

LEASE OF REAL ESTATE AT THE AURORA MUNICIPAL AIRPORT

THIS INDENTURE made this _____ day of _____, 2019 between the City of Aurora, an Illinois Municipal Corporation (“Landlord”) and Highgate Aviation, Inc., an Illinois Corporation (“Tenant”).

WITNESSETH:

1) LEGAL DESCRIPTION OF LEASED PREMISES

The Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord the following described real estate, being a part of the Aurora Municipal Airport, Sugar Grove Township, Kane County, Illinois; to-wit:

The part of the South half of the Southeast quarter and of the South half of the Southwest quarter of Section 17, Township 38, North, Range 7 East of the Third Principal Meridian, described as follows:

Beginning at a point on the West line of the Southwest quarter of said section, 105.90 feet South of the North line of the South half of the Southeast quarter; thence West along a line which forms an angle of 90 degrees, 10 minutes from North to West a distance of 91.44 feet; thence South at right angles to the last described course 190.0 feet; thence East at right angles to the last described line, 185.0 feet thence North at right angles to the last described line, 190.0 feet; thence West at right angles to the last described line 93.56 feet to the place of beginning, less the Northerly 40 feet of the above described tract in Kane County, Illinois containing 27,750 square feet, more or less.

2) GROUND RENT

The Tenant will pay to the Landlord annual ground rent for the parcel described in Paragraph 1 of this Agreement in the amount of \$0.43235 per square foot times the square footage (\$11,997.71 per year) of the leased property which ground rent shall be paid in equal monthly installments. Said ground rent shall be due on the first day of the month after occupancy of the building, and each succeeding month hereafter until the termination of this Lease. Said ground rent is computed by multiplying the total square footage of the subject parcel by an amount of \$0.43235 per square foot and shall be increased annually on the first day of December of each year of the Lease by an amount of 3% over the prior year ground rent.

3) ADDITIONAL RENT

- a. In addition to the ground rent provided in Section 2, the Tenant shall pay to the Landlord an additional rent for the use of the leased premises. The additional rent shall be 1 ½ percent (1.5%) of the gross receipts generated by the Tenant from the Tenant's business physically conducted on the leased premises and/or the Tenant's business derived in part or in whole from the leased premises during the calendar month next preceding the date said rent is payable. Gross receipts is defined as all cash received by the Tenant that arises from the Tenant's business activities regardless of the physical location of one part or all of the Tenant's particular business activity, plus deductions for State and/or federal excise/sales taxes as evidenced by appropriate paid tax returns and any other allowable deduction(s) as provided for in this Lease. Additional rent shall be paid monthly no later than thirty (30) days after the end of the month for which it is assessed until the termination of this Lease. Payment reports must be submitted on a form approved by the City of Aurora.
- b. If, for any reason, the rent as set forth in this Section 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. In addition, if the Tenant is determined to be delinquent for any two (2) months during a consecutive twelve (12) month period then the Tenant shall be required to post a security bond equivalent to six (6) months of rent based on the amounts as set forth in Paragraphs 2 and 3(a) of this Lease or be in breach of this Lease.

4) LEASE TERM

The term of this lease shall begin on _____, 2019 and shall continue for a period of twenty (20) years expiring on _____, 2039. The Tenant shall have the option to renew this Lease for an additional ten (10) years not to extend beyond _____, 2049; provided, that at the time of such renewal, that any party hereto shall require the renegotiation of the amounts of ground rent and/or additional rent under Paragraphs 2 and 3 hereof. Tenant shall advise the Landlord by the procedure of the "NOTICES" Paragraph of this Agreement no sooner than January 1, 2036 and no later than January 31, 2036 of its intent to exercise the option contained herein.

5) USE OF PREMISES

a. Tenant agrees that the use of the premises shall be limited to the following list of activities according to the most recent Rules and Regulations and Minimum Standards for Commercial Activities at the Aurora Municipal Airport as adopted by the Aurora City Council and amended from time to time:

- 1) The right to operate, store and maintain their own aircraft.
- 2) Rental of hangar and office space to others subject to the aforementioned Rules and Regulations and Minimum Standards for Commercial Activities at the Aurora Municipal Airport as adopted by the Aurora City Council and amended from time to time.

