

STATE OF GEORGIA
COUNTY OF WHITFIELD

DALTON MUNICIPAL AIRPORT GROUND LEASE

THIS LEASE AGREEMENT is effective as of the 19TH day of April, 2021 (the "Effective Date") by and between the CITY OF DALTON, a municipal corporation (the "Lessor"); and Steve Herndon, an individual, (the "Lessee").

WHEREAS, the Lessor is the owner of that certain tract or parcel of land more particularly described in Exhibit "A" of this Lease Agreement (the "Premises"); and

WHEREAS, it is the desire of the Lessor and the Lessee to enter into a lease agreement with respect to the Premises.

THEREFORE, the Lessor, for and in consideration of all the conditions, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be kept and performed by the Lessee, has leased and rented, and by these presents does lease and rent the Premises unto the Lessee; and the Lessee hereby agrees to lease and take up the Premises from the Lessor on those same terms and conditions that hereinafter appear.

1. **THE PREMISES:** The Lessee hereby leases from Lessor a seventy (70) foot by seventy (70) foot property upon the premises of the CITY OF DALTON MUNICIPAL AIRPORT (the "Airport") as more particularly described on the plat attached hereto as "Exhibit A" and made a part hereof (the "Premises").

2. **THE HANGAR:** Lessee shall construct an aircraft hangar on the Premises that has dimensions of sixty (60) feet by sixty (60) feet (the "Hangar"). The design and placement of the Hangar on the Premises shall be subject to written approval by the Dalton Airport Authority ("DAA") prior to the commencement of construction. All Hangar construction activities by Lessee shall be completed in a manner so as to cause minimal conflict with Airport activities and in any event shall be completed with twelve (12) months from the date of this Lease.

Lessee shall have a forty-five (45) day feasibility period following the effective date of this Lease, during which time Lessee may complete such surveys, testing or analysis as Lessee deems appropriate. If Lessee determines during the feasibility period that the Premises are unsatisfactory or unsuitable to Lessee, Lessee shall be entitled to terminate the Lease by giving notice of termination to the Lessor in writing prior to the end of the feasibility period.

Lessee shall be responsible for property tax on the Hangar and its contents. Lessee shall allow no materialman's or other lien to attach to the Premises or improvements thereon, except as specifically approved in advance in writing by Lessor. Lessee indemnifies and holds Lessor, the DAA, their officers, employees and agents harmless from any and all claims arising due to the construction of any improvements on the Premises whether in contract or due to injury or damage to persons or personal property on the Premises due to said construction.

Lessor, during the Term, grants and conveys to Lessee (a) an easement for ingress over and across such portion of the Airport as is reasonably necessary, in the sole discretion of Lessor, to provide access to the Property and, (b) a construction easement over and across that portion of the Airport reasonably necessary, in the sole discretion of Lessor, to construct the Hangar on the Premises.

3. **TERM:** The term of this Lease shall be for twenty-five (25) years commencing on the Effective Date and terminating at midnight on April 18, 2046 unless sooner terminated as hereinafter provided in this Lease.

4. **RENT:** Lessee agrees to pay Lessor Two Hundred Forty-Five Dollars (\$245.00) (the "Base Rental") per month as rental for the use of the above described Premises. Rent is payable in advance on or before the 10th of each month of the Lease Term. If any Term commences or ends on a date other than the first of the month, Lessee shall pay for such month a prorata amount based on the total number of days in that month in which the Lease was in effect. The annual Base Rental for each year of the Original Term or any Extended Term of this Lease beginning on the first anniversary of the effective date of this Lease, shall increase on the anniversary of the effective date of this Lease by the percentage increase, if any, in the Consumer Price Index for All Urban Consumers – South Urban Area, all items (1982-1984 equals 100) during the Lease year preceding the applicable year of adjustment. If the Consumer Price Index published by the U.S. Bureau of Labor Statistics is discontinued, then the Consumer Price Index published by the U.S. Department of Commerce shall be used (with proper adjustment), and in the event said Index is discontinued, then Landlord and Tenant shall, in good faith, agree on a suitable substitute. In no event shall the rental amount for an Extended Term be less than the rental amount of the immediately preceding Term.

5. **UTILITIES:** The Lessee shall be solely responsible for all charges for gas, electricity, telephone and other utilities services used, rendered, supplied or imposed upon the Premises and shall indemnify the Lessor and save it harmless against any liability or charges on account thereof. If the Lessee does not pay such utility charges when due, the Lessor may pay the same and such payment shall be added as additional rent hereunder.

