does covenant and agree that:
1. It shall enforce all minimum operating standards or requirements for all aeronautical endeavors and activities conducted at the Airport.
  2. Any other operator of aeronautical endeavors or activities will not be permitted to operate on the Airport under rates, terms of conditions which are more favorable than those set forth in this Agreement; and
  3. It will not permit the conduct of any aeronautical endeavor or activity at the Airport except under an approved lease and operating agreement.

#### ARTICLE IV

##### APPURTENANT PRIVILEGES

- A. **Use of Airport Facilities.** Lessee shall be entitled, in common with others so authorized, to the use of all facilities and improvements of a public nature which now are or may hereafter be connected with or appurtenant to the Airport, including the use of landing areas, runways, taxiways, navigational aids, terminal facilities and aircraft parking areas designated by Lessor.
- B. **Maintenance of Airport Facilities.** Lessor shall maintain all public and common or joint use areas of the Airport, including the Air Operations Area, in good repair, and shall make such repairs, replacements or additions thereto as, in its opinion, are required and necessary for the safe and efficient operation of the Airport. Lessor shall furnish and maintain present equipment.
- C. **Aerial Approaches.** Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to

prevent Lessee from erecting, or permitting to be erected, any building or other structure on or adjacent to the Airport, which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft.

- D. **Non-Competition.** Lessor shall not engage directly or indirectly in any of the activities described in Paragraphs A and B of Article III of this Agreement.

## ARTICLE V

### PAYMENTS

- A. **Rent and Fees.** In consideration of the rights and privileges granted by this Agreement, Lessee agrees to pay to Lessor during the term of this Agreement the following:

1. **Rent.** A rental of \$12,000.00 per annum for the Premises.
2. **Fees.**
  - a) A sum of \$.04 per gallon on all aviation fuel sold by Lessee at retail, excepting federal (including military), state and municipal government contract.
  - b) A sum equal to 50% of the gross receipts from all hangar rentals collected by Lessee at the Airport.

- B. **Payments.**

1. The rental payment specified in Paragraph A1 above, shall be paid monthly in advance in the sum of \$1,000.00 per month, the first payment to be made on or before the twenty-fifth (25<sup>th</sup>) day of each month during the term of this Agreement. It is understood and agreed that the rental payments specified in Paragraph A1 above, and in the preceding sentence, may be adjusted pursuant to Paragraph G, below, and that each such adjustment shall result in a change in the annual and monthly rental payments.
2. The fees specified in Paragraph A2, above, shall be paid to Lessor on or before the twenty-fifth (25<sup>th</sup>) day following the end of each month throughout the term of this Agreement, together with a report of Lessee's retail fuel sales and gross hangar receipts during the preceding month. It is understood and agreed that the fees specified in Paragraph A2, above, may be adjusted pursuant to Paragraph G, below, and that each such adjustment shall result in a change in the calculation of the monthly payments of fees.

- C. **Delinquency Charge.** A delinquency charge of 1.5% per month shall be added to payments required by Paragraphs A & B, above, which are rendered more than ten (10) days delinquent.

- D. **Place of Payment.** All payments due Lessor from Lessee shall be delivered to the place designated in writing by Lessor.



- E. **Renegotiation of Rent and Fees.** The rent and fees specified in Paragraphs A1 and A2, above, shall be renegotiated during the last six (6) months of each term of this Agreement. It is understood and agreed that (1) no such increases shall be required if Lessee is prohibited by law or regulation from passing such increase on to its customers.
- F. **Records.** Lessee shall provide and maintain accurate records of retail fuel sales and gross rent receipts derived under this Agreement, for a period of three (3) years from the date the record is made. Such records shall be maintained according to generally accepted accounting principles. Lessor or its duly authorized representatives shall have the right at all reasonable times during business hours to inspect the books, records and receipts of Lessee, and to verify Lessee's fuel sales and gross rent.
- G. **Annual Statement.** Within sixty (60) days after the end of each calendar year, Lessee shall furnish to Lessor a statement of fuel sales and gross rent receipts generated, collected, during the preceding calendar year certified by an officer of Lessee as to its correctness. Lessor reserves the right to audit said statement and Lessee's books and records, including examination of the general ledger and all other supporting material, at any reasonable time during business hours, for the purpose of verifying the reported fuel sales and gross rent receipts, and landing and parking fees collected.
- H. **Disputes.** In the event that any dispute may arise as to fuel sales or adjusted gross rent receipts collected, the amount claimed due by Lessor shall be paid forthwith and the dispute shall be submitted to a certified public accountant, agreeable to both parties, who shall determine the rights for the parties hereunder in conformity with generally accepted accounting principles. The fees due said accountant for such services shall be paid by the unsuccessful party, or in the event the determination is partially in favor of each party, the fee shall be borne equally by the parties.
- I. **Rental Amount.** The rental amount above listed shall be renegotiated if Lessee shall cease to be Airport Manager, due to resignation or non-performance.

