

(FINAL DRAFT – 04/24/2019)

**Fixed Base Operations Use and Lease Agreement  
Between the  
Borough of Pottstown, Pennsylvania  
and  
Fly Elite, LLC  
at  
Pottstown Municipal Airport – N47**

This Fixed Base Operations Use and Lease Agreement (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between the Borough of Pottstown, Pennsylvania (“Borough”), a Political Subdivision of the Commonwealth of Pennsylvania, and Fly Elite, LLC, a Pennsylvania limited liability company (“Fly Elite”).

**RECITALS**

WHEREAS, the Borough owns and operates the Pottstown Municipal Airport (“**Airport**”);

WHEREAS, the Borough Council is empowered to provide for the acquisition, construction, operation, and regulation of the Airport;

WHEREAS, the Borough deems it advantageous to itself and to its operation of the Airport to Lease unto Fly Elite certain premises and to grant unto Fly Elite certain rights, privileges and uses therein, as necessary to conduct its fixed base operation (“**FBO**”) as hereinafter set forth;

WHEREAS, Fly Elite wishes to lease space and to offer FBO services at the Airport pursuant to the terms and conditions as hereinafter set forth;

WHEREAS, the parties desire to enter into a Use and Lease Agreement defining their rights, obligations, services, and privileges with regard to the operation of Airport and the lease and use of its facilities as hereinafter set forth.

NOW, THEREFORE in consideration of the rents, premises, covenants, agreements, obligations and privileges contained in this Lease and Use Agreement, the Borough hereby leases, demises, and grants to Fly Elite, and Fly Elite hereby leases from the Borough, the following premises, rights, obligations, and privileges upon the following mutually agreed upon terms and conditions:

**Section 1. Term.**

The term of this Agreement (“**Term**”) shall be for a period of five (5) years commencing on January 1, 2019, (“**Commencement Date**”) and ending at midnight local time on December 31, 2023, unless sooner terminated pursuant to the provisions of this Agreement.

## **Section 2. Premises.**

Borough grants, demises, and leases to Fly Elite the following Premises solely for the conduct of Fly Elite's business as an FBO at the Airport:

- A. An Aviation Terminal office building (Office) containing office space, classroom area, and public area consisting of approximately one thousand four hundred sixty-eight square feet (1,468 sf);
- B. An aircraft hangar (Hangar) containing approximately three thousand seven hundred fifty square feet (3,750 sf). Fly Elite shall allow certain persons and/or groups approved by the Borough in writing to improve, furnish, and use at their discretion a storage/meeting area located on the east side of the aircraft hangar;
- C. A fuel storage area (fuel farm) consisting of one above ground 12,000-gallon tank for 100LL fuel and one above ground 3,000-gallon tank for jet fuel along with associated pumps, filters, and metering devices;
- D. An automobile parking area located to the west of the Office and one-half of the parking lot to the south of the Office; and
- E. Seven (7) airplane tie-downs (#12 - #18) located west of the fuel farm.

The Borough grants Fly Elite the Non-exclusive use of the asphalt apron located between the hangar/fuel farm and the main taxiway, from the east end of the hangar to the leased tie-down area. Fly Elite is to manage this asphalt apron on behalf of the Borough and utilize it to maneuver, park, and tiedown transient aircraft.

Exhibit "A" of this Agreement, incorporated into and made a part hereof, depicts these leased Premises. Fly Elite has examined the leased Premises and agrees to accept and take them in their present condition without any representation by Borough. Fly Elite agrees not to install any fixtures or make any alterations, additions, improvements, or repairs (except such as are normally installed or made in the regular course of its business) without the prior written approval of the Borough.

## **Section 3. FBO Services.**

At a minimum, Fly Elite shall offer FBO services, facilities, equipment, and supplies to the public as set forth below:

- A. **Fuel and Oil Sales and Line Service.** In conducting aviation fuel and oil sales and line service on the Airport, Fly Elite shall provide:
  - i. The sale and into-plane delivery of common and recognized brands of aviation fuel, lubricants, and other aviation petroleum products.
  - ii. Sufficient personnel trained in accordance with the requirements of the latest edition of NFPA 407 at least five (5) hours per day, seven (7) days a

week, and on call by reasonably accessible telephone at other hours, to provide customer service including coordinating ground transportation services; aircraft fueling, marshalling, and parking of aircraft to adequately meet the needs of the public. The hours of operation shall be approved in writing by the Borough