The aforementioned authorized activities shall be limited to the Tenant only. No other business activities shall be authorized to be conducted or performed nor shall Tenant provide any additional service(s), other than those listed herein, from the leased premises without prior written approval from the City of Aurora. Any entity including one affiliated with Tenant corporation operating from the premises without prior written approval from the City of Aurora shall be deemed to be a violation of this Lease Agreement. Should the Tenant not actively be engaged in any or all of the approved activities set forth in this paragraph for a period of time exceeding three (3) consecutive months, the City reserves the right to rescind said approved activity.

6) NON-DISCRIMINATION

The Tenant for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that:

- a. For all aeronautical leases involving services to the public; each lease must be in conformance with Section 308 of the Federal Aviation Act of 1958, as follows: "It is hereby agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right prohibited by Section 308 of the Federal Aviation Act of 1958, as amended, and the lessor reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature."
- b. All leases involving services to the public must contain the assurances required by Title VI of the Civil Rights Act of 1964, and by Part 21 of the regulations of the Office of the Secretary of Transportation, as follows: "The lessee for himself, his personal representatives, successors in interest and assigns, as part of the

consideration hereof, does hereby covenant and agree that: 1) 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 in the use of said facilities; 2) in the construction of any improvements on, over or under such land 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; 3) the lessee shall use the premises in compliance with all the other requirements imposed by 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, as amended.”

- c. All aeronautical leases involving services to the public must contain the provisions of paragraph 4b of the Project Application for Airport Improvements, as follows: “The lessee agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, that the lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.”
- d. In the event of breach of any of the above covenants, Tenant shall have thirty (30) days to resolve said breach to the satisfaction of the Landlord. If the parties hereto cannot agree that said breach has been, or can be, resolved then the matter may be resolved through appropriate legal proceedings.

7) USE OF AIRPORT FACILITIES

The Tenant shall have free use of the Aurora Municipal Airport, including, but not by way of limitation, the landing areas, aprons, taxiways and vehicle parking areas. This Lease shall not be construed to convey to the Tenant the exclusive use of any part of the Aurora Municipal Airport except those premises described in Section 1 herein, or to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended. The Landlord reserves the right to lease to any other party any portion of the Aurora Municipal Airport not described in Paragraph 1 herein (and subject to the terms of the Right of First Refusal) other than public facilities, and to grant to others the privilege and right of conducting any one or more activities of an aeronautical nature.

8) CARE OF LEASED PREMISES

- a. Tenant shall keep and maintain the leased premises and all improvements of any kind, which may be erected, installed or made thereon by Tenant in good and substantial repair and condition, including the exterior condition thereof, and shall make all necessary repairs and alterations thereto. Subject to the prior written approval of Landlord approving the right to operate and maintain such facility, the Tenant shall assume all responsibility for the installation and maintenance of any fuel or oil (or any other material deemed hazardous by the Environmental Protection Agency) storage facility on the airport that is for the sole use of the Lessee. Maintenance includes, but is not limited to, any and all environmental clean-ups of the site and/or removal of the facility. Tenant agrees to hold harmless from any responsibility or expense, the Landlord for any maintenance of the facilities. Tenant shall provide proper containers for trash and garbage and shall keep the premises free and clear of rubbish, debris and litter at all times. Tenant shall also maintain all aprons, ramps and taxiways that are constructed by Tenant and are for the exclusive use of Lessee, its sublessees, guests and invitees. Tenant shall keep mowed and in a slightly condition all landscaping and grass areas within the leased premises. Tenant shall be responsible for payment of all electric, telephone, road, water, natural gas and other public utility services used on the premises.
- b. At the termination of this Lease or of any extension or renewal thereof, Tenant shall surrender the leased premises, including all buildings and site improvements constructed or installed by the Tenant, in good condition, reasonable wear and tear and damage by fire, explosion, windstorm or any other casualty excepted. All such buildings and improvements shall become the sole property of the Landlord upon termination of the Lease. Regardless of the time when such termination occurs, or the reason therefore, the Landlord shall have no obligation to account for, or pay the value or cost of, such buildings or improvements to the Tenant or Mortgagee.

9) CARE OF AIRPORT FACILITIES

The Landlord shall maintain in good repair and operating condition all of the facilities and premises of the Aurora Municipal Airport which are not leased to the Tenant and which remain under the authority and control of the Landlord. Said facilities and premises shall include, without limitation, all runways, aprons, taxiways, parking areas, roadways and

lighting equipment. Landlord shall not be liable to Tenant for any injury or damage to Tenant or its property on the Premises occasioned by fire or other casualty, by leaking water, or by any defect in the Premises, except when caused through the negligent or intentional acts or omissions of Landlord or its officers, agents or employees.

