AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN IT, AS LESSOR, AND MERKOL, INC., AS LESSEE, REGARDING SPACE WITHIN THE MORGANTOWN MUNICIPAL AIRPORT TERMINAL BUILDING, WHICH WILL BE OPERATED AS A RESTAURANT.

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

FIRST READING:

_____
MAYOR

ADOPTED:

FILED:

_____
CITY CLERK

RECORDED:

RESTAURANT LEASE AGREEMENT

CITY OF MORGANTOWN
MORGANTOWN MUNICIPAL AIRPORT
MORGANTOWN, WEST VIRGINIA

THIS AGREEMENT, made this _____ day of _____, 2014, by and between THE CITY OF MORGANTOWN, 389 SPRUCE STREET, MORGANTOWN, WEST VIRGINIA, 26505, a municipal corporation, hereinafter referred to as the "CITY", and MERKOL, INC., a West Virginia corporation, hereinafter referred to as the "LESSEE".

WHEREAS, the "CITY", owns, controls, and operates an airport known as the MORGANTOWN MUNICIPAL AIRPORT, hereinafter referred to as "AIRPORT", located in the City of Morgantown, Monongalia County, West Virginia; and

WHEREAS, the "LESSEE" has submitted a proposal to the "CITY", which the Morgantown City Manager, on behalf of the "CITY", after careful evaluation, desires to accept, thereby granting to the "LESSEE", the right, privilege, and obligation to operate the aforesaid restaurant, as described and limited by the terms and conditions contained herein.

NOW THEREFORE, the "CITY", and the "LESSEE", hereby mutually agree, each for itself, and for its successors and assigns, that the Airport Restaurant Lease Agreement conditions are as follows:

ARTICLE I

DEFINITIONS

1.1 "Agreement shall mean the contract, including any and all attachments, between the "CITY", and "LESSEE", for the right, privilege and obligation to use such Airport property as defined herein for the conduct of an Airport Restaurant within said property under the terms and conditions expressly set forth herein.

1.2 "Airport" shall mean the tract of land, with all the improvements thereon and to be erected thereon, designated as the "Morgantown Municipal Airport".

1.3 "Airport Terminal" and "Terminal" shall mean the airline terminal building at the Airport.

1.4 "Assigned Area" shall mean the area or areas at the Airport designated by this

Agreement and the Exhibits thereto as the place or places where the business of "LESSEE", may be conducted as designated by the "CITY".

1.5 "Airport Manager" shall mean the Airport Manager of the Morgantown Municipal Airport, who is designated by the City of Morgantown to act with respect to all matters contained within this agreement.

1.6 "Annual Rental Payment" is the amount of money due the Airport annually from "LESSEE", in consideration of the area or areas at the Airport designated by this Agreement. Payment will be made on a monthly basis according to the terms of this Agreement.

1.7 "Minority" as defined by the Federal Aviation Administration is either: Female, Black, Hispanic, Asian (Chinese, Japanese, Pacific Islander), Filipino and American Indian or Alaskan Native. A "Disadvantaged Business Enterprise" is a business, whether it is a company or a corporation, of which at least 51 percent of the interest is owned and controlled by one or more minority group members.

ARTICLE II

2.1 The Assigned Area, as shown on Exhibit "A", located at the center of the Airport Terminal, shall consist of approximately two thousand nine hundred fifty eight (2,958) square feet of improved space on the main floor (runway level) of the Airport Terminal containing, at the time of execution of this Agreement, a dining area, counter serving area, cashier area, and kitchen, and approximately one thousand two hundred and seven one (1,271) square feet of unimproved space on the lower floor (main road level) of the Airport Terminal containing, at the time of this Agreement, a storage area, trash room, and rest room.

ARTICLE III

3.1 This Agreement shall be effective and binding upon execution. The original term of this Agreement shall be for a two (2) year period beginning August 1, 2014, and ending on July 31, 2016, unless sooner terminated pursuant to this Agreement. "LESSEE" shall have four (4) optional two (2) year terms thereafter. This Agreement shall be automatically renewed for each of the foregoing optional two (2) year terms unless within ninety (90) days prior to the new term written notice is sent by "LESSEE" to "LESSOR" by certified mail advising "LESSOR" that the lease will not be renewed, provided "LESSEE" is not in default of any terms and conditions contained within this Agreement.