- iii. Inspections of the fuel farm in conformance with all applicable National Fire Protection Association ("NFPA") safety requirements, fuel company requirements, and the current edition of FAA AC 150-5230-4, *Aircraft Fuel Storage, Handling, Training, and Dispensing on Airports*
- iv. Equipment for repair and inflating aircraft tires, servicing oleo struts, changing engine oil, washing aircraft and aircraft windows and windshields, and for recharging or energizing discharged aircraft batteries and starters
- v. Dedication of nine hundred (900) square feet of the Office space described in Section 2, conveniently located and properly heated and air conditioned, for an office, pilot flight planning area, lounge or waiting rooms for passengers, and transient aircraft crews, together with sanitary rest rooms and public telephone
- vi. Adequate towing equipment and parking and tie-down areas to safely and efficiently move aircraft and store them in all reasonable expected weather conditions
- vii. An adequate inventory of at least two brands of generally accepted grades of aviation engine oil and lubricants.

**B. Flight Training and Aircraft Rental.** In conducting flight training and aircraft rental service on the Airport, Fly Elite shall provide as a minimum:

- i. 250 square feet of heated and air conditioned space for an office, class room with access to public rest rooms;
- ii. One full-time properly certified flight instructor for single engine land aircraft on duty during normal business hours, or at other business hours approved in writing by the Borough
- iii. One dual equipped single engine land aircraft properly equipped and maintained for flight instruction, and such additional type of aircraft as may be required to give flight instruction of the kind advertised
- iv. Adequate mock-ups, pictures, slides, or other visual aids necessary to provide proper ground school instruction
- v. Properly certificated ground school instructor providing regularly scheduled ground school instructions sufficient to enable students to pass the FAA written examinations for private pilot and commercial ratings
- vi. Continuing ability to meet certification requirements of the FAA for the flight training proposed.

**C. Aerial Photography Services.**

- D. **Other Services.** Upon prior written approval of the Borough, Fly Elite may provide the following aeronautical services to the public:
- i. installation and operation of a 24-hour self-service, credit card fuel dispenser or other self-service fueling arrangement
  - ii. Aircraft sales
  - iii. Specialized commercial flying services.

**Section 4. Rights and Obligations.**

In providing any of the required or other services or activities specified in this agreement, Fly Elite shall have the right and obligation to:

- A. The non-exclusive use, in common with others, of the airport parking areas, appurtenances, and improvements thereon
- B. Install, operate, maintain, repair, and store all equipment necessary for the conduct of Fly Elite's business subject to the approval of Borough in writing in the interests of the safety and convenience of all concerned,
- C. The exclusive right of ingress to and egress from the leased Premises, which right shall extend to Fly Elite's employees, passenger's, guests, invitees, and patrons
- D. The right, in common with others authorized to do so, to use common areas of the airport, including runways, taxiways, aprons, roadways, floodlights, landing lights, signals and other conveniences for the takeoff, flying and landing of the aircraft of Fly Elite
- E. The obligation to provide 24-hour per day public telephone access for emergency calls and calls to flight service and weather information
- F. The obligation to post, in a public place, insurance requirements, flight patterns, and the airport license.

**Section 5. Rents, Fees, and Charges.**

Fly Elite agrees to pay to Borough for rental of the leased premises for use of the airport premises, together with all facilities, equipment, improvements, except as otherwise stated herein, as well as, for the privilege of conducting business. Fly Elite shall pay to the Borough the following fees, rents and charges, subject to any credits and deductions outlined below:

- A. **Rent.** Commencing on January 1, 2019, Fly Elite shall pay to the Borough annual rent in the amount of Twenty Thousand Dollars (\$20,000.00) (hereinafter "Base Rent"), which shall be payable in monthly installments in the amount of One Thousand Six Hundred Sixty-Seven Dollars (\$1,667.00) which shall be due in advance on the 1<sup>st</sup> of each month. Fly Elite shall be in default if Borough does not receive the monthly rental payment by the 10<sup>th</sup> day of the month.
- B. **Rent Escalation.** Beginning January 1, 2020, and each January 1<sup>st</sup> thereafter, the Base Rent shall increase by five percent per year.

