

LIMITED OPERATOR AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 2023, and effective _____1, 2023, by and between the City of Aurora, a Municipal Corporation of the State of Illinois, (hereinafter referred to as "City"), and Freedom Flying Club, Inc. (hereinafter referred to as "Operator").

WITNESSETH

WHEREAS, the City of Aurora owns and operates a public airport known as the Aurora Municipal Airport; and

WHEREAS, Operator is willing to operate a flight training business at said Airport for the use and benefit of the public and to promote aviation at said Airport.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, the parties hereby covenant and agree as follows:

1. The City of Aurora does hereby grant to Operator the right to operate its business pursuant to the conditions set forth herein and Operator does hereby agree to operate its business on a non-exclusive limited basis pursuant to the terms and conditions of this agreement and to all rules and regulations in force from time to time of said Airport and does hereby assume the responsibility for the efficient conduct of said operations. Operator agrees to maintain sufficient qualified personnel at the airport during such times as may be required for the efficient operation of its facilities. Without limiting the generality of the foregoing, Operator shall have the following non-exclusive rights, privileges and uses in connection with the operation of said Airport.
 - a. The use of airport automobile parking areas, appurtenances and of public improvements thereon.
 - b. The use of common areas of the airport, including runways, taxiways, aprons (exclusive of tiedowns), roadways, control tower, floodlights, landing lights, signals, and other conveniences for take-off, flying and landing of Operator's aircraft.
 - c. The Operator shall have the right to operate a general aviation flight training business.
 - d. The right to maintain its business operations in the premises subleased from Revv Aviation or any other building located on the airport property. If for whatever reason Operator relocates to a building on the airport property other than that owned or leased by Revv Aviation, Operator shall notify the City within 10 days of the relocation. Operator shall have the use during the term hereof of all administrative buildings of the Aurora Municipal Airport on an equal basis with other users.
 - e. City and/or Aurora Municipal Airport shall not grant any of the non-exclusive privileges and rights herein granted to Operator to any other persons, firm or corporation upon more favorable terms than are afforded to the Operator.
 - f. City and/or Aurora Municipal Airport shall generally aid and cooperate with Operator in the promotion of interest in aviation and aviation business at the Airport.
2. The term of this Agreement shall be one (1) year, commencing _____ 1, 2023 and expiring _____ 31, 2024, hereinafter referred to as the "Initial Term". In addition to the Initial Term,

the Operator is hereby given the option to extend the Initial Term by four (4) successive one (1) year option periods upon the same terms and conditions as set forth herein. In order to exercise said options, Operator shall deliver written notice of its intent to exercise the option to the City no later than thirty (30) days prior to the end of the Initial Term or any option period exercised by Operator.

3. For the privilege of conducting business at the Airport, the Operator agrees to pay the City an amount equal to one and one-half percent (1 and ½%) of the gross income generated by the Operator as a result of the aircraft management services Operator is being permitted to conduct on the premises and subject to the minimum annual payment as hereinafter defined (hereinafter referred to as "rent").
 - a. Gross income is defined as all cash received by the Operator arising from the aircraft management services being performed by the Operator at the Aurora Airport as evidenced by paid customer invoices which the Operator shall, in the ordinary course of business, be required to generate and retain during the term of this Agreement, less deductions for State and/or Federal Sales/Excise Taxes, if any, as evidenced by appropriate paid Sales/Excise Tax Returns and any other allowable deduction(s) as provided for in this lease. The Operator shall retain all such customer invoices for inspection at reasonable times, and subject to reasonable notice, by the City and the Operator shall also be required to submit an "Additional Rent Lease Payment" form Statement" in the form as required by the City, on a monthly basis due no later than forty-five (45) days from the close of each respective month.
 - b. If for any reason, the rent as set forth in this Agreement is not paid when due, a carrying charge of two percent (2%) per month or any portion of the month thereof shall be imposed on the amount which remains due and unpaid and be due and payable with the next rental payment.
 - c. In addition, if the Operator is determined to be delinquent in rent for any two (2) months during a consecutive twelve (12) month period, then the Operator shall be required to post a security bond equivalent to six (6) months of rent (based on the amounts set forth in Paragraph 3 of this document) or be in violation of this Agreement.
 - d. In no event shall the total annual rent payments set forth in this Paragraph 3 be less than \$3,600. If at the conclusion of the Initial Term or at the conclusion of any one (1) year option period exercised by Operator the total annual rent amount paid by the Operator to the City is less than \$3,600, the Operator shall pay to the City the difference bringing the total annual amount paid to the \$3,600 annual minimum rent payment amount.
4. Books and Records Maintained: At all times during the term of this Agreement or any option period, the Operator shall maintain accurate books, accounts, records, and receipts in a manner acceptable to a Certified Public Accountant showing the true status of all aircraft management services conducted at the Airport so as to permit the preparation of financial statements in accordance with generally accepted accounting principles. The Operator shall preserve same until they have been audited by the City's auditor and shall make them available, subject to reasonable notice, at any reasonable time to the City for examination and audit.
 - a. Financial Reports: Operator shall present to the City, within thirty (30) days after the end of each fiscal quarter and after each fiscal year end, a copy of all financial statements