10) INSURANCE

- a. Tenant covenants and agrees to maintain in force and effect at all times during the term of this Lease and any extension thereof public liability insurance in amounts as required by Landlord, but in no event less than \$5,000,000 combined single limit for bodily injuries or property damage or such other amount as may be set forth in the most current Rules and Regulations of the Aurora Municipal Airport and/or the Minimum Standards for Commercial Activities of the Aurora Municipal Airport as adopted by the City of Aurora. Said insurance shall protect Tenant and City of Aurora and its agents or employees from loss on account of each and every claim or demand arising out of alleged wrongful or negligent acts or omissions on the part of Tenant, its agents, servants or employees. Said insurance shall be with a company or companies satisfactory to the City of Aurora, and shall include coverage commonly known as "Airport Liability," "Hangar Keeper's Liability," "Worker's Compensation" and "Product Liability." The City of Aurora shall be named as an additional insured in such insurances and shall be provided with certificates of the insurance evidencing such coverage throughout the life of this Agreement. The Landlord reserves the right to request and receive copies of the Tenant's insurance policies as referenced herein. Said insurance shall be primary coverage and any insurance that the City of Aurora may have shall be considered secondary and non-contributory and all said insurance policies shall contain an endorsement to this effect.
- b. Tenant covenants and agrees to maintain in force and effect at all times during the term of this lease and any extension thereof, policies of fire and extended coverage insurance, insuring the buildings and improvements located on the demised premises to their full replacement value. Said insurance shall be with companies approved by the City of Aurora Risk Manager. The City of Aurora shall be named as an additional insured in such insurances and shall be provided with certificates of the insurance evidencing such coverage throughout the life of this Agreement. The Landlord reserves the right to request and receive copies of the Tenant's insurance

policies as referenced herein. Said insurance shall be primary coverage and any insurance that the City of Aurora may have shall be considered secondary and non-contributory and all said insurance policies shall contain an endorsement to this effect.

11) ASSESSMENTS

It is understood and agreed that the Landlord may from time to time assess against the leased premises (to the extent that any such improvements benefit the Tenant's leasehold) a portion of its costs of furnishing, installing, maintaining and renewing various utility services. Such assessment against the leased premises shall be a fraction of the total assessment, the numerator of which is total lease area square feet and the denominator of which is the total square footage of all land designated for leasehold sites (but not less than 500,000 square feet) at the Aurora Municipal Airport. The Tenant shall be responsible for any and all taxes and assessments against the leased premises coming due during the term of this Lease.

12) SUBORDINATION

a. State and Federal Law

This Lease is subject to all applicable State and Federal laws as well as all articles and conditions of grant agreements entered into between the Landlord and the Federal Aviation Administration and the Department of Aeronautics of the State of Illinois and nothing contained herein shall be construed to prevent the Landlord from making such further commitments as it desires to make to the Federal Government or to the State of Illinois so as to qualify for further expenditure of federal and/or state funds at the Aurora Municipal Airport.

b. Local Ordinances

This Lease shall be subject and subordinate to all ordinances of the City of Aurora, the Rules and Regulations of the Aurora Municipal Airport and/or the Minimum Standards for Commercial Activities at the Aurora Municipal Airport, as the same may be in effect and amended from time to time.

13) CONDEMNATION

In accordance with the statutes of the State of Illinois relative to eminent domain, the Landlord shall have the power to condemn this leasehold, or any portion thereof, even though the Landlord is, itself, a party hereto.

14) RIGHT OF ACCESS

The Landlord hereby reserves the right to enter upon the leased premises at reasonable times for the purpose of making inspections to determine if the conditions and requirements of this Lease are being fully complied with. Should any buildings on the leased premises become deficient in maintenance or in need of repair, Tenant hereby agrees to repair same within thirty (30) days after receipt of notice from Landlord. Failure to comply shall be a breach of this Lease.

15) STORAGE OF DAMAGED AIRCRAFT

No damaged aircraft shall be stored in view of the general public.

16) TENANT'S PERSONNEL

All personnel employed by the Tenant on the leased premises shall be schooled, trained and competent for their assigned duties and shall be of good moral character.

