

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY, AS LESSOR, AND MORGANTOWN JET CENTER, LLC, AS LESSEE, REGARDING WHAT IS KNOWN AS THE MYLAN HANGAR LOCATED AT THE MORGANTOWN MUNICIPAL AIRPORT.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the lease agreement, hereto attached, by and on behalf of the City of Morgantown.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

LEASE AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2014, by and between **THE CITY OF MORGANTOWN**, a municipal corporation, hereinafter referred to as the “CITY”, and Morgantown Jet Center, LLC, (hereinafter referred to as “LESSEE”).

WITNESSETH, THAT WHEREAS, the “CITY” owns, controls and operates the Morgantown Municipal Airport; and

WHEREAS, “CITY” desires to lease and grant certain premises and facilities on said “AIRPORT”, and “LESSEE” desires to hire and obtain certain premises and facilities on said “AIRPORT”, together within the certain rights, licenses and privileges thereon.

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I – PREMISES

1.1 The “CITY” hereby grants the “LESSEE” the right to utilize the former Mylan hangar with office space within the hangar at the Morgantown Municipal Airport which shall include the following, hereinafter referred to as “Premises”

(a) **General Aviation Office Space**

An area comprising seven thousand seven hundred and fifty five (7,755) square feet of lounge area, public restrooms, training areas, flight planning areas, and office space.

(b) **Hangar Space**

An area comprising fifteen thousand two hundred and ten (15,210) square feet.

(c) **Ramp and Apron Area**

An area comprising approximately twenty one thousand five hundred and fifty (21,550) square feet situated at the aforementioned “former Mylan Hangar.”

(d) **Automobile Parking Lot**

An area comprising between fourteen thousand four hundred (14,400) square feet of automobile parking space.

The exhibit attached hereto shows the location of the Leased Premises upon the Airport realty.

- 1.2 **“LESSEE”** may utilize the Hangar Bay to house corporate aircraft and conduct aviation related activities only. Lessee may utilize office space for other business activities.

ARTICLE II – CONSTRUCTION/INSTALLATION OF IMPROVEMENTS

- 2.1 The **“LESSEE”** shall not, without prior written consent of the **“CITY”**, make any permanent improvements to the assigned area such as the demolition of existing walls, the construction of new permanent walls, the installation of electrical outlets or lighting, or any modifications to the heating/air conditioning systems. The CITY shall not unreasonably withhold consent to make said improvement and shall not impose unreasonable conditions upon its consent.
- 2.2 The **“LESSEE”** may place furniture, property, and equipment in the assigned area as is necessary for the conduct of its business. Installed equipment, which requires electrical or natural gas power shall be subject to the conditions outlined in ARTICLE VII, paragraph 7.1 of this Agreement. The **“LESSEE”** shall have the right to remove the same upon termination of this Agreement, providing the premises are repaired to the satisfaction of the **“CITY”** or restored to their original condition after such removal.

ARTICLE III – TERM OF AGREEMENT

- 3.1 The **“LESSEE”** shall have and hold said premises, facilities, rights, licenses, and privileges set forth herein for a term of ten (10) years commencing the 15th day of May, 2014, and terminating the 14th day of May, 2024, unless sooner terminated as herein provided.
- 3.2 It is the mutual intent of the parties that this Agreement shall remain in effect for the full term, subject to each party’s right on breach.

ARTICLE IV – RENTAL FEES AND OTHER CONSIDERATION

- 4.1 Subject to the terms and conditions set forth herein, the **“LESSEE”** agrees to pay the **“CITY”** an annual rental fee of seventy two thousand dollars (\$72,000.00), which shall be paid to City at the rate of six thousand dollars (\$6,000.00) per month for the first twelve months of the lease agreement. Payment will be made in advance, on or before the first business day of each month during the terms hereto and any extension thereof.
 - (a) Failure to remit payment as to the prescribed time will result in an additional charge of 1.5% of all unpaid rents and fees. **“LESSEE”** will have the right to cure within thirty (30) days.