At the conclusion of all two (2) year extension periods, the parties may agree to extend this lease for a total period not to exceed ten (10) years. Any such agreement to extend shall be in writing, be executed by the parties, and shall address the specific time period of extension and the rental payments to be paid by LESSEE. All remaining terms and conditions within this lease agreement shall be carried over and

be in effect during any agreed upon extension. The City Manager shall have sole discretion as to whether he/she wishes to approve said extension aagreement and execute the same on behalf of the City of Morgantown.

3.2 It is the mutual intent of the parties that this Agreement remains in effect for the full Term, subject to each party's right on breach.

ARTICLE IV

USES AND PRIVILEGES

4.1 The "LESSEE" has the right, privilege, and obligation to operate and manage the Airport Restaurant in the Assigned Area for the sale of food, alcoholic beverage, catering in the Airport Terminal. The rights above shall be exclusive as to the "LESSEE" only within the Assigned Area during the term, either original or extended, of this Agreement. The right to provide catering services at the Airport shall be non-exclusive. While not a part of the area being leased to "LESSEE" by this Agreement, "CITY" agrees to allow "LESSEE" to use the meeting room adjacent to the restaurant facilities, subject to the following conditions:

a. That "LESSEE" must obtain permission from the Airport Manager in advance of each instance that "LESSEE" wishes to use said meeting room;

b. That the "CITY" has the right to deny "LESSEE" use of said meeting room if it conflicts with the City's scheduled usage of said meeting room;

c. That the "CITY" agrees to not convert the meeting room into any other type of room as long as this lease is in effect.

4.2 Nothing herein shall be construed to prevent the "CITY" from permitting any hotel or motel to establish food and beverage facilities on Airport property in conjunction with its right to operate such hotel or motel; nor shall this Agreement prohibit or limit the right of the "CITY" to authorize the installation of vending machines for the sale of food, beverage, snack or tobacco items within the Airport Terminal, as the "CITY", in its sole discretion, may deem appropriate.

4.3 "LESSEE" shall have reasonable rights of ingress and egress from the Airport Terminal to its Assigned Area during the hours of 6:00 a.m. until 11:00 p.m. daily. Such rights of ingress or egress shall apply to the "LESSEE'S" employees, guests, Patrons, invitees, and suppliers. "LESSEE" shall be totally responsible for its Assigned Area, locks, and keys, as well as securing the facility when closed.

4.4 "LESSEE" agrees not to use, or suffer or permit any person to use the Assigned

Areas or any part thereof, for any illegal purposes, or for any purpose in violation of any Federal or State laws, rules, orders, regulations or ordinances of the "CITY" now in effect or hereafter enacted or adopted and in the event of any violation, or in case the "CITY", or its representatives, or any representatives of the Department of Health shall deem any conduct on the part of the "LESSEE" its agents or employees, to be objectionable or improper the "CITY" shall have the right and power and is hereby authorized by the "LESSEE" to at once declare the Agreement terminated without previous notice to the "LESSEE".

ARTICLE V

OPERATIONAL STANDARDS

5.1 The "CITY", by and through its City Manager and Airport Manager, shall have the right to determine the "LESSEE'S" compliance with all operational conditions and requirements. "LESSEE'S" failure or refusal to comply with these Operational Standards shall be deemed a default in its performance hereunder and may be grounds for termination of this Agreement.

5.2 The Airport Restaurant in the Assigned Area, shall be operated, ready to serve its guests and patrons, between the hours of 11:00 a.m. until 7:00 p.m., Monday through Saturday and shall be closed on Sundays. The "LESSEE" shall have the option to operate beyond 7:00 p.m.

5.3 The "LESSEE" shall operate the Airport Restaurant every day of the Agreement unless a holiday schedule or permission is granted in writing by the Airport Manager to close it as a result of some contingency beyond the control of the "CITY" or the "LESSEE" which shall make it necessary to close the restaurant for any portion of the period of this Agreement.

5.4 All items served by the "LESSEE" shall be first quality, shall conform to all applicable regulations and laws, and shall be purchased from reliable sources.

5.5 "LESSEE" shall serve, at a minimum, separate and dedicated combination lunch and dinner menu. "LESSEE" shall serve adequate portions and charge reasonable and justifiable prices which are comparable to those maintained at other similar first class establishments in the Morgantown, West Virginia, area, while at the same time maximizing revenues.