17) EXAMINATION AND AUDITS

At all times during the terms of this Lease, the Tenant and its affiliates shall maintain accurate books, accounts, records and receipts in a manner acceptable to a Certified Public Accountant and as approved by the City of Aurora, showing the true status of all business conducted on the leased premises and preserve same until they have been audited by the City of Aurora's auditor. Such documents shall be made available, at any time, to the City of Aurora for examination and audit. Furthermore, Tenant shall annually present to the Landlord a copy of Tenant's annual fiscal audit report within 120 days of the close of Tenant's fiscal year.

18) DELAYS IN ENFORCEMENT

No delay on the part of any party in enforcing any of the provisions of this Lease shall be construed as a waiver thereof. No waiver on the part of any party of a breach of any of the provisions of this Lease shall be construed as a waiver of any subsequent breach.

19) ASSIGNMENT OF LEASE

This Lease may not be assigned or subleased including any transfer to a parent company or subsidiary company of Tenant or transfer of a controlling interest in Tenant without prior written consent of the Landlord and such consent shall not be unreasonable withheld.

20) 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 Landlord at:

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

With a copy to:

City of Aurora Law Department
44 East Downer Place
Aurora, IL 60507

And if to Tenant at:

Mr. Richard S. Wagner
Highgate Aviation, Inc.
1929 Annettes Circle
Sugar Grove, IL 60554.

21) SUCCESSORS AND ASSIGNS

The terms, covenants and conditions of this Lease shall be binding upon and inure to the benefit of the successors and/or assigns of the parties hereto.

22) INTERPRETATION

a. Severability

It is the intention of the parties hereto that the provisions of this Lease shall be severable with respect to declaration of invalidity of any provision contained herein.

b. Headings

The paragraph headings are for convenience only and do not define, limit or describe the contents of such paragraphs.

c. Governing Law and Venue

The laws of the State of Illinois shall govern the validity, performance and enforcement of this Lease. Venue for any litigation between the parties arising out of this lease shall be in the Circuit Court in the Sixteenth Judicial Circuit, Kane County Illinois.

d. Amendments

No amendments, modifications or supplements to this Lease shall be effective unless in writing and executed and delivered by both parties to this Lease.

23) LEASEHOLD MORTGAGE

At Landlord's discretion the leasehold may be mortgaged and subject to the further conditions as follows:

- a. Any mortgage and/or subordination agreement shall be subject to landlord's review and approval (Landlord reserves the right not to agree to any mortgage or subordination agreement in its sole discretion).
- b. A Memorandum of Lease in recordable form shall be executed and recorded in the Office of the Recorder of Kane County.
- c. Tenant shall have no right to amend, modify, cancel or terminate this Lease without the Mortgagee's prior written consent thereto.
- d. In the event of any default on the part of Tenant hereunder, Landlord shall give Mortgagee written notice thereof, and an opportunity to cure said default for a period of not less than thirty (30) days beyond, or longer than, any period given to Tenant to cure such default.
- e. If the Mortgagee shall take possession of Tenant's leasehold estate, by foreclosure or otherwise, then (i) Mortgagee shall be liable for any previous defaults of Tenant occurring prior to the time Mortgagee takes possession, and (ii) Mortgagee's right to assign or sublet all or any portion of the premises shall be conditioned on the prior consent of Landlord, in Landlord's sole discretion.
- f. Landlord's obligation to agree to a mortgage on the demised premises is subject to mortgagee's obligation to notify Landlord of any breaches by Tenant of the terms of the mortgage and giving Tenant and/or Landlord sixty (60) days to cure said breach(s) and full reinstatement of the mortgage on cure.

- g. Tenant agrees that any uncured breach or the terms of any mortgage on the premises will be a breach of this Lease and entitle Landlord to immediate possession of the demised premises.

24) INDEMNITY

Tenant agrees to indemnify and save Landlord, its officers, agents and employees harmless from and against any and all claims and demands (except such as result from the negligent or intentional acts or omissions of Landlord, or its officers, agents or employees) for, or in connection with, any accident, injury or damage whatsoever caused to any person or property arising, directly or indirectly, out of the use of the Premises by the Tenant, or arising directly or indirectly from any act or omission of Tenant or any concessionaire or subtenant of Tenant, or their respective licensees, servants, officers, agents, employees, invitees, or contractors, and from and against any and all costs, expenses and liabilities incurred in connection with any such claim or proceeding brought thereon.