- C. **Fuel Flowage Fee.** Commencing on January 1, 2019, Fly Elite shall pay a flowage fee of ten cents (\$0.10) per gallon of fuel sold and/or used in the course of providing its services. Flowage fees shall be paid by Fly Elite to Borough semi-annually for the periods January 1<sup>st</sup> through June 30<sup>th</sup> and July 1<sup>st</sup> through December 31<sup>st</sup>. The payment representing the period of January 1<sup>st</sup> through June 30<sup>th</sup> shall be due August 15<sup>th</sup> of each year and the payment reflecting the period of July 1<sup>st</sup> through December 31<sup>st</sup> shall be due February 15<sup>th</sup> of each year and shall be accompanied by a complete audited report submitted by the Fly Elite to the Borough. Said report shall contain a summary of invoices of fuel purchased and delivered to the fuel farm, and all fuel sold and/or used by the Fly Elite during the period. The fuel flowage fee shall increase to fifteen cents (\$0.15) per gallon on January 1, 2021 and twenty cents (\$0.20) per gallon beginning January 1, 2023.
- D. **Base Rent Credit.** Fly Elite shall be permitted to reduce payment of Base Rent through deductions outlined below in an amount not to exceed Eleven Thousand, Five Hundred Dollars (\$11,500.00) annually. Base Rent credit shall include the following:
1. **Lawn mowing services within airport property bounded by Grosstown Road, Berks Street, Glasgow Street and Circle of Progress (not including future runway expansion area) as more specifically described in Exhibit B – Three Thousand Dollars (\$3,000.00).**
  2. **Fuel Farm Regular Maintenance including NFPA inspections, Pennsylvania weights and measures, routine inspections, purchase and replacement of filter and filter changes at intervals recommended by the manufacturer, dispensing system calibration, static reel, painting, fencing, gates, etc. – Four Thousand Dollars (\$4,000.00). In addition, Tenant shall be responsible for all repairs and replacement of the Fuel Farm Static Reel.**
  3. **Snow Removal on all airport surfaces – Three Thousand Dollars (\$3,000.00).**
  4. **General upkeep and maintenance of terminal building and adjacent hangar for items such as lights, windows/doors, plumbing but not including utility service lines, roof or structure, as well as, runway navigation aids – One Thousand Five Hundred Dollars (\$1,500.00)**

Should Fly Elite choose to exercise any of the responsibilities described in Section 5.D above, Fly Elite shall first provide 60-day written notice to Borough of its intent to assume those responsibilities. At all times, Borough shall have the right to review and inspect the leased premises to ensure that Fly Elite has complied with its responsibilities. Borough, in its sole and reasonable discretion shall determine whether or not Fly Elite has complied with its responsibilities. In the event maintenance responsibilities are discontinued by Fly Elite, Fly Elite shall provide the Borough a minimum of 12-month notice in advance. In the event that Fly Elite fails to undertake the maintenance responsibilities described in 5.D and Borough is required to

undertake such maintenance obligations, the rent credit will immediately terminate and Tenant shall pay to Borough, as a penalty, one and one-half times the rate charged to Borough to undertake the maintenance obligations, in addition to the monthly rental amounts as set forth in Section 5(A).

Payments shall be made either in person or by mail to the Borough of Pottstown, to the attention of the Finance Department, 100 East High Street, Pottstown, Pennsylvania. Payments by check or cash can be presented to the cashier's office located in Borough Hall at the same address. There will be a Thirty Dollar (\$30.00) Late Penalty Fee charged for payment received after the 10<sup>th</sup> day of any month. There will be an additional charge of Thirty Dollars (\$30.00) for any check that is returned from a bank.

Fly Elite shall provide and maintain accurate records of retail fuel sales and gross receipts derived under this agreement for a period of three (3) years from the date the record is made. The Borough, or its duly authorized representative, shall have the right at all reasonable times during business hours to audit the books, records, and receipts of Fly Elite, and to verify the quantity of fuel sales and gross receipts of its operations. In the event that any dispute may arise as to the volume of fuel sales, the amount claimed due by the Borough shall be paid forthwith and the dispute shall be submitted to a certified public accountant, agreeable to both parties, who shall determine the rights of the parties hereunder to conformity with generally accepted accounting principles. The fees due said accountant for such service 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.