5.6 "LESSEE" shall make all reasonable efforts to maintain, develop and increase business conducted by it in the Airport Terminal.

5.7 "LESSEE" agrees to operate the Restaurant in a highly efficient and attractive manner and to conduct the operation in such a manner as to win public esteem.

5.8 All operation shall be supervised at all times by an active, qualified, competent manager or a qualified subordinate in the manager's absence. The manager or qualified subordinate shall be available at the Assigned Area(s) during all business hours.

5.9 "LESSEE" shall employ and maintain, at its expense, a sufficient number of employees, help and labor as may be necessary to provide, at all times, effective and efficient service required or authorized in this Agreement. "LESSEE" shall ensure and control the professional conduct, demeanor and appearance of its employees and representatives, who shall be properly trained by the "LESSEE" and shall possess such food handling certificates and qualifications as may be required by law in carrying out the responsibilities of this Agreement.

5.10 All personnel employed by the "LESSEE" shall be neat, clean and courteous at all times. Employees shall wear appropriate uniforms and name tags while on duty. No loud, boisterous or otherwise improper actions or language shall be permitted while on or about the Airport.

5.11 "LESSEE" shall comply with all health codes and laws applicable to the sale of food, non-alcoholic and alcoholic beverages. "LESSEE" shall cooperate with all local health and fire officials, and comply with all applicable codes, rules and regulations.

5.12 "LESSEE" shall accept no less than two (2) major credit cards for purchases. No additional charges shall be levied against the customer using such credit card(s), nor shall discounts be permitted for customers paying cash.

5.13 "LESSEE" shall remove and dispose of all garbage, waste and debris from the Assigned Areas and the grounds surrounding the Airport Restaurant and keep the Assigned Areas occupied under this Agreement in a clean and sanitary condition and in conformity with all laws and rules and regulations pertaining to sanitation and public health. A commercial trash dumpster shall be provided for all Airport tenants and each tenant, including "LESSEE", shall be responsible for its own disposal of garbage therein.

ARTICLE VI

RENTS, FEES, AND ACCOUNTABILITY

6.1 Annual Rent Payment - In consideration of the rights, privileges, and obligations granted by this Agreement, 'LESSEE" agrees to pay to the "CITY", for the two (2) year period beginning on August 1, 2014, and ending July 31, 2016, of the original term of this Agreement, a rental payment of $1,200.00 monthly or $14,400.00 annually.

6.2 Annual Rental Payment – (1st Additional Two (2) Year Period). In consideration

of the rights, privileges, and obligations granted by this Agreement, "LESSEE" agrees to pay to the "CITY" during the first additional two (2) year period, beginning August 1, 2016, and ending July 31, 2018, of this Agreement, a rental payment of $1,300.00 monthly or $15,600.00 annually.

6.3 Annual Rental Payment – (2nd Additional Two (2) Year Period). In consideration of the rights, privileges, and obligations granted by this Agreement, "LESSEE" agrees to pay to the "CITY" during the second two (2) year period, beginning August 1, 2018, and ending July 31, 2020, of this Agreement, a rental payment of $1,400.00 monthly or $16,800.00 annually.

6.4 Annual Rental Payment – (3rd Additional Two Year (2) Year Period). In consideration of the rights, privileges, and obligations granted by this Agreement, "LESSEE" agrees to pay the "CITY" during the third two (2) year period, beginning August 1, 2020, and ending July 31, 2022, of this Agreement, a rental payment of $1,500.00 or $18,000.00 annually.

6.5 Annual Rental Payment – (4th Additional Two (2) Year Period). In consideration of the rights, privileges, and obligations granted by this Agreement, "LESSEE" agrees to pay the "CITY" during the fourth two (2) year period, beginning August 1, 2022, and ending July 31, 2024, of this Agreement, a rental payment of $1,600.00 Monthly or $19,200.00 annually.

6.6 Payments: All payments due the "CITY" from "LESSEE" shall be on a check, no cash shall be accepted, made payable to the following:

Morgantown Municipal Airport

6.7 Place of Payment: All payments due the "CITY" from "LESSEE" shall be delivered to the following:

City of Morgantown
Airport Manager's Office
Morgantown Municipal Airport
100 Hart Field Road
Morgantown, West Virginia, 26505

6.8 Delinquency Charge: A delinquency charge of five percent (5%) per month shall be added to payments required by Paragraphs 7.1 through 7.10, above, which are rendered more than five (5) days delinquent.