## ARTICLE VI

### UTILITIES

Lessee shall have the right to use the utility service facilities located on the Premises at the commencement of the term of this Agreement. In addition, should Lessee's operations require additional utility service facilities, Lessor shall, at its expense, extend such facilities to the Premises. Lessor's obligation under this provision shall be limited to utilities extended by a public utility company to Lessor's property line, and nothing herein shall obligate Lessor to provide any utility to Lessee that is not otherwise available to Lessor at its property line. Such limitation shall also include the inability of Lessor to provide utility facilities or service due to the imposition of any limit on consumption or

on the construction of additional utility facilities, or the allocation or curtailment of utility facilities or service by law or regulation. Lessee agrees to pay the cost of all utilities used by Lessee. In the event Lessee fails to pay any utility bills when due, Lessor may, at its option, pay the same and collect from Lessee the amounts so disbursed, plus interest at the rate of 1.5% per month or fraction thereof.

## ARTICLE VII

### INSURANCE

- A. **Required Insurance.** Lessee shall obtain and maintain continuously in effect at all times during the term of this Agreement, at Lessee's sole expense, the following insurance:
1. **Comprehensive general liability insurance** protecting Lessor against any and all liability by reason of Lessee's conduct incident to the use of the Premises, or resulting from any accident occurring on or about the roads, driveways, or other public places, including runways and taxiways, used by Lessee at the Airport, caused by or arising out of any wrongful act or omission of Lessee, in the minimum amount of \$1,000,000.00;
  2. **Passenger liability insurance** in the minimum amount of \$1,000,000.00 per seat, and \$1,000,000.00 per occurrence;
  3. **Hangar keeper's liability insurance** in the minimum amount of \$1,000,000.00;
  4. **Product liability insurance** in the minimum amount of \$1,000,000.00;
  5. **Fire and extended coverage insurance** on all fixed improvements erected by Lessee on or in the Premises to the full insurable value thereof.
- The insurance specified in Paragraphs A2 through A4, above, shall name Lessor as an additional insured.
- B. **Notice.** Lessor agrees to notify Lessee in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder of which Lessor has knowledge, and to cooperate with Lessee in the investigation and defense thereof.

## ARTICLE VIII

### INDEMNIFICATION

To the extent not covered by insurance carried in favor of Lessor, Lessee shall keep and hold harmless Lessor from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons excluding punitive damages, including agents or employees of Lessor or Lessee, by reason of death or injury to persons or loss or damage to property, resulting from Lessee's operations, or anything done or omitted by Lessee, under this Agreement except to the extent that such claims, demands, suits, judgments, costs and expenses

may be attributed to the acts or omissions of Lessor or its agents or employees. The hold harmless provision shall be limited to the scope and extent of insurance coverage that lessee is required to provide under this agreement.

## **ARTICLE IX**

### **LESSEE AS INDEPENDENT CONTRACTOR**

In conducting its business hereunder, Lessee acts as an independent contractor and not as an agent of Lessor. The selection, retention, assignment, director and payment of Lessee's employees shall be the sole responsibility of Lessee and Lessor shall not attempt to exercise any control over the daily performance of duties by Lessee's employees.

## **ARTICLE X**

### **ASSIGNMENT**

This agreement, or any part thereof, may not be assigned, transferred or subleased by Lessee, by process or operation of law or in any other manner whatsoever, without the prior written consent of Lessor, which consent shall not be withheld unreasonably.

## **ARTICLE XI**

### **NON-DISCRIMINATION**

Notwithstanding any other or inconsistent provision of this Agreement, during the performance of this Agreement, Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration for this Agreement, does hereby covenant and agree, as a covenant running with the land, that:

- A. No person on the grounds of race, color, religion, sex, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in, the use of the Premises.
- B. In the construction of any improvement, on over or under the Premises, and the furnishing of services therein or thereon, no person on the grounds of race, color, religion, sex or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;
- C. Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, 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.

- D. In the event of breach of any of the above non-discrimination covenants, Lessor shall have the right to terminate this Agreement and to reenter and repossess the Premises and hold the same as if said Agreement had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 have been followed and completed, including expiration of appeal rights.