prepared in accordance with generally accepted principles and audited and certified to by a licensed Certified Public Accountant.

- b. In lieu of (a) above, the Operator shall present the City of Aurora on a quarterly basis, a financial statement in a format acceptable to the City of Aurora and certified by the Operator. If this option is used by the Operator, there shall be an annual audit fee of not less than \$200.00 and not more than \$500.00 payable by the Operator on the anniversary date of this Agreement and annually thereafter, a like amount payable by the Operator upon performance of audit work done by the City of Aurora.
 - c. Operator hereby agrees to pay any and all assessments or taxes on its real or personal property located at the Aurora Municipal Airport.
5. To the extent permitted by law, the Operator agrees to indemnify and save harmless the City, its agents and employees from and against all loss and expenses (including costs and reasonable attorney's fees) by reason of liability imposed by law upon the City for damages because of bodily injury, including death, at any time resulting therefrom sustained by any person or persons or on account of damage to property, including loss of use thereof, arising out of or in consequence of the operation of Operator's business, whether such injuries to persons or damage to property be due to the negligence of the Operator or his employees or agents.

The Operator shall assume total risk and shall be responsible for any and all damages or losses caused by or in any way resulting from the operation of its business and provide all insurance necessary to protect and save harmless the City and its employees. Said insurance shall include contractual liability equal to the limits as hereinafter set forth.

The Operator agrees to purchase a policy of insurance, which shall include the City as an additional insured or provide separate coverage for the City with an owner's protective policy. All insurance provided by Operator, extending to City as additional insurance, shall be primary and insurance maintained by City shall be excess and not contributing with City's insurance. The minimum amounts of insurance shall be as follows, except that no restriction on occurrence limits will be permitted:

Bodily Injury Liability Property Damage Liability

<u>Each Occurrence</u>	<u>Aggregate</u>	<u>Excess Liability Umbrella</u>
\$1,000,000	\$2,000,000	\$2,000,000

The coverage and amounts above are minimum requirements and do not establish limits to the Operator's liability. Other coverage and higher limits may be provided at the Operator's option and expense.

The City does not waive its subrogation rights against Operator for damages due to losses to City or its employees due to the fault or negligence of the Operator and/or any of its employees or agents during or as a result of the operation of the business.

All such insurance must include an endorsement whereby the insurer agrees to notify the City at least thirty (30) days prior to non-renewal, reduction or cancellation. The City may require that the Operator cease operations of the business if the insurance is canceled or reduced below the required amount of coverage.

6. Operator shall not permit any mechanic's lien to be placed upon the demised premises during the terms of this Agreement. In the case of the filing of such lien as a result of any work permitted to be done on the demised premises, Operator will pay promptly the amount of the same. In the event of default by Operator of the requirements of this paragraph which shall continue for more than thirty (30) days after written notice thereof from the City to the Operator, the City shall have the right and privilege, at City's option, to pay the same or any portion thereof without inquiry as to the validity thereof, and any amount so paid, including expenses and interest, shall become an additional indebtedness hereunder due from Operator to the City or to cancel this Agreement at the City's sole option. In the event of a mechanic's lien to which Operator asserts a valid defense in whole or in part, Operator may in lieu of payment required herein post an indemnity bond with the City in an amount of sufficient funds or shall place sufficient funds in an interest bearing escrow account with directions to pay upon entry of a valid court judgment in favor of a lien holder after the time for all appeals has lapsed. Sufficient funds shall be deemed to be 125% of the amount of the lien.
7. Operator covenants and agrees that it will protect, save and keep the City and its agents or employees forever harmless and indemnified against any penalty, damage or charge imposed for any violation of any laws or ordinances, and that it will at all times protect, indemnify, save and keep harmless the City and its agents or employees against any and all laws, costs damage or expenses arising out of any failure of the Operator in any respect to comply with and perform any or all of the requirements of this Agreement.
8. Operator agrees not to erect any building, structure or sign on the airport premises without first securing the written consent of the City. Operator further agrees to operate said business from an office subleased from an Airport tenant, upon terms negotiated between the Operator and Airport tenant. Operator shall present to the City for its approval an executed sublease with an Airport tenant as described herein within ten (10) days of the execution of this Agreement. Failure of Operator to provide said Sublease to the City shall render this Agreement void and unenforceable. Operator has the sole responsibility of locating suitable space to sublease at the Airport. If, for whatever reason, during the term of this Agreement, Operator relocates to a different building on the Airport property, Operator shall notify the City within ten (10) days of the potential relocation, and provide an executed Sublease to the City on the terms noted above. Failure of Operator to provide said new Sublease to the City shall render this Agreement void and unenforceable. During the term of this Agreement, Operator shall have the right to use all Airport administrative buildings on an equal basis with other Airport users.
9. In the event either party defaults on the prompt and full performance of the covenants and agreements herein contained, and such default is not remedied or prompt and full performance is not accomplished by the defaulting party, or such defaulting party has not promptly instituted and is not pursuing such remedies as are necessary to rectify such default