6. **USE OF PREMISES:** The Premises shall be occupied and used in conformity with all laws, statutes, ordinances, rules, restrictions and orders of any federal, state or municipal governments or agencies thereof having jurisdiction over the use of the Premises. The Premises shall be used for general aviation related storage only and not for commercial operations (meaning that Lessee shall not provide any aeronautical service offered to the public by the Fixed Base Operator for the Dalton Municipal Airport). The storage of flammable liquids, gases, fuels, lubricating or waste oil, acids, paint and solvents is prohibited except that such materials may be kept and stored in an aircraft in the proper receptacles installed in the aircraft for such purpose, or except as may be necessary for use in the operation of Lessee's aircraft, in which event any such substances shall be delivered in such amount, and stored and used only as approved by the Lessor and in accordance with applicable federal, state and local statutes, ordinances, rules and regulations in force during the term of the Lease.

Lessee and every person entering the Property or the Airport as a member, guest, employee or invitee of Lessee shall abide by all laws, ordinances, rules, regulations, of the Federal Aviation

Administration, the federal government, the State of Georgia, the Lessor and the DAA for the operation and use of the Airport together with all other duly constituted public authorities having jurisdiction. Lessee shall be responsible for ensuring that any person entering the Airport or the Property as a guest, member, employee or invitee of Lessee abides by all such rules. Failure to do so may result in termination of this Lease.

Lessee will not compete with Lessor, or engage as a fixed Base Operation (FBO), or local fueling agent, at the Airport unless agreed upon in writing by Lessor.

7. **INDEMNIFICATION AND INSURANCE:** Lessee shall indemnify Lessor from and hold Landlord harmless against all claims, demands and judgments for loss, damage or injury to person or property, resulting from or accruing by reason of the use, occupancy or non-occupancy of the Premises or by the negligence or willful acts of Lessee, its agents, officers, employees, invitees or licensees and from all expenses incurred by Lessor as a result thereof including, without limitation, reasonable attorneys' fees and expenses and court costs. Lessee agrees to carry at its own expense through the term of this Lease, public liability insurance covering the Premises, and Lessee's use thereof, in an amount periodically adjusted to conform with the then current standard business practices pertaining to aircraft hangers. Lessee shall provide Lessor with copies or evidence of such insurance coverage prior to the commencement date of the Lease and annually thereafter. Such insurance policies shall name Lessor as an additional insured.

Lessee agrees that all personal property that may be at any time in the Premises shall be at Lessee's sole risk or at the risk of those claiming through Lessee and that Lessor shall not be liable for any damage to or loss of such personal property except if arising from or caused by the sole fault or negligence of Lessor. All personal property remaining on the Premises after termination of this Lease shall be deemed abandoned by the Lessee and may be disposed of by Lessor without liability to Lessee.

8. **AFFIRMATIVE COVENANTS OF LESSEE:** The Lessee covenants and agrees that the Lessee will, without demand:

- a. Keep the premises reasonably clean and free from all rubbish, dirt and other matter;
- b. At the Lessee's own expense maintain the Premises and the improvements thereon in good repair and at least as good condition as they existed at the time of the commencement of this Lease after construction thereof, allowing for ordinary wear and tear;
- c. Make all necessary repairs, interior and exterior, to all improvements located upon the Premises;
- d. Comply with any requirements of the constituted public authorities, and with the terms of any state or federal statutes or local ordinances or regulations applicable to the Lessee or its business and to the Lessee's use of the Premises, and further, to hold the Lessor harmless from any penalties, fines, costs or damages including any attorney's fees associated with defending against such penalties or fines from any failure of the Lessee to do so;
- e. Give to the Lessor prompt notice of any accident, fire or damage occurring on or to the Premises;
- f. Remove, on or prior to the expiration of this Lease, any signs located on the Premises

by or on behalf of the Lessee which can be removed without damage to the Premises. The Lessee agrees that any such signs remaining on the Premises after the time and date of termination of this Lease may be deemed abandoned by the Lessee to the Lessor.

- g. Indemnify the Lessor against all expenses, liabilities and claims of any kind, including reasonable attorney's fees, by on behalf of any person or entity arising out of either:
 - (i) The failure by the Lessee to perform any of the terms or conditions in this Lease;
 - (ii) Any laborer's, materialman's or mechanic's lien or security interest filed against the Premises;
 - (iii) All claims, damages, expenses, liabilities, actions or causes of action of any kind or nature arising from breaches of the Lessee's representations, warranties or covenants hereunder or from acts or failure to act occurring, or conditions existing, during the Lessee's occupancy of the Premises.
- h. Secure any and all permits for such use as the Lessee intends to make of the Premises prior to the Effective Date of this Lease and upon obtaining such permit the Lessee shall not use Premises in any manner inconsistent with or in violation of such permit.