## ARTICLE XII

### REQUIREMENTS OF THE UNITED STATES

This Agreement shall be subject and subordinate to the provisions of any existing or future agreement between Lessor and the United States, or any agency thereof, 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 or operation of the Airport; provided, however, that Lessor shall, to the extent permitted by law, use its best efforts to cause any such agreements to include provisions protecting and preserving the rights of Lessee in and to the Premises, and to compensation for the taking thereof, interference therewith and damage thereto, caused by such agreement or by actions of Lessor or the United States pursuant thereto.

## ARTICLE XIII

### DEFAULT AND TERMINATION

- A. **Termination by Lessee.** This Agreement shall be subject to termination by Lessee in the event of any one or more of the following events:
1. The abandonment of the Airport as an airport or airfield for any type, class or category of aircraft.
  2. The default by Lessor in the performance of any of the terms, covenants or conditions of this Agreement, and the failure of Lessor to remedy, or undertake to remedy, to Lessee's satisfaction, such default for a period of sixty (60) days after receipt of notice from Lessee to remedy the same.
  3. Damage to or destruction of all or a material part of the Premises or Airport facilities necessary to the operation of Lessee's business.
  4. The lawful assumption by the United States, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to restrict substantially Lessee from conducting business operations for a period in excess of ninety (90) days.
- B. **Termination by Lessor.** This Agreement shall be subject to termination by Lessor in the event of any one or more of the following events:
1. The default by Lessee in the performance of any of the terms, covenants or conditions of this Agreement, and the failure of Lessee to remedy, or undertake to remedy, to

- Lessor's satisfaction, such default for a period of sixty (60) days after receipt of notice from Lessor to remedy the same.
2. Lessee files a voluntary petition in bankruptcy, including a reorganization plan, makes a general or other assignment for the benefit of creditors, is adjudicated as bankrupt or if a receiver is appointed for the property or affairs of Lessee and such receivership is not vacated within sixty (60) days after the appointment of such receiver.
- C. **Exercise.** Exercise of the rights of termination set forth in Paragraphs A and B, above, shall be by notice to the other party within sixty (60) days following the event giving rise to the termination.
- D. **Removal of Property.** Upon termination of this Agreement for any reason, Lessee, at its sole expense, shall remove from the Premises all signs, trade fixtures, furnishings, personal property equipment and materials which Lessee was permitted to install or maintain under the rights granted herein. If Lessee shall fail to do so within thirty (30) days, then Lessor may effect such removal or restoration at Lessee's expense, and Lessee agrees to pay Lessor such expense promptly upon receipt of a proper invoice therefor.
- E. **Causes of Breach; Waiver.**
1. Neither party shall be held to be in breach of this Agreement because of any failure to perform any of its obligations hereunder if said failure is due to any cause for which it is not responsible and over which it has no control; provided, however, that the foregoing provision shall not apply to failures by Lessee to pay fees, rents or other charges to Lessor.
  2. The waiver of any breach, violation or default in or with respect to the performance or observance of the covenants and conditions contained herein shall not be taken to constitute a waiver of any such subsequent breach, violation or default in or with respect to the same or any other covenant or condition hereof.
- F. **Payment for Leasehold Improvements.** In the event of any cancellation or termination of this Agreement, for any cause other than a breach or default by Lessee, Lessor shall, within thirty (30) days of the date of such termination or cancellation, pay Lessee, for all of the leasehold improvements installed or constructed by Lessee pursuant to Paragraph A of Article V of this Agreement, a cash price equal to Lessee's unamortized costs for said improvements. Lessee agrees that, for purposes of this provision, it shall amortize the actual direct cost of such improvements on a straight-line basis, commencing with the effective date of this Agreement and extending for the twenty (20) year term hereof.

## ARTICLE XIV

### MISCELLANEOUS PROVISIONS

- A. **Entire Agreement.** This Agreement constitutes the entire understanding between the parties, and as of its effective date supersedes all prior or independent agreements between the parties covering the subject matter hereof. Any change or modification hereof must be in writing signed by both parties.
- B. **Severability.** If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.
- C. **Notice.** Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be sent by registered mail, return receipt requested, with postage and registration fees prepaid:
1. If to Lessor, addressed to:  
  
Director of Public Service  
150 East High Avenue  
New Philadelphia, Ohio 44663
  2. If to Lessee, addressed to:  
  
Professional Aviation Municipal Management Group Ltd.
- Notices shall be deemed to have been received on the date of receipt as shown on the return receipt.
- D. **Headings.** The headings used in this Agreement are intended for convenience of reference only and do not define or limit the scope or meaning of any provision of this Agreement.
- E. **Governing Law.** This Agreement is to be constructed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**LESSOR: City of New Philadelphia**

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

Title: Mayor

**LESSEE: Professional Aviation Municipal Management Group Ltd.**

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

Title: President