#### **Section 6. Taxes and Assessments.**

Fly Elite shall, at its own expense and at all times during the term of this Agreement, pay all lawful taxes and assessments levied against the leased Premises as well as all taxes and assessments levied against the personal property used by Fly Elite in its operation on the leased Premises. None of the terms, covenants or conditions of this Agreement shall be construed as a release of waiver on the part of Borough, of the right to assess, levy or collect any license, personal, intangible, or other tax which shall be lawfully imposed on the business or property of Fly Elite.

#### **Section 7. Security.**

Fly Elite shall comply with all applicable regulations relating to Airport security and shall use reasonable efforts to control the leased Premises so as to prevent or deter unauthorized persons from obtaining access to the Airport.

**Section 8. Utilities.**

Fly Elite shall be solely responsible for and pay all charges for utilities to the leased Premises, including but not limited to all charges pertaining to providing sewer, water, electrical power and telephone service.

Fly Elite shall allow Borough, either directly or through others, to maintain existing and future utility lines, sprinkler, firefighting equipment, heating, ventilation, air conditioning systems, sewage, drainage, and Unicom radio communication systems, including all pipes, lines, wires, conduits, fixtures, and equipment in and about the leased Premises. The Borough shall make such repairs, replacements, and alterations as may be deemed necessary or advisable, and from time to time, construct or install in and about the leased Premises such areas, lines, pipes, mains, wires, conduits, fixtures, and equipment that may be necessary for proper and safe operation of the airport.

Borough agrees to pay for all utility services for airport appurtenances, specifically t-hangar buildings, runway lights (not more than eight (8) runway lights per year), rotating beacon, and other navigational aids; otherwise, Fly Elite shall be responsible for maintaining runway lights, rotating beacon (bulb) and lights (not to include building structures and/or power and other navigational aids. Upon execution of this Lease, FBO will be provided a copy of the keys for the electrical vault and power breaker in new hangars in order to conduct proper electrical maintenance.

**Section 9. Maintenance.**

A. Fly Elite, at its own cost and expense, shall:

- i. Be responsible for performing general maintenance of terminal office
- ii. Keep the same in good, safe, clean, and sanitary condition
- iii. Conduct inspections of the fuel farm in conformance with NFPA safety requirements and inform the Borough of maintenance requirements for this facility
- iv. Install and maintain all fire extinguishers on the Premises.
- v. Provide routine bulb changes for the runway lights.
- vi. Be responsible for the removal of snow and ice from the leased Premises as depicted in Exhibit B
- vii. Operate a Unicom Station that is owned, maintained and licensed by the Borough
- viii. Notify the Borough when any air navigational aids require maintenance or repair.

B. The Borough, at its own cost and expense, shall:

- i. Maintain all public and common or joint uses of the Airport, in good repair, and shall make such repairs, replacements or additions thereto as, in its sole opinion, are required and necessary for the safe and efficient use of the Airport
- ii. Maintain the Airport's Unicom station
- iii. Maintain the Airport's Precision Approach Path Indicators (PAPIs).

**Section 10. Fuel Farm Maintenance.**

Fly Elite shall, at its own cost and expense, conduct inspections of the fuel farm in accordance with all federal, state, and local requirements and shall inform the Borough of all maintenance requirements. The Borough shall be responsible for the maintenance of the fuel farm area unless Fly Elite opts to maintain the Fuel Farm as provided for in Section 5(D)(2). In addition, Fly Elite shall be responsible for all repairs and replacement of the Fuel Farm Static Reel.

**Section 11. Right to Inspect.**

Borough shall have the right, at any time, and as often as it considers necessary, to inspect the leased Premises to enter therein and to take such action therein as may be required for the protection of persons or property and for the enforcement of any of the terms and conditions hereof.

**Section 12. Compliance with Laws.**

Fly Elite, its officers, directors, employees, agents, and contractors shall comply with: (i) all applicable federal, state, and local laws and ordinances, including directives of the FAA applicable to Fly Elite's presence and operations at the Airport; (ii) the Airport Rules and Regulations; and (iii) the Airport Minimum Standards. Fly Elite shall make every reasonable effort to cause its customers and invitees to comply as well.

Notwithstanding anything to the contrary, references in this Agreement to a law or regulation shall be deemed to be a reference to: (i) such law or regulation as it may be amended from time to time, and (ii) all ordinances, rules, executive orders, policies, and instructions pertaining, and lawfully promulgated pursuant, to such law or regulation as they now exist or may be amended from time to time.