- (b) All sums due hereunder shall be paid by check or electronic equivalent such as an ACH, payable to the City of Morgantown and mailed to the “Morgantown Municipal Airport, 100 Hart Field Road, Morgantown, WV 26505” unless otherwise directed in writing by the “CITY”.

4.2 Beginning with month thirteen of the lease agreement, the monthly rental fee shall increase to seven thousand dollars based upon a combination of rent and jet fuel credits. “LESSES” has the right to have tenants utilize the hangar space, any and all such tenants will be referred to as “SUBLESSES”. Starting in month fourteen, the “City” shall provide to “LESSEE” by the 15th of the month, the accounting for the jet fuel credits (\$1.00 per gallon of jet fuel purchased) generated by the “LESSEE” or “SUBLESSES” from the previous month. Beginning with month fifteen of the lease agreement and continuing until the lease ends; the monthly rental cost will be reduced by the jet fuel credits as per the accounting provided by the “CITY” associated with jet fuel credits from two months prior. Under no condition will the monthly rental payment less aforementioned credit be less than four thousand dollars per month. Parties will meet annually to reconcile values associated with fuel usage.

Example 1 of a rent and jet fuel credit scenario:

In Month 13, “LESSES” and “SUBLESSES” purchase 3,000 gallons of jet fuel. Therefore, accounting provided by the “CITY” by the 15th of Month 14 for jet fuel credits from Month 13 will equal \$3,000. This will result in a rent payment due of \$4,000 for Month 15, netting a combined monthly rent equivalent to the “CITY” of \$7,000.

Example 2 of a rent and jet fuel credit scenario:

In Month 24, “LESSES” and “SUBLESSES” purchase 6,000 gallons of jet fuel. Therefore, accounting provided by the “CITY” by the 15th of Month 25 for jet fuel credits from Month 24 will equal \$6,000. Due to the floor rent payment established, this will result in a rent payment due of \$4,000 for Month 26. Therefore netting the “CITY” a combined monthly rent equivalent of \$8,000.

4.3 Commencing January 1, 2016, base rental payments shall increase as of the first day of each calendar year (January 1) during the entire term, by the same percentage increase (if any) in the Consumer Price Index (revised) for Urban Wage Earners and Clerical Workers in Pittsburgh, PA, as published by the Bureau of Labor Statistics of the US Department of Labor (CPI) during the prior calendar

year, but no more than three percent (3%). Base rents shall be fixed between annual adjustments. Each calendar year's recalculated rent shall be the basis for the adjustment for the next calendar year base rent. The base rent shall be recalculated as soon as the CPI is published. The increase shall be effective as of January 1 of each year. In no event shall adjustment be a negative amount. If the base rental rate increases, Lessee shall, within thirty (30) days of receipt of notice from City, pay to City any additional base rent caused by the increase in CPI, divided by twelve (12), multiplied by the number of base rental payments made by Lessee since the effective date of rental adjustment.

- 4.3 "LESSEE" has the right to assign, transfer or sublease this Lease Agreement in part or in whole with the prior written consent of the "CITY". However, City shall not withhold consent unreasonably and shall not impose unreasonable conditions upon its consent.
- 4.4 In the event, Lessee subleases, pursuant to the provisions of this Agreement, any portion of the leased premises to a third party, Lessee shall pay to City each month in addition to the monthly rent, an additional rent of two percent (2.00%) of the amount of revenue collected above the monthly rental fee by Lessee for the month in question from any such third party.