within thirty (30) days after demand is made by the other party, then in any such event, the party against whom such default is made, if it so elects, may terminate this Agreement.

10. The City shall have the right, if it so elects, to terminate this Agreement immediately upon the filing of any petition, voluntarily or involuntarily, for the adjudication of the Operator as bankrupt, or the making by the Operator of any general assignment for the benefit of creditors.
11. The provisions of the City of Aurora Code of Ordinances, the Rules and Regulations of the Aurora Municipal Airport and the Minimum Standards for Commercial Activities at the Aurora Municipal Airport, all as amended from time to time, are hereby made a part of this Agreement by reference and said provisions shall be binding on the parties to this Agreement.
12. This Agreement is subject to the approval of the State of Illinois, Division of Aeronautics, United States Government and the Federal Aviation Administration, and other regulatory agencies, before execution hereof by the parties.
13. Pursuant to Title VI of the Civil Rights Act of 1964, and Part 21 of the regulations of the Office of the Secretary of Transportation, the parties to this Agreement hereby agree that neither the City nor the Operator in the operation or usage of the subject property shall in any way on the ground of race, color or national origin discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21; furthermore, that the parties will include or require the inclusion, in every Agreement or concession pursuant to which any person, operates or has the right to operate any facility herein concerned providing services to the public. The foregoing covenant is an obligation assumed by that person, together with the provisions granting the parties the right to take such action as the government may direct to enforce that covenant.
14. It is hereby agreed between the parties that the City and the Operator will operate the airport for the use and benefit of the public on fair and reasonable terms, and without unjust discrimination; that in its operation and the operation of all facilities of the airport, neither party nor any person or organization occupying space or facilities thereon will discriminate against any person or class of persons by reason of race, color, creed or national origin in the use of any facilities provided for the public on the airport; that in any agreement, contract, lease or other arrangement under which a right or privilege at the airport is granted to any person, firm or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the airport, the parties hereto will insert and enforce provisions requiring the Operator:
 - a) to furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof; and
 - b) to charge fair, reasonable and no unjustly discriminatory prices for each unit or service; provided, that the Operator shall be allowed to make reasonable and non-discriminatory discounts, rebates or other similar price reductions to volume purchasers.
 - c) However, Operator may deny services at any time it reasonably believes that such service poses a security risk or unreasonable risk to any person's safety or safety of property.

15. Notices: All notices required hereunder shall be in writing and shall be deemed to have been delivered if deposited in the United States mail, certified mail, return receipt requested, with postage prepaid and addressed, if to the City at:

Airport Manager
43W636 US Route 30
Sugar Grove, IL 60554

with copies to:

City Clerk
City of Aurora
44 East Downer Place
Aurora, IL 60507

Revenue and Collection Division
Finance Department
City of Aurora
44 East Downer Place
Aurora, IL 60507

And if to Operator at:

Jack Maechtle
Freedom Flying Club
43W624 US 30, Suite A
Sugar Grove, IL 60554

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

CITY OF AURORA, A MUNICIPAL CORPORATION, OWNER OF THE AURORA MUNICIPAL AIRPORT

BY _____
MAYOR

ATTEST:

BY _____
CITY CLERK

Freedom Flying Club

BY _____
PRESIDENT

ATTEST:

BY _____
SECRETARY