9. **NEGATIVE COVENANTS OF LESSEE:** The Lessee covenants and agrees that it will do none of the following things without Lessor's prior written consent which consent shall not be unreasonably held:

- a. Occupy the Premises in any type or manner or for any other purpose than set forth in this Lease ;
- b. Assign, mortgage or pledge Lessee's interest under this Lease ;
- c. Sublease any of the Premises.
- d. Use the Premises for the "treatment", "storage", or "disposal" of any "hazardous waste", as such terms are defined in the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et.seq., as amended;
- e. Release on the Premises a "hazardous substance" as such term is defined in the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. §9601 et.seq., or install or maintain an underground storage tank as defined under State and federal environmental laws and regulations in addition to any underground storage tank located on the Premises at the commencement of this Lease;
- f. Do or knowingly permit any other person to do anything on the Premises, or any part thereof, or doing or knowingly permitting anything to be brought or kept on the Premises, or knowingly permit the use of the Premises for any business or purpose, that would:
 - (i) Cause an increase in the recognized standard rate of any insurance on the Premises; and
 - (ii) Cause a violation of any requirements of the constituted public authorities within the terms of any State or federal statutes or local ordinances or regulations applicable to the Lessee's use and occupancy of the Premises.

10. **NO REPRESENTATION BY LESSOR:** Neither the Lessor nor the Lessor's agents have made any representations or promises with the respect to the Premises, except as expressly set forth herein. The taking of possession of the Premises by the Lessee shall be

conclusive evidence against the Lessee, and the Lessee accepts the Premises "as is", that the Premises and any portion thereof occupied by the Lessee at the commencement of this Lease Agreement are in satisfactory condition.

11. **ADDITIONAL COVENANTS:** Lessor shall not be liable for any damage, compensation or claim by reason of inconvenience or annoyance arising from the interruption of the use of the Premises. Provided, however, Lessor shall give fifteen (15) days prior written notice to Lessee of any planned and known interruption due to construction work scheduled by the Lessor. Lessee specifically agrees that its leasehold of the Premises and any right thereunder shall be subordinate to the Lessor's operation of a municipal airport and that the Lessor may take any reasonable action necessary in furtherance of the operation of a municipal airport without incurring liability to the Lessee, and the Lessee waives any claim against the Lessor for damage or expense incurred by it as a result of the Lessor's municipal airport operation, construction or maintenance, excluding however the Lessor's negligent or unlawful acts.

It is hereby covenanted and agreed by and between the parties that any law, usage or custom to the contrary notwithstanding, the Lessor shall have the right at all time to enforce the covenants and provisions of this Lease in strict accordance with the terms hereof, notwithstanding any conduct or custom on the part of the Lessor in refraining from doing so at any time or times, and further, that the failure of the Lessor at any time or times to enforce its right under said covenants and provisions strictly in accordance with the same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions or covenants of this Lease, or as having in any way or manner modified the same.

Lessee agrees to grant to the Lessor, its employees and agents reasonable access to the Premises and the improvements on the Premises.

12. **IMPROVEMENTS:** Lessee agrees that it will not remove the permanent improvements on the Premises during the term of the Lease, except with prior written permission of the Lessor. All improvements located upon the Premises after the termination of this Lease shall remain on and shall not be removed from the Premises. At the termination of this Lease, all such improvements shall remain and become the property of the Lessor and the Lessee shall execute any instrument(s) or documents(s) reasonably requested by the Lessor to evidence that transfer of title and interest.

13. **EVENTS OF DEFAULT:** The occurrence of any of the following shall constitute an "Event of Default" hereunder:

- a. Any part, portion, or component of the rent or any other sums payable under this Lease are not paid within five (5) days after receipt of the Lessor's notice that the same is past due;
- b. Any petition is filed by or against the Lessee under any section or chapter of the Federal Bankruptcy Code, and, in case of a petition filed against the Lessee, such petition is not dismissed within 30 days after the date of such filing;
- c. Lessee becomes insolvent;

- d. Lessee breaches or fails to comply with any term, provision, condition or covenant of this Lease Agreement, other than payment of rent, which breach is not cured within thirty (30) days after written notice by the Lessor of such default is given to the Lessee, and, if the failure cannot be reasonably cured within such thirty (30) days period, the Lessee fails to commence in good faith to cure the breach within such thirty (3) day period.