ARTICLE VII

7.1 All fixed improvements, equipment and interior design and décor installed by the "LESSEE", its agents, or contractors, including the plans and specifications, shall

conform to all applicable Federal, State and local statutes, ordinances, building codes, the Americans with Disabilities Act, and Morgantown Municipal Airport rules and regulations. Prior to commencing such work, the "LESSEE" shall first obtain approval from the Airport Manager. The approval given by the "CITY" shall not constitute a representation or warranty as to such conformity; responsibility for compliance at all times shall remain in "LESSEE".

7.2 All improvements, additions and alterations made to the Assigned Areas by the "LESSEE", shall be and remain the property of the "LESSEE" until the expiration of the term, either original or extended, of this Agreement or upon termination of this Agreement (whether by mutual rescission, cancellation, forfeiture, or otherwise), whichever first occurs, at which time the said improvements, less furniture and readily removable equipment owned by "LESSEE", shall become the property of the "CITY".

7.3 The "LESSEE" shall not remove or demolish, in whole or in part, any improvements upon the assigned Areas without the written consent of the "CITY". Consent may be conditional upon the obligation of "LESSEE" to replace the same with a specified improvement. The "CITY" shall not withhold consent unreasonably.

7.4 The "LESSEE" may, at its own expense, install and operate necessary and appropriate identification signs on the Airport for the purpose of advertising the Airport Restaurant, subject to the approval of the "CITY" as to the number, size, height, location, color and general type and design.

ARTICLE VIII

MAINTENANCE AND REPAIRS

8.1 The "LESSEE" agrees to provide at its own expense such maintenance, custodial, and cleaning services and supplies as may be necessary or required in the operation and maintenance of its Assigned Areas; including, but not limited to, proper maintenance of all grease traps and ventilation fans and hoods.

8.2 The "LESSEE" agrees to maintain and make necessary repairs to the interior of all of its Assigned Areas and any equipment which might be furnished by the "CITY". " LESSEE" shall also maintain without limitation, the interior windows, doors and entrances, storefronts, signs, floor coverings, interior walls and ceiling, the surfaces of interior columns exclusive of structural deficiencies, any columns erected by the "LESSEE" and any lighting tubes or bulbs within the Assigned Areas. "LESSEE" agrees to keep and maintain in good and safe condition its electrical equipment and the plumbing fixtures located at or within its Assigned Areas.

8.3 The "CITY" agrees to make, at its expense, all structural repairs to the building and repair or replacement of ceiling tiles provided, however, that if repairs or

replacement are necessitated by the negligence of the "LESSEE", its agents, or employees, or by willful destruction, said structural repairs or replacements shall be at the expense of the "LESSEE".

8.4 All repairs done by the "LESSEE" or on its behalf shall be of first class quality in both materials and workmanship. All repairs shall be made in conformity with the rules and regulations prescribed from time to time by Federal, State and/or local authorities having jurisdiction over the work in the "LESSEE'S" Assigned Areas.

8.5 Representatives of the "CITY" shall have the right to enter the "LESSEE'S" Assigned Areas to:

a. Inspect the Assigned Areas at reasonable intervals during the "LESSEE'S" regular business hours or at any time in case of emergency, to determine whether the "LESSEE" has complied with and is complying with the terms and conditions of the Agreement. The "CITY", Airport Manager, may, at its/her discretion, require the "LESSEE" to effect repairs at the "LESSEE'S" own cost; and

b. Perform any and all things which "LESSEE" is obligated to and have failed to do after providing "LESSEE" fifteen (15) days written notice to act, including maintenance, repairs and replacements to "LESSEE" Assigned Areas. The cost of all labor, materials, and overhead charges required for 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 IX

UTILITIES

9.1 The "CITY" shall pay for all electric current, water, and natural gas which enters the Assigned Area via presently installed underground utility lines and pipes, to the Terminal Building, and operated by local utility companies. The "LESSEE" shall be expected to exercise all practical economy in utilizing such utilities, and failure to do so will constitute unsatisfactory operations. The "CITY" shall have the right to insist upon and institute practices, which it deems necessary, which the "LESSEE" shall be expected to implement to insure misuse of abuse of this privilege.