In addition, Fly Elite shall obtain permission from Borough prior to installing any advertising sign on the leased premises. Political and religious advertising signs are prohibited on the premises.

**Section 13. Environmental Obligations.**

Fly Elite shall comply with any and all applicable Environmental Laws and Environmental Permits (whether obtained by Fly Elite or the Borough) related to Fly Elite's occupancy and Fly

Elite's use of the Airport. Fly Elite shall obtain and maintain any and all Environmental Permits required by applicable Environmental Laws for Fly Elite's activities at the Airport. Without limiting the generality of the foregoing, Fly Elite shall comply with the requirements as set forth below

A. Duty to Notify.

In the event of any release or discharge, or threatened release or discharge of Hazardous Materials at, on, under, or about the Airport, or any portion thereof, that is caused by Fly Elite, its agents, invitees, servants or employees, and which is required by applicable Environmental Laws, Environmental Permits, or Airport rules and regulations to be reported by Fly Elite, whether as a result of negligent conduct or otherwise, or in the event any written claim, demand, complaint or action is made or taken against Fly Elite that pertains to Fly Elite's release, discharge, or threatened release or discharge of Hazardous Materials, or failure or alleged failure to comply with any Environmental Laws or Environmental Permits at the Airport, Fly Elite shall notify the Borough as soon as reasonably practical of all known facts pertinent to such release or discharge, or threatened release or discharge, claim, demand, complaint, action, or notice, and shall provide the Borough with copies of any and all such claims, demands, complaints, notices, or actions so made. If Fly Elite is required, by any Environmental Laws, Environmental Permits, or governmental agency, to file any written notice or report of a release or discharge, or threatened release or discharge at, on, under or about the Airport, or any part thereof, Fly Elite shall simultaneously provide a copy of such notice or report to the Borough.

B. Remediation.

Fly Elite shall undertake all necessary steps required under applicable Environmental Laws and Environmental Permits, or as directed by a governmental agency, to remedy and remove any Hazardous Material or environmental condition or damage to the extent caused by, or resulting from, the activities, conduct or presence of Fly Elite, its agents, invitees, servants or employees, whether resulting from negligent conduct or otherwise ("**Remediation Work**"). Such Remediation Work shall be performed at Fly Elite's expense. Except in the event of an emergency, such Remediation Work shall be performed after Fly Elite submits to the Borough a written plan for completing such Remediation Work and receives the prior written approval from the Borough, which approval shall not be unreasonably withheld or delayed. Specific cleanup levels for any Remediation Work by Fly Elite shall be designed to meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits, as determined by the governmental agency responsible for enforcing Environmental Laws or Environmental Permits. Neither an ongoing Remediation Work, including any testing or monitoring, shall either unreasonably or materially impair or interfere with the use of the Airport as an airport. The Borough shall have the right to

conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representatives of its choice. Fly Elite's obligations hereunder shall survive the expiration or early termination of this Agreement.

- C. For purposes of this Section, the following words and phrases shall have the following meaning:
- i. **"Environmental Laws"** means all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, permits, permit conditions, and orders relating to the generation, use, storage, transportation, or disposal of Hazardous Materials.
  - ii. **"Environmental Permits"** means any and all permits, licenses, approvals, authorizations, consents, or registrations required by Environmental Laws, whether federal, state or local, which pertain to the production, use, treatment, generation, transportation, processing, handling, disposal, or storage of Hazardous Materials.
  - iii. **"Hazardous Materials"** means friable asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), petroleum, or crude oil or any fraction thereof, natural gas, source material, special nuclear material, and byproduct materials regulated under Environmental Laws, pesticides regulated under Environmental Laws, and any hazardous waste, toxic, or dangerous substance or related material, including any material defined or treated as a hazardous substance, hazardous waste, toxic substance, or contaminant (or comparable term) under any of the Environmental Laws.

#### **Section 14. Indemnification.**

Fly Elite shall indemnify, save, and hold the Borough and its, officers, directors, employees, agents, and contractors harmless from and against any and all claims, demands, actions, or cause of action, costs, and expenses, including without limitation attorneys' fees, for or on account of any property damage or loss, including without limitation environmental damage, injuries, deaths, occurrences or events arising out of, or incidental to, this Agreement, the use of the Premises, or Fly Elite's activities at the Airport, and occasioned by any act or omission on the part of Fly Elite, its officers, directors, employees, agents, contractors, or invitees.