14. **REMEDIES:** Upon the occurrence of an Event of Default the Lessor may do or perform any one or more of the following in addition to, and not in limitation of, any other remedy or right permitted it by law or by this Lease

- a. Lessor may terminate this Lease, in which event the Lessee shall immediately surrender the Premises to the Lessor. If the Lessee fails to do so, the Lessor may, without prejudice to any other remedy the Lessor may have either by law or by this Lease, enter upon the Premises and obtain a writ of Possession and then remove the Lessee and the Lessee's personal property without being liable to the Lessee in any manner whatsoever for damages therefrom. Lessee shall be liable to the Lessor for, and shall indemnify and hold the Lessor harmless from and against, all costs or damage which the Lessor may suffer by reason of such termination of this Lease, whether through inability to relet the Premises, through a decrease in rent received, by damage to the Premises, or otherwise.
- b. Lessor may enter the Premises if abandoned and remove the Lessee and its personal property and may relet the Premises as the agent of the Lessee and receive such rent therefore as the agent of the Lessee.

15. **REMEDIES CUMULATIVE:** All of the remedies hereinbefore given to the Lessor and all rights and remedies given by law or in equity to the Lessor shall be cumulative and concurrent. No termination of this Lease or taking or recovering of the Premises shall deprive the Lessor of any of its remedies or actions against the Lessee including but not limited to rent due under the terms hereof in the future as if there had been no termination, nor as to bringing of any action for rent or breach of covenant, nor shall resort to any other remedy herein provided for the recovery of rent be construed as a waiver of possession of the Premises.

16. **PARTIES BOUND:** All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several and respective heirs, executors, administrators, successors and assigns of the parties. The word "Lessee" shall be deemed to and be taken to mean each and every person or party mentioned as a Lessee herein, be the same one or more.

17. **NOTICES:** Except for the legal process which may also be served as provided by law, all notices required or desired to be given with respect to this Lease Agreement shall be in writing and shall be deemed to have been given when hand delivered or three (3) days after deposited, postage prepaid, with the United States Postal Service, Certified, Return Receipt Requested, and properly addressed as follows:

To LESSOR:

City of Dalton
P.O. Box 1205
Dalton, GA 30722-1205
Attention: City Administrator

To LESSEE:

Such addresses may be changed from time to time by either party by notice in writing to the other.

18. **NO ESTATE IN LAND:** This Lease creates the relationship of landlord and tenant between the Lessor and the Lessee. No estate shall pass out of the Lessor, and the Lessee has only a usufruct which is not subject to levy and sale.

19. **HOLDING OVER:** In no event shall there be any renewal of this Lease by operation of law, and if the Lessee remains in possession of the Premises after the termination of this Lease and without the execution of a new lease, the Lessee shall be deemed a tenant at will and such tenancy may be terminated by either party as then provided by the laws of the State of Georgia.

20. **SEVERABILITY:** If any clause or provision of this Lease is or becomes illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, effective during its terms, the intention of the parties hereto is that the remaining parts of this Lease shall not be affected thereby unless the Lessee is prohibited from the rental of hangar space, in which event, either party may terminate this Lease upon written notice to the other setting forth the cause.

21. **SUCCESSORS AND ASSIGNS:** The provisions of this Lease shall inure to the benefit of and be binding upon the Lessor and the Lessee, their respective permitted successors and assigns.

22. **GOVERNING LAW:** The laws of the State of Georgia shall govern the interpretation, validity, performance and enforcement of this Lease. The exclusive venue for any action arising out of this Lease shall be the Superior Court of Whitfield County Georgia, and the parties hereby waive all personal jurisdictional defenses pertaining to such venue.

23. TIME IS OF THE ESSENCE: Except as otherwise specifically provided herein, time is of the essence of this Lease in each and all of its provisions.

24. EXECUTION: This Lease may be executed in any number of counterparts, each of which shall be deemed an original and any of which shall be deemed to be complete in itself and be admissible into evidence or used for any purpose without the production of the other counterparts.

25. QUIET ENJOYMENT: If and so long as Lessee pays the prescribed rent and performs or observes all of the terms, conditions, covenants and obligations of this Lease required to be performed or observed by it hereunder, Lessee shall at all times during the term hereof have the peaceable and quiet enjoyment, possession, occupancy and use of the Premises subject to right of Lessor by its agents to inspect reasonably.

26. COMPLETE AGREEMENT; AMENDMENTS: This Lease constitutes the entire agreement between the parties hereto; it supersedes all previous understandings and agreements between the parties, if any, and no oral or implied representation or understanding shall vary its terms, and it may not be amended except by written instrument executed by both parties hereto.

27. ATTORNEY FEES: Attorney Fees. If any rent or other debt owing by Lessee to Lessor hereunder is collected by or through an attorney at law, Lessee agrees to pay an additional amount equal to fifteen percent (15%) of such sum as attorneys' fees.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date and year first above written.

LESSEE:

By:_____

LESSOR:

CITY OF DALTON, GEORGIA

By:_____

Mayor

ATTEST:

City Clerk