ARTICLE V – INSTALLATION OF IMPROVEMENTS

- 5.1 The Lessee may, without cost to the City, make improvements and provide and install all trade fixtures as are necessary for the customary operation of its business. Prior to doing so, Lessee shall submit plans to the City for review and comment. Lessee shall not proceed with any such improvement without receiving prior written approval from the City. However, City shall not withhold consent unreasonably and shall not impose unreasonable conditions upon its consent.
- 5.2 The Lessee shall have the right, at its sole expense, to install and maintain signs advertising its business, however, Lessee must first obtain prior written approval of the Airport Director, as the City's Representative, both as to size and location. However, the Airport Director shall not withhold consent unreasonably and shall not impose unreasonable conditions upon its consent.
- 5.3 Lessee shall not suffer or permit any mechanic or other forms of liens to be levied or filed against the City. All improvements, equipment, fixtures, and interior decor constructed by the Lessee, its agents, or contractors, shall conform in all respects to all applicable statutes, ordinances, building codes, and rules and regulations. Lessee shall be responsible for applying for and obtaining any

permits required to complete improvements. Any approval given by the City shall not constitute a representation or warranty as to conformity; responsibility therefore shall at all times remain with the Lessee.

- 5.4 All structural improvements and alterations shall, upon termination of this Agreement, become property of the Airport. All non-structural improvements and property of the Lessee must be removed upon termination of this Agreement.
- 5.5 The Lessee shall not remove or demolish, in whole or in part, any improvements within the Leased Premises without the express prior written consent of the City, which consent may be conditioned upon the obligation of the Lessee to replace the same by an improvement specified in the consent. However, City shall not withhold consent unreasonably and shall not impose unreasonable conditions upon its consent.

ARTICLE VI – MAINTENANCE OF PREMISES

- 6.1 “LESSEE” shall be responsible for grass manicuring and cutting, and general housekeeping of the leased area. “LESSEE” shall keep and maintain the leased premises in good condition, order and repair and shall surrender the same upon the expiration of this Agreement in an as leased/as found condition reasonable wear and tear and damage by the elements not caused by “LESSEE’S” negligence excepted. It is understood by the parties that LESSEE shall be responsible for all maintenance and repairs to the structure, upon the leased premises at its sole cost, including the maintenance of the structure’s backup, emergency generator. “CITY” shall be responsible for snow removal on the premises.

ARTICLE VII – QUIET ENJOYMENT

- 7.1 CITY covenants that LESSEE may quietly enjoy the Premises without hindrance by CITY or any party claiming under CITY, so long as Lessee is not in default of the performance of any of its obligations under this lease.

ARTICLE VIII – UTILITIES

- 8.1 “LESSEE” shall be responsible for contracting individually with the utility companies for water, gas, electricity, telephone, cable, etc. and “LESSEE” shall be responsible for any installation or repair charges and shall pay all charges for such services, including late penalties, as they become due. In the event “LESSEE” fails to pay any utility bills when due, “CITY” may, at its option, pay the same and collect from “LESSEE”.

ARTICLE IX – RIGHT TO INSPECT AND MAKE REPAIRS

- 9.1 The “CITY” shall have the right to enter “LESSEE’S” assigned area to:
- (a) Inspect the assigned area at reasonable intervals, , during the “LESSEE’S” regular business hours, to determine if the “LESSEE” is in compliance with the terms and conditions of this Agreement,. The “CITY” will provide “LESSEE” reasonable notice and opportunity to appear at the time of inspection due to the fact that the “LESSEE” may be involved in classified work.. The foregoing provision shall not be construed as a limitation on City’s right to enter anytime in the case of an emergency. The “CITY” may, at its discretion, require the “LESSEE” to effect any required maintenance or repairs at the “LESSEE’S” own costs; and
 - (b) Perform any and all things, which the “LESSEE” is obligated to, and has failed to do, after providing the “LESSEE” with thirty(30) days prior written notice to act, including maintenance, repairs and replacements to “LESSEE’S” assigned area. The cost of all labor, materials and overhead charges required for the performance of such work will be paid by the “LESSEE” to the “CITY” within ten (10) days following receipt of invoice for said charges by “LESSEE”.