ARTICLE X

LIABILITY, INDEMNIFY AND INSURANCE

10.1 Each party hereto shall give to the other prompt and timely written notice of any claim made or suit instituted coming to its knowledge which in any way directly or indirectly, contingency or otherwise, affects or might affect the other party, and

each shall have the right to participate in the defense of the same to the extent of its own interest.

10.2 It is expressly understood and agreed by and between the parties hereto that the "LESSEE" is and shall be responsible to all parties for all of its acts or omissions, and the "CITY" shall in no way be responsible therefor. The "LESSEE", and its officers, directors, employees, and agents, shall not be construed to be employees or agents of the "CITY". It is further agreed that in its use and enjoyment of the Airport or premises and facilities herein referred to, the "LESSEE" will indemnify and save harmless the "CITY", and its members, officers, and City Council, employees and agents from any and all claims, liabilities, causes or actions or losses, (including the cost of defense) that may result in liability to the "CITY" from any actions or omissions on the part of the "LESSEE", and/or its employees, authorized agents or representatives, and shall always hold the "CITY", and its members, officers, City Council, employees and agents harmless from same. The "LESSEE" shall save harmless the "CITY", and its members, officers, City Council, employees and agents from all liabilities, claims, judgments, costs, and expenses, including all costs to defense, which may in any manner arise against the "CITY", and its members, officers, City Council, employees and agents in consequence of the granting of this Agreement, which results from the negligence of the "LESSEE", its agents, customers, servants, or employees.

10.3 During the term, either original or extended, of this Agreement, the "LESSEE" shall effect and maintain, with a company satisfactory to the "CITY":

a. Public Liability and Property Damage Insurance including, if deemed necessary by the "CITY", Automobile Liability Insurance - covering claims for damages for bodily injury, including accidental death, and for claims for property damage which may rise from operations under this Agreement, whether such operations are by "LESSEE" or its duly authorized agents, representatives or employees. The "LESSEE'S" public liability insurance shall include coverage for the sale of alcoholic beverages, and shall be in a minimum amount of one million dollars ($1,000,000.00) for each occurrence and five hundred thousand dollars ($500,000.00) for property damage covering the acts of the "LESSEE", its agents and employees. "LESSEE" agrees to deliver copies of any and all policies of insurance and certificates of said insurance required by this Agreement to the Airport Manager upon the execution of this Agreement. Additionally, the "CITY" shall be notified in writing by the insurer and "LESSEE" at least thirty (30) days prior to the cancellation of any public liability insurance required under the terms and conditions of this Agreement. "LESSEE" agrees to insure that "CITY" and its officers, agents, and employees are held harmless against any and all claims arising out of "LESSEE'S" services at the Airport.
b. Worker's Compensation and Employer's Liability Insurance – "LESSEE" shall provide such coverage for its operations under this Agreement in the

amounts and form required by the Worker's Compensation Act and insurance laws of the State of West Virginia.

10.4 "LESSEE" shall not use or permit the storage of any illumination oils, lamps, turpentine, benzene, naptha, and other similar substances, or explosive of any kind, or any substance or thing prohibited in the standard policies of fire insurance in the State of West Virginia, or by the West Virginia State Fire Code.

10.5 It is understood that smoking is prohibited within the Airport facility and that there are designated smoking areas on the north and south ends outside of the building.

10.6 During the term, either original or extended, of this Agreement, the "CITY", at its sole discretion, shall have the right to adjust the minimum amounts of all liability insurance coverage required hereunder.

ARTICLE XI

ASSIGNMENT, SUBLEASING, AND CHANGE OF OWNERSHIP

11.1 The "LESSEE" shall not assign, delegate, sublease or transfer this Agreement or any other right, privilege, or license conferred by this Agreement, or any duty or obligation slated herein, either in whole or in part, or sublet or in any manner encumber the Assigned Areas or any portion thereof, except as otherwise provided in this Agreement, without obtaining in advance the written consent of the "CITY", which may be withheld at the sole discretion of the "CITY".

11.2 The "LESSEE" must obtain the consent of the "CITY" to keep the Agreement in effect prior to any transfer or merger of ownership between the "LESSEE" and any other legal entity. Transfer shall include the transfer of corporate stock from one party to another, but shall not include transfers of stock among shareholders of record as of the date of execution of this lease agreement.