#### **Section 15. Insurance.**

- A. Beginning on the Commencement Date and throughout the Term, Fly Elite shall maintain insurance as set forth below.
- i. General Liability insurance in an amount not less than \$1,000,000 combined single limit each occurrence and \$3,000,000 general aggregate.

- ii. Hangarkeepers Legal Liability insurance in an amount not less than \$250,000 each aircraft and \$500,000 total loss.
  - iii. Business Automobile Liability insurance in an amount not less than \$500,000 each accident.
  - iv. Aircraft Liability insurance in an amount not less than \$1,000,000 combined single limit each occurrence and \$1,000,000 per passenger.
  - v. Worker's Compensation Insurance in an amount equal to the statutory limits as set by the Commonwealth of Pennsylvania.
  - vi. Pollution insurance against loss for bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; clean-up costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims; all in connection with any loss arising from any discharge of Hazardous Materials (as defined in 13 herein) by Fly Elite, its officers, directors, employees, agents, contractors, or invitees. Insurance coverage shall be maintained in an amount of at least \$1,000,000 per loss.
- B. Such limits may be reviewed by the parties from time to time and, upon such review, the insurance coverage limits may be adjusted to reflect the then-expected exposures to liability and the insurance coverage required herein shall be amended accordingly. Any differences between the parties specifically concerning such liability insurance coverage shall be resolved by the insurance agent of the Borough with the advice and consultation of the insurance agent of Fly Elite.
- C. Coverage required in this Section shall: (i) be issued by insurers of recognized responsibility who shall have a Best's rating of at least "B++," and are licensed and certified by the Pennsylvania Insurance Department to do business in the Commonwealth of Pennsylvania; (ii) name the Borough and its officers, directors, and employees as Additional Insureds as respects to liability coverage; (iii) include a waiver of subrogation in favor of the Borough and its officers, directors, and employees; and (iv) provide that all liability insurance is primary and without right of contribution as to any other insurance maintained by the Borough. Fly Elite shall provide the Borough with the certificate(s) of insurance evidencing the required insurance, including 30 days written notice of cancellation or non-renewal or material change in coverage.

**Section 16. Assignment.**

Fly Elite shall not, in any manner, directly or indirectly, assign, transfer or encumber this Agreement or any portion thereof, or any interest therein, or sublet or sublease the whole or any part of the leased Premises or facilities let to it, nor license the use of the same, in whole or in part, by any other person, firm or corporation, without the prior written consent of the Borough.

**Section 17. No Third-Party Beneficiaries.**

This Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person or entity other than the parties hereto and their assigns any legal or equitable rights hereunder.

**Section 18. Independent Contractor.**

It is expressly understood and agreed that nothing contained in this Agreement is intended or shall be construed, in any way, to create the relationship of principal and agent between Borough and Fly Elite; and, on the contrary, it is understood and agreed that Fly Elite is acting as an independent contractor under this Agreement and not as an agent or an employee of Borough.

**Section 19. Subordination.**

This Agreement is subject and subordinate to any existing or future agreements between the Borough and the United States Government or governmental authority, relating to the operation or maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds for the improvement or development of the Airport. Fly Elite shall not cause the Borough to violate any assurances made by the Borough to the United States Government in connection with the granting of federal funds. If the Federal Aviation Administration or its successors requires modifications or changes to this Agreement as a condition precedent to the granting of funds for the improvement of the Airport or otherwise, Fly Elite agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement. This Agreement is also subordinate to the rights of the United States Government to operate the Airport, or any part thereof, during time of war or national emergency. Such rights shall supersede any provisions of this Agreement inconsistent with the operation of the Airport by the United States Government.

**Section 20. Non-Discrimination.**

Fly Elite shall furnish all services required, authorized, or licensed by this Agreement on a fair, equal, and not unjustly discriminatory basis to all users and shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided that it may make reasonable

and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers, if permitted by law.

Fly Elite for itself, its personal representatives, successors in interest, and assignees hereby agrees that:

- A. No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of its facilities.
- B. In the construction of any improvements on, over, or under the Airport and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- C. Any area or facilities that Fly Elite may lease or use at the Airport shall be used in compliance with all requirements imposed by or pursuant to 49 C.F.R. Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulation may be amended.
- D. In the event of breach of any of the above non-discrimination covenants, the Borough shall have the right to terminate this Agreement.