ARTICLE X – GENERAL PROVISIONS

- 10.1 The “LESSEE” hereby covenants and agrees:
- (a) That the facilities and space hereby leased shall be maintained and left in a neat and clean condition and the “LESSEE” shall conduct its business in such a manner as not to interfere with the normal operations of the Airport.
 - (b) That personnel performing services for the “LESSEE” shall be neat, clean, and courteous, and the “LESSEE” shall not permit its agents, servants or employees so engaged to conduct business in a loud, boisterous, offensive or objectionable manner.
 - (c) That the “LESSEE” shall abide by and be subject to all reasonable Airport Rules and Regulations, which are now, or may be from time to time be, promulgated by the “CITY”, concerning management, operation or use of the Airport and which are communicated to “LESSEE” in writing.
 - (d) That the “LESSEE” will meet all expenses in connection with the use of the leased premises hereunder and the rights and privileges herein granted, including without limitation by reason of enumeration, taxes, permit fees,

license fees, and assessments lawfully levied or assessed against it or assessed because of its operations hereunder, and that it will secure all required permits and licenses for its operation hereunder.

- (e) That, should the “CITY” be required by any department of the Federal Government to take any action in order to be eligible for any federal funds, and this action be related to the rights, privileges, and premises covered hereunder, the “LESSEE” agrees to allow the City to take such action necessary to comply at City’s expense.
- (f) That the “LESSEE” will not on the grounds of race, color, national origin, sex, handicap, religion, or age discriminate, or permit discriminations, against any person or group of persons in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation and Title XI of the Civil Rights Act of 1964.

ARTICLE XI – AIRPORT SECURITY

- 11.1 The City is responsible for the safety and security of the Airport premises. Access is controlled by keys and key cards. Lessee, its employees and tenants, will be granted access as necessary to conduct Lessee/Tenant’s business. Key and key cards are issued to individual persons and each person issued a key or key card is solely authorized to use same. Key and key cards are not to be loaned or used to allow unauthorized persons access to the Airport Aircraft Operating Area. The City reserves the right to cancel and/or revoke access immediately for any violation involving life, limb, safety, airport security or law. In the event of other violations, notice would be given and an opportunity to cure. In the event a person’s access is terminated for any reason, all keys and key cards must be returned to the Airport Director within five (5) business days. Keys or key cards that are lost and require replacement or are not returned when requested will result in a payment of fifty-dollars (\$50.00) per key or key card by Lessee to the Airport.
- 11.2 Lessee is responsible for controlling all access and security relating to the “Premises.”

ARTICLE XII – INDEMNIFICATION AND INSURANCE

- 12.1 “LESSEE” shall protect, defend, indemnify and hold the “CITY” and its representatives and employees completely harmless from and against any and all liabilities, demands, suits, claims, losses, fines or judgments arising by reason of the injury or death of any person or damage to or loss of any property, including all reasonable costs for investigation and defense thereof, (including, but not

limited to, attorneys fees, court costs and expert fees), of any nature whatsoever arising out of, or incidental to this Lease Agreement or “LESSEE’S” use or occupancy of the leased premises, or the acts or omissions of “LESSEE’S” officers, employees, agents, representatives, contractors, sub-contractors, licensees or invitees, except to the extent such injury, death, loss or damage may occur, unless such injury, death or loss or damage is caused by the negligence or intentional misconduct of the “CITY” or its employees, agents, officers, or representatives. The “CITY” shall give “LESSEE” reasonable notice of any such claims or actions. The provisions of this Article shall survive the expiration or earlier termination of this Lease Agreement.

- 12.2 Without limiting its liability as aforesaid, the “LESSEE” shall carry combined single limit general liability coverage in the minimum amount of \$1,000,000.00 and name the City of Morgantown as an additional insured. “CITY” will maintain insurance on the building structure.
- 12.3 “CITY” is responsible for property taxes on the Premises.
- 12.4 “LESSEE” shall at all times maintain Hangar Keeper’s Insurance in an amount sufficient to cover damages to or replacement of any aircraft kept in such leased premises or obtain waivers of subrogation from the insurance carriers of such aircraft preventing any and all claims against “CITY”. “LESSEE” shall also maintain Building Fire and Extended Coverage Insurance on the contents of the leased premises.

The “LESSEE” shall provide the “CITY” with certification of insurance throughout the term of this agreement, evidencing such coverage to be in force.