ARTICLE XII

COMPLIANCE

12.1 The "LESSEE", its officers, agents, servants, employees, contractors, licensees, and any other person over which the "LESSEE" has the right to control shall comply with all present and future laws, ordinances, orders, directives, rules and regulations of the Federal, State, County, and "CITY" governments which may be applicable to its operations at the Airport.

12.2 "LESSEE" shall pay on or before its respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees, which are now or may hereafter be levied upon the Assigned Areas, or upon "LESSEE" or upon

the business conducted on the Assigned Areas, or upon any of the "LESSEE" property used in connection therewith; and shall have and maintain in current status all Federal, State, and local licenses and permits required in the operation of the business conducted by the "LESSEE".

12.3 "LESSEE" agrees to pay, or guarantee payment of all lawful fines and penalties as may be assessed by the "CITY" or against the "CITY" for violations of Federal, State, and local laws, ordinances, ruling or regulations, or Airport rules and regulations caused by "LESSEE'S" acts or omissions or those of its employees or agents.

12.4 "LESSEE", its employees and agents shall at all times comply with rules and regulations for the Morgantown Municipal Airport (and its Manager) as may be adopted from time to time by the "CITY". In the event that there is a conflict between the provisions of this Agreement and such rules and regulations, this Agreement shall govern unless otherwise directed by the "CITY".

ARTICLE XIII

CANCELLATION BY "LESSEE"

13.1 In addition to all other remedies available to the "LESSEE" this Agreement shall be subject to cancellation by the "LESSEE" by giving a thirty (30) day written notice to the "CITY", should any one or more of the following occur, provided however, that none of the compensation and fees which are to be paid by "LESSEE" herein will be refunded to "LESSEE":

a. The abandonment or the permanent removal of all certificated passenger airline service from the Airport for longer than six (6) months.
b. The assumption by the United States Government, or any additional agency thereof, of the operation, control or uses of the Airport, or any substantial part or parts thereof in such manner as to substantially restrict "LESSEE" from operating thereon for a period of at least six (6) months.
c. The complete destruction of all of a substantial portion of the Assigned Areas from a cause other than the negligence or omission to act of "LESSEE", its subcontractors, agents or employees, and the failure of the "CITY" to repair or reconstruct said premises within six (6) months after such destruction.
d. The breach by the "CITY" in the performance of any covenant or any Agreement required to be performed by the "CITY" and the failure of the "CITY" to commence to remedy such breach for a period of thirty (30) days after receipt of notice of such breach by "CITY" from "LESSEE".
e. The issuance by any court of competent jurisdiction of any injunction preventing or restraining the use of the Airport in such a manner as to substantially restrict the "LESSEE" from conducting its restaurant business not caused by the act or omission of the "LESSEE" and the remaining in force of such injunction for at least ninety (90) days.

ARTICLE XIV

CANCELLATION BY "CITY"

14.1 In addition to all other remedies provided herein or at law, "CITY" may cancel this Agreement by giving a thirty (30) day written notice to the "LESSEE" should any one or more of the following events occur:

a. "LESSEE" fails to make any payments required hereunder when due to the "CITY" or within ten (10) days after receipt of written notice from the "CITY" of non-payment.
b. "LESSEE" permits to continue, for a period of three (3) days after receipt of written notice from the Airport Manager, the unsafe or unsanitary conditions or practices in or about the Assigned Areas; provided however, if the unsafe or unsanitary condition is such as to require replacement, repair, or construction, "LESSEE" shall have a reasonable time in which to correct said condition, but must begin action on the matter immediately upon receipt of said notice.
c. The interest of "LESSEE" under this Agreement is transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the prior written consent of the "CITY", as per sections 11.1 and 11.2 herein.
d. "LESSEE" becomes, without written approval of the "CITY" a successor or merger corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution, as per sections 11.1 and 11.2 herein.
e. "LESSEE" shall neglect or fail to perform and observe any other promise, covenant or condition set forth in this Agreement within ten (10) days after receipt of written notice of breach from the "CITY" or the Airport Manager, except where fulfillment of such obligation requires activity over a period of time and "LESSEE" has commenced to perform whatever may be required within ten (10) days after receipt of such notice and continues such performance without interruption except for causes beyond its control.
f. The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which is not vacated, dismissed or set aside within a period of ninety (90) days and which does, or as a direct consequence of such process will, interfere with "LESSEE'S" use of the Assigned Areas or with its operations under this Agreement.
g. "LESSEE" becomes insolvent, or takes the benefit of any present or future insolvency statute, or make an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the arrangement for their reorganization, or the readjustment of the indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States, or under any State laws, or consents to the appointment of a receiver, trustee or liquidator of all or

substantially all of the property or its property located within the Assigned Area.