25) DEFAULT

- (a) Each of the following shall constitute an event of default (“Default”) under this lease:
 - (i) Tenant shall vacate or abandon the Premises, or permit the same to remain vacant or unoccupied for a period of thirty (30) days;
 - (ii) Tenant shall fail to continue to use the Premises in accordance with the use permitted under this Lease or shall use the Premises for a use or uses that are not permitted under the Lease, and in either case such event continues for a period of fifteen (15) days after Landlord provides written notice of same to Tenant;
 - (iii) Tenant declares or files for protection under the bankruptcy laws, dissolves or ceases to do business, ceases to do business in accordance with its present corporate purpose or generally admits an inability to pay its debts as such debts become due;
 - (iv) Tenant fails to perform any obligation or observe or perform any covenant of Tenant under this Lease, and such failure continues for a period of fifteen (15) days after Landlord provides written notice of same to Tenant.

(b) After the occurrence of a Default, Landlord may terminate Tenant's right to possession of the Premises, with or without any additional notice or demand whatsoever, and the mere retention of possession thereafter by Tenant shall constitute a forcible detainer of the Premises; and if the Landlord so elects, but not otherwise, and with or without notice of such election or any additional notice or demand whatsoever, this Lease shall thereupon terminate, and upon the termination of Tenant's right of possession, as aforesaid, whether this Lease be terminated or not, Tenant agrees to surrender possession of the Premises immediately, without the receipt of any additional demand for rent, notice to quit or demand for possession of the Premises whatsoever, and hereby grants to Landlord full and free license to enter into and upon the Premises or any part thereof, to take possession thereof, and to expel and to remove Tenant or any other person who may be occupying the Premises or any part thereof, and Landlord may use such force in and about expelling and removing Tenant and other persons as may reasonably be necessary, and Landlord may repossess itself of the Premises as of its former estate, but such entry of the Premises shall not constitute a trespass or forcible entry or detainer, nor shall it cause a forfeiture of rents due by virtue thereof, nor a waiver of any covenant, agreement or promise in this Lease contained, to be performed by Tenant. The acceptance of rent, whether in a single instance or repeatedly, after it falls due, or after knowledge of any breach hereof by Tenant, or the giving or making of any notice or demand, whether according to any statutory provision or not, or any act or series of acts except an express written waiver, shall not be construed as a waiver of Landlord's right to act or of any other right hereby given Landlord, or as an election not to proceed under the provisions of this Lease. In addition to the foregoing, Landlord shall be entitled to take any action or pursue any remedy permitted under law or in equity.

26) ACCESS TO PREMISES

Landlord and its designees shall have the right to enter upon the Premises at all hours without prior notice in the event of an emergency, and to enter upon the Premises at reasonable hours with reasonable notice in all events other than an emergency to inspect the same, or to make repairs to the Premises.

27) RIGHT TO CURE DEFAULTS

If Tenant shall fails to comply fully with any of its obligations under this Lease (including, without limitation, its obligations to maintain various policies of insurance, comply with all laws, ordinances and regulations and pay bills for utilities), then Landlord shall have the right, at its option, after Tenant's rights to cure have expired, to cure such breach at Tenant's expense. Tenant agrees to reimburse Landlord (as additional rent) for all costs and expenses incurred as a result thereof, together with interest thereon, promptly upon demand.

28) RELATIONSHIP OF PARTIES

Nothing contained in this Lease shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto other than the relationship of Landlord and Tenant.

29) ENTIRE AGREEMENT

No oral statement or prior written matter shall have any force or effect all of which shall merge herein and be superseded hereby. No waiver of any provision of this Lease shall be effective unless in writing, signed by the waiving party. Tenant agrees that it is not relying on any representations or agreements other than those contained in this Lease. This Lease shall not be modified except by a writing subscribed by all parties, nor may this Lease be cancelled by Tenant except with the written consent of Landlord, unless otherwise specifically provided herein. The invalidity or unenforceability of any provisions of this Lease shall not affect or impair any other provision. All captions herein are solely for convenience and shall not be given any legal effect.

IN WITNESS WHEREOF, the Landlord has caused this Lease to be executed by its Mayor and attested by its City Clerk, and its corporate seal affixed hereto, and Tenant has caused this Lease to be executed by its President and attested by its Secretary and its corporate seal affixed hereto, effective the day and year first above written.

LANDLORD: CITY OF AURORA, a Municipal Corporation

BY _____
MAYOR

ATTEST:

CITY CLERK

TENANT:

BY _____

ATTEST:

SECRETARY