**Section 21. No Exclusive Rights.**

It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by 49 U.S.C. §§40103(e) and 47107(a)(4), as amended from time to time, and the Borough reserves the right to grant to others the privilege and right of conducting any or all activities of an aeronautical nature.

**Section 22. Default and Termination.**

- A. Termination by Borough: This agreement shall be subject to termination by the Borough in the event of any one or more of the following events:
  - i. Fly Elite fails to abide by any of its obligations herein, and, unless otherwise set forth elsewhere in this Agreement, such failure continues for more than fifteen (15) days after the Borough provides Fly Elite with written notice of such failure, the Borough may declare this Agreement in default, terminate same without further notice
  - ii. Fly Elite abandons or discontinues a substantial part of its business activities or fails to provide the minimum required services, as stated in Section 3, and, unless otherwise set forth elsewhere in this Agreement, such failure continues for more than ten (10) days after the Borough

- provides Fly Elite with written notice of such failure, the Borough may declare this Agreement in default, terminate same without further notice
- iii. If any action under 11 U.S.C. §§ 101 et seq. is commenced by or against Fly Elite, and such action is not dismissed before either an adjudication in bankruptcy or the confirmation of a composition, arrangement, or plan of reorganization, or if Fly Elite is adjudged insolvent, or if Fly Elite makes an assignment for the benefit of its creditors, or if a receiver with authority to take possession or control of Fly Elite or its business activities is appointed in any proceeding or action to which Fly Elite is a party, and such receiver is not discharged within a period of sixty (60) days after such appointment, such event shall be deemed to constitute a default hereunder by Fly Elite and the Borough shall have the right to terminate this Agreement without further notice.

**B. Termination by Fly Elite:** This agreement shall be subject to termination by Fly Elite in the event of any one or more of the following events:

- i. The abandonment of the airport as an airport or airfield for any type, class or category of aircraft
- ii. The lawful assumption by the United States, or any authorized agency thereof, of the operation, control or use of the airport, or any substantial parts thereof, in such a manner to restrict Fly Elite from conducting business operations for a period in excess of ninety (90) days
- iii. The default by the Borough in the performance of any of the terms, covenants or conditions of this Agreement, and the failure of Borough to remedy or undertake to remedy, to Fly Elite's satisfaction, such default within a period of thirty (30) days after receipt of written notice from Fly Elite to remedy same.
- iv. Damage to or destruction of all or a material part of the premises or airport facilities necessary to the operation of Fly Elite's business.

### **Section 23. Choice of Law.**

This Agreement is made and entered into in the Commonwealth of Pennsylvania, and Pennsylvania law shall govern and apply to this Agreement. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall be brought only in a federal or state court in the Commonwealth of Pennsylvania with applicable jurisdiction. The provisions of this Section shall survive the expiration or termination of this Agreement.

In the event that Fly Elite should fail to keep all of the covenants of this Agreement, including but not limited to, the prompt payment of rent due hereunder, Fly Elite authorizes and empowers any attorney of any Court of Record in Pennsylvania to appear for it and confess judgment against it for possession and for such sums as may then be due, and further authorizes

the issuance of a Writ of Possession, waiving the benefit of any stay, exemption, or provision of the Pennsylvania Landlord-Tenant Act.

**Section 24. Force Majeure.**

Neither party hereto shall be liable to the other for any failure, delay, or interruption in performing its obligations hereunder due to acts, events or conditions beyond its control, including acts of God, weather conditions, shortages of energy or materials, embargoes, riots, rebellions, sabotage, acts of a public enemy, war, terrorism, insurrection, strikes, boycotts, picketing, slow-downs, work stoppages or other labor actions affecting the rights or obligations of the parties hereunder, their respective contractors or subcontractors, except to the extent that such failure, delay or interruption directly or indirectly results from failure on the part of either party to use reasonable care to prevent, or make reasonable efforts to cure, such failure, delay or interruption.

**Section 25. Cumulative Remedies.**

All rights and remedies of the parties as provided herein shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law. Waiver of any one right or remedy shall not constitute a waiver of any other.