h. A petition under any part of the Federal bankruptcy laws, or an action under any present or future insolvency law or statute is filed against "LESSEE" and is not dismissed within ninety (90) days.
i. By or pursuant to, or under authority of, any legislative act, resolution or rule, order or decree of any court, governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control or all or substantially all of the property of "LESSEE", and such possession or control continues in effect for a period of ninety (90) days.
j. Any lien is filed against the Assigned Area (s) because of any act or omission of "LESSEE" and such lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within thirty (30) days.
k. "LESSEE" abandons, deserts, vacates or discontinues its operation of the business herein authorized for a period of five (5) days without prior written consent of the "CITY".

14.2 Acceptance by the "CITY" of any rental payments specified herein, after a breach of any of the terms of this Agreement shall not be deemed a waiver of any right on the part of the "CITY" to cancel this Agreement on account of such breach, unless said breach is fully and completely corrected and cured to the satisfaction of the "CITY" prior to said cancellation, or of the "CITY'S" right to cancel this Agreement because of any subsequent breach of a similar or different nature.

14.3 The "CITY" may reenter the Assigned Areas and may remove all persons and property from same upon the date or reentry specified in the "CITY'S" written notice to "LESSEE". Such date of reentry shall not be less than thirty (30) days from the date of said notice. Upon any removal of "LESSEE'S" property by "CITY" hereunder, said property may be stored at a public warehouse or elsewhere at "LESSEE'S " sole cost and expense.

ARTICLE XV

GENERAL PROVISIONS

15.1 Nondiscrimination

a. The "LESSEE", as a part of the consideration hereof, does hereby covenant and agree:

1. That no person, on the grounds of race, color, religion, creed, political ideas, sex, sexual orientation, age, or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
2. That in the construction of any improvements and the furnishing of services, no person, on the grounds of race, color, religion, creed, political

ideas, sex, sexual orientation, age, or handicap, shall be excluded from participation in, denied benefits of, or be otherwise subject to discrimination in the use of said facilities;

3. That the "LESSEE" shall use the Assigned Areas 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.
4. That the "CITY" has provided handicapped accessible ingress and egress to the leased area and "LESSEE" shall not close or otherwise cause said access way to be nonfunctional without first providing an alternative means of access which has been approved in writing by the Airport Manager.

b. The "LESSEE" shall furnish its accommodations and/or services on a fair, equal, and nondiscriminatory basis to all users thereof, and it shall charge fair, reasonable, and nondiscriminatory prices for each unit of services; however, the "LESSEE" may be allowed to make reasonable discounts to other similar type of price reductions to purchasers on a nondiscriminatory basis.
c. "LESSEE" acknowledges that the provisions of 49 CFR, Part 23, Disadvantaged Business Enterprise (DBE) and 14 CFR, Part 152, Affirmative Action Employment Program, are applicable to the activities of "LESSEE" under the terms of this Agreement, and unless exempted by said regulations, hereby agrees to comply with all requirements of the Department, the Federal Aviation Administration, and the U.S. Department of Transportation, in reference thereto. These requirements may include, but not be limited to, the compliance with MBE, DBE, and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports, and including, if directed by the Department, the contracting of specified percentage of goods and services contracts to Minority Business Enterprises.
d. Noncompliance by "LESSEE" with the requirements of section 16.1 of this Agreement shall constitute a material breach thereof. In the event of such noncompliance, the "CITY" shall have the right to cancel this Agreement after all actions required by the United States Government have been exhausted.

15.2 Federal Aviation Act, Section 300: Nothing herein contained shall be deemed to grant the "LESSEE" any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any aeronautical activity on the Airport, except that, subject to the terms and conditions hereof, the "LESSEE" shall have the right to process the Assigned Area under the provisions of this Agreement.