- 12.5 The “CITY” agrees to notify the “LESSEE” in writing, as soon as practicable of any claims, demands or action arising out of an occurrence covered hereunder of which the “CITY” has knowledge, and to cooperate with the “LESSEE” in the investigation and defense thereof.

ARTICLE XIII – CANCELLATION/TERMINATION

- 13.1 It is understood and agreed by the parties hereto that this agreement may be terminated by “LESSEE”, for any reason, by giving the “CITY” sixty (60) days advanced written notice. It is further understood and agreed by and between the parties hereto that any one of the following occurrences will result in cancellation of this agreement:
 - (a) In the event the “LESSEE” shall make default in any of the provisions of this agreement, and said default shall continue for a period of thirty (30)

days, then and in that event, this agreement may be canceled and held for naught by the "CITY", and the "LESSEE" shall immediately surrender possession of the leased space.

- (b) A national emergency results in the Airport being substantially occupied by the United States Government so as to materially interfere with the "LESSEE'S" operations.
- (c) In the event the Airport, or a material portion thereof, is destroyed by fire or other cause, resulting in material interference with the "LESSEE'S" operations.

13.2 Upon termination or cancellation of this Agreement, the "LESSEE" shall remain liable for any rental fee and/or custodial fee payments, if any, then due up to the date of termination, and the "LESSEE" shall immediately surrender possession of the leased premises.

ARTICLE XIV – MISCELLANEOUS PROVISIONS

14.1 Any notice or other communication to the parties hereunder shall be deemed validly given, served or delivered upon deposit in the United States Mail, registered and with proper postage and registration fee paid, addressed as follows:

THE "CITY"

**OFFICE OF THE AIRPORT DIRECTOR
Morgantown Municipal Airport
100 Hart Field Road
Morgantown, West Virginia 26505**

"LESSEE"

**Morgantown Jet Center, LLC
3168 Collins Ferry Road
Morgantown, WV 26505**

Or other address as may be designated by either party, in writing, from time to time.

14.2 To the extent not prohibited by law, the "CITY" shall attempt to protect the rights and privileges granted to the "LESSEE" under this agreement.

- 14.3 The failure of the “CITY” to insist, in any one or more instance, upon the strict performance by the “LESSEE” of any of the provisions, terms, covenants, reservations, conditions or stipulations contained in this Lease Agreement shall not be considered as a waiver or relinquishment thereof for the future, but the same remain and continue in full force and effect, and no waiver of the conditions or stipulations hereof shall be deemed to have been made in any instance unless expressly in writing.
- 14.4 If any term, clause or provision of this Lease Agreement shall be adjudged by any court or government agency to be invalid or contrary to any applicable law or regulation or state government agency, such invalidation or determination shall not affect the validity and enforceability of the of the remaining portions of the Lease Agreement, and, to this end, the terms, clauses and provisions of this Lease Agreement are hereby agreed to be severable.
- 14.5 Both parties hereto acknowledge and agree that this document contains the entire agreement between the parties and that they have not relied upon any statements, representations, agreements or warranties, except such as are expressed herein, and that no amendment or modification of the Lease Agreement shall be valid or binding unless expressed in writing and executed by the parties hereto within the amended Lease Agreement in the same manner as the execution of this Lease Agreement.
- 14.6 This Lease Agreement shall be deemed to have been made in and construed in accordance with the laws of the State of West Virginia
- 14.9 The foregoing Articles contain the entire Agreement between the parties and shall supersede all previous communications, representations or agreements, if any, between the parties with respect to the subject matter thereof.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized officer and their respective seats to be hereunto affixed, the day and year first above written.

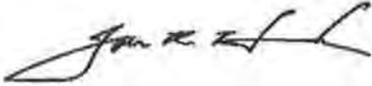
CITY OF MORGANTOWN

BY: _____
Jeff Mikorski, City Manager

In the presence of:

City Clerk

ATTEST:



(LESSEE)

BY: Jon Hammock

TITLE: Managing Member

WITNESS: Ken Brissett