**Section 26. Miscellaneous.**

- A. Borough reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the leased Premises, for navigation or flight in the said airspace for landing on, taking off from or operation on the Airport
- B. Fly Elite expressly agrees for itself, its successors and assigns, to prevent any use of the leased Premises which would interfere with or adversely affect the operation or maintenance of Airport, or otherwise constitute an Airport hazard.
- C. In the event that the Federal Aviation Administration or its successors shall require any modifications or changes in this Agreement as a condition precedent to the granting of its approval hereof or the granting of funds for improvement of the Airport, Fly Elite hereby consents to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may reasonably be required to obtain such approval or such funds.
- D. Borough reserves the right (i) to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways (other than the leased Premises) as it may reasonably see fit.
- E. Fly Elite acknowledges and understands that it shall cooperate and supply records to the Borough as required and permitted under the Pennsylvania Open Records Act. In addition to all financial information and other documents Fly Elite may be subject to a Right to Know Request if deemed a public record by

the Borough Right to Know Officer. Failure of Fly Elite to comply with any such request of the Borough shall be considered a default pursuant to this Lease Agreement. In addition, any attorney's fees incurred by the Borough to enforce this section shall be the obligation of Fly Elite.

**Section 27. Construction of Agreement**

This Agreement shall not be construed against the Borough by reason of the preparation of this Agreement by the Borough.

**Section 28. Severability.**

In the event that any covenant, condition, or provision of this Agreement is held to be invalid by any court of competent jurisdiction; found to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement; or is determined to be inconsistent with any of the Borough's existing or future grant agreements with the United States of America or the Commonwealth of Pennsylvania, it is the intention of the parties that the invalidity of such covenant, condition, or provision shall not materially prejudice either the Borough or Fly Elite in their respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement. It is also the intention of the parties that each such clause or provision of this Agreement that is illegal, invalid, unenforceable, or inconsistent with grant agreements, be stricken from the Agreement and replaced with a clause or provision as similar in terms to such illegal, invalid, unenforceable, or inconsistent clause or provision as may be possible and may be legal, valid, enforceable, and consistent.

**Section 29. Personal Property.**

The personal property placed or installed by Fly Elite on the leased Premises which may be removed without damage to the leased Premises, shall remain the property of Fly Elite, and shall be removed on or before the expiration of the term of this Agreement. In the event of termination of this Agreement for any cause whatsoever, Fly Elite shall have sixty (60) days after notice of termination in which to remove such property. If Fly Elite's property is not removed as herein provided, Borough may, at its option, as agent for Fly Elite and at Borough's risk and expense, remove such property to a public warehouse for deposit, or retain the same in the Borough's possession and after the expiration of thirty (30) days, sell the same, with or without notice, at public or private sale, the proceeds of which shall be applied first to the expenses of the sale and storage, second to any sum owed by Fly Elite to Borough, and any balance remaining shall be paid to Fly Elite.

**Section 30. Time of Essence.**

The parties expressly agree that time is of the essence in this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if no time

is specified herein, shall relieve the other party, without liability, of any obligation to accept such performance.

**Section 31. Entire Agreement.**

This Agreement, including all attached exhibits, constitutes the entire agreement between the Borough and Fly Elite relating to the subject matter hereof, and may not be changed, modified, or discharged, or extended, except by written endorsement duly executed on behalf of the parties and attached hereto. This Agreement supersedes all prior agreements and understandings, written or oral, express or implied. Fly Elite agrees that no representation or warranty shall be binding upon the Borough, unless expressed in writing herein.

**Section 32. Notices**

All notices, demands, or other writings provided in this Agreement to be sent, or which may be given by either party hereto to the other, shall be deemed to have been fully given when made in writing and deposited in the U.S. Mail, certified and postage prepaid, and addressed as follows:

to the Borough: Justin Keller  
Borough Manager  
100 East High Street  
Pottstown, PA 19464

to Fly Elite: Rick Jones, Owner  
1149 Glasgow Street  
Pottstown, PA 19464

The address to which any notice, demand, or other writing may be given to any party may be changed by written notice given by such party.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

THE BURGESS AND TOWN COUNCIL  
OF THE BOROUGH OF POTTSTOWN

Fly Elite, LLC

BY: \_\_\_\_\_ (SEAL)  
President

BY: \_\_\_\_\_ (SEAL)

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

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

ATTEST: \_\_\_\_\_ (SEAL)  
Secretary

BY: \_\_\_\_\_ (SEAL)

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

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

**Exhibit A**  
**Leased Premises**