15.3 Subordination to Agreements With The United States Government: This

Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the "CITY" and the United States Government, relative to the operations and maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to the "CITY" for Airport purposes, or the expenditure of federal funds for the improvement or development of the Airport, in accordance with the provisions of the Federal Aviation Act of 1958, as amended from time to time. The "CITY" covenants that to the best of its knowledge and belief it has no existing agreements with the United States Government in conflict with the express provisions of this Agreement.

15.4 Waiver of Damages: The "LESSEE" hereby expressly waives any and all claims for compensation for any and all loss or damages sustained by reason or any defect, deficiency or impairment of the electrical apparatus, water supply equipment, equipment or wires used in the Assigned Areas, herein mentioned, or by reason of any loss or impairment of light, current or water supply which may occur from time to time for any cause, or for loss or damage sustained by the "LESSEE" resulting from fire, water, windstorm, tornado, civil commotion, or riots and the "LESSEE" hereby expressly waives all right, claims and demands and forever releases the "CITY", its officers, employees and agents, from any and all demands, claims, actions, and causes of action arising from any such cause.

15.5 Nonwaiver of Rights: Failure of the "CITY" to insist upon strict performance of any provision or condition of this Agreement, or to exercise any right herein, shall not operate or be construed to be a waiver of such condition or right in any other instance.

15.6 Notices: Notices required herein may be given by registered or certified mail by Depositing the same in the United State mail in the continental United States, postage prepaid. Any such notice so mailed shall be presumed to have been received by the addresses seventy-two (72) hours after deposit of same in the mail. Notices in writing may also be delivered by personal service of said notice to the agents for each party at the addresses listed below. Either party shall have the right, by giving notice to the other, to change the address at which its notices are to be received. Until such change is made, notices to the "CITY" shall be delivered as follows:

City of Morgantown
Airport Manager's Office
Morgantown Municipal Airport
Morgantown, WV 26505

Notices to "LESSEE" shall be deemed sufficient if in writing and mailed to, registered or certified, postage prepaid, addressed to "LESSEE" at:

Elias Hishmeh
82 Hart Field Road
Suite 255
Morgantown, WV 26505

15.7 Right to Develop Airport: It is further covenanted and agreed that the "CITY" reserves the right to further develop or improve the Airport, including the Terminal and all landing areas as it may see fit, regardless of the desires or views of the "LESSEE" and without interference or hindrance. The "CITY" shall have the right to construct or install over, in, under or through the Assigned Areas new lines, pipes, mains, wires, conduit and equipment.

15.8 Relationship of Parties: Nothing contained herein shall be deemed or construed by the parties hereto, or any third party, as creating the relationship of principal and agent, partners, joint venture, or any other similar such relationship, between the CITY OF MORGANTOWN and "LESSEE". The parties shall understand and agree that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto creates a relationship other than the relationship of the "CITY" and "LESSEE". This agreement is not intended to and shall not be construed to vest in the "LESSEE" any title, tenure or any property rights in the real estate, fixtures or personal property belonging to the "CITY" now located, or which may hereafter be located, in or around the Assigned Areas.

15.9 Right to Amend: In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport or otherwise, the "LESSEE" agrees to consent to such amendments, modifications, revisions, supplements, or decisions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required.

15.10 Termination: Upon the termination or cancellation of this Agreement for any cause the "LESSEE" shall vacate the Assigned Area and shall not remove any of the "LESSEE'S" supplies, property or equipment from the Assigned Areas until all license fees, Business and Occupation taxes, and other sums due the "CITY" have been paid.

ARTICLE XVI

ENTIRE AGREEMENT

16.1 The parties hereto understand and agree that this instrument, including the items specifically incorporated by reference into it consistent with the terms of this document, and its attached Exhibits contain the entire Agreement between the parties. The parties further understand and agree that neither party nor its agents have made representations or promises with respect to this Agreement

except as expressly set forth herein; and that no claim or liability shall arise for any representations or promises not expressly stated in this Agreement, any other writing or parole agreement with the other party being expressly waived.

THE CITY OF MORGANTOWN
a municipal corporation,
"CITY"

By: _____
Jeff Mikorski, City Manager

Witness: _____

MERKOL, INC. A West Virginia corporation, "LESSEE"
"MERKOL, INC."

By: _____

Its: _____

Witness: _____