

EMERGENCY

City of Cincinnati

JRS AG

An Ordinance No. \_\_\_\_\_

- 2021

**AUTHORIZING** the City to enter into a *Lease Agreement* with vR Hospitality LLC or other affiliated organization acceptable to the City Administration, pursuant to which the City will grant a leasehold interest in certain City-owned property at Lunken Airport in the Linwood neighborhood known as Lease Area 52 for a term of up to 40 years to facilitate the company's establishment and operation of a fixed-base operator business involving the sale of fuel and the storage and servicing of aircraft.

WHEREAS, the City owns Lunken Airport ("Airport"), which is under the management of the City's Department of Transportation and Engineering ("DOTE"); and

WHEREAS, vR Hospitality LLC or other affiliated organization acceptable to the City Administration (the "Company") desires to establish a fixed-based operator business ("FBO") at the Airport and, therefore, desires to lease from the City certain City-owned property at the Airport in the Linwood neighborhood known as Lease Area 52, as more particularly described in the *Lease Agreement* attached as Attachment A to this ordinance (the "Property"), for a term of up to 40 years (the "Lease"); and

WHEREAS, the City Administration, including DOTE, has determined that (i) the Property is not needed for any municipal purpose during the term of the Lease, and (ii) leasing the Property to the Company is not adverse to the City's retained interest in the Property or the Airport; and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-5, Council may authorize the lease of City-owned property without competitive bidding in those cases in which it determines that it is in the best interest of the City; and

WHEREAS, the City had determined that eliminating competitive bidding in connection with the Lease of the Property to the Company is in the best interest of the City and the public because the Company's fixed-base operator business will complement the mixed-use hotel, restaurant, and commercial event space the Company will construct and operate on the adjacent property, will create new employment opportunities at the Airport, broaden the services available to the other users of the Airport, and enhance the overall viability of the Airport; and

WHEREAS, the City's Real Estate Services Division, in consultation with the City's Airport Manager and after considering airport industry standards and FAA requirements, has determined by appraisal that the fair market rental value of the Property is approximately \$19,144.50 per annum, which the Company has agreed to pay (with rent to be adjusted as described in the Lease); and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution, and research; and

WHEREAS, the City Administration, including DOTE, has determined that the Lease constitutes a proper public purpose because the Lease of the Property will enhance the economic viability of the Airport, help the Airport operations achieve self-sustainability, and stimulate economic activity in and around the Linwood neighborhood; and

WHEREAS, the City Planning Commission, having the authority to approve the change in use of City-owned property, approved the Lease of the Property to the Company at its meeting on December 3, 2021; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City is hereby authorized to enter into a *Lease Agreement* with vR Hospitality LLC or other affiliated organization acceptable to the City Administration (“Company”), in substantially the form attached as Attachment A to this ordinance, pursuant to which the City of Cincinnati will lease to the Company certain City-owned property at Lunken Airport in the Linwood neighborhood known as Lease Area 52 for a term of up to 40 years to facilitate the Company’s establishment and operation of a fixed-base operator business involving the sale of fuel and the storage and servicing of aircraft.

Section 2. That the Property is not needed for a municipal purpose for the duration of the *Lease Agreement*.

Section 3. That the rent set forth in the *Lease Agreement* reflects the fair market rental value of the leased premises, as determined by appraisal by the City’s Real Estate Services Division in consultation with the City’s Airport Manager and after considering airport industry standards.

Section 4. That eliminating competitive bidding in connection with the City’s lease of the Property is in the best interest of the City because the City has not received any other acceptable proposals from other interested parties and because the Company’s fixed-base operator business

will complement the mixed-use hotel, restaurant, and commercial event space the Company's affiliate will construct and operate on the adjacent property, will create new employment opportunities at Lunken Airport, broaden the services available to the other users of Lunken Airport, and enhance the overall viability of Lunken Airport.

Section 5. That the proper City officials are hereby authorized to take all necessary and proper actions to carry out the provisions and intent of this ordinance and the *Lease Agreement*, including, without limitation, executing any and all ancillary documents associated with those agreements, including plats, deeds, easement agreements, and other documents, and further including executing amendments or supplements thereto to incorporate any and all additional or revised terms and conditions as the City Administration determines to be in the City's vital and best interests.

Section 6. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to execute the *Lease Agreement* so construction of the new facility can begin as soon as possible to enable the City to receive the benefit of the work to be performed by the Company at the earliest possible time.

Passed: \_\_\_\_\_, 2021

\_\_\_\_\_  
John Cranley, Mayor

Attest: \_\_\_\_\_  
Clerk

Contract No. \_\_\_\_\_

Property: Lunken Airport – Lease Area No. 52  
Project: Lunken Airport Terminal FBO

**LUNKEN AIRPORT LEASE AGREEMENT**  
(up to 40 years)

THIS LEASE AGREEMENT (“**Lease**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, OH 45202 (the “**City**”), and [\_\_\_\_\_] a [\_\_\_\_\_] company, (“**Lessee**”), an affiliate of **LUNKEN DEVELOPMENT FBO, LLC**, a Kentucky limited liability company, the address of which is 25 W. Robbins Street, Covington, Kentucky 41011.

Recitals:

A. The City owns the property known as Lunken Airport (the “**Airport**”), which is under the management and control of the City’s Department of Transportation and Engineering (“**DOT**”).

B. Lessee desires to lease the portion of the Airport known as Lease Area 52, containing approximately 63,815 square feet (approximately 1.35+ acres), as described on Exhibit A (Description of Leased Premises) and depicted on Exhibit B (Site Map) hereto (the “**Leased Premises**”), for an initial term of 5 years, with seven 5-year renewal options (for a total of up to 40 years, plus the initial construction period), in order to construct improvements and conduct business as a fixed-based operator (“**FBO**”), which includes selling gasoline, oil, and other lubricants, maintaining and operating full aircraft servicing facilities, providing storage space for aircraft, and repairing and servicing aircraft engines, instruments, propellers and accessories.

C. The City has determined that the Leased Premises are not needed for any municipal purpose during the term of this Lease.

D. The City has determined that competitive bidding in connection with the lease of the Leased Premises is impractical and that eliminating competitive bidding is in the best interest of the City because the City has determined that Lessee’s proposed business is aviation-related as required by the FAA and will be suitable and advantageous given the other mix of tenants at the Airport.

E. The initial base rent set forth in this Lease reflects the current fair market rental value of the Leased Premises, as determined by analysis by the City’s Real Estate Services Division and the Airport Manager, taking into consideration airport industry standards and FAA requirements.

F. Cincinnati Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City’s lease of the Leased Premises to Lessee at its meeting on December 3, 2021.

G. Execution of this Lease was authorized by Ordinance No. \_\_\_\_-20\_\_\_\_, passed by Cincinnati City Council on \_\_\_\_\_, 20\_\_\_\_.

NOW, THEREFORE, the parties hereby agree as follows:

**1. Leased Premises.**

(A) Grant. The City hereby leases the Leased Premises to Lessee, and Lessee hereby leases the Leased Premises from the City, for the Term set forth in section 2 below and on the terms and conditions set forth herein. Lessee represents that it has had a reasonable opportunity to investigate the physical condition

of the Leased Premises. The City makes no representations or warranties to Lessee regarding the physical condition of the Airport or Leased Premises and, on the Possession Date (as defined below), Lessee shall accept the Leased Premises in "as is" condition. The rights herein granted to Lessee are subject and subordinate to any and all existing covenants, easements, restrictions and other matters of record affecting the Leased Premises, and to any and all existing agreements between the City and the federal government pertaining to the Airport.

(B) City's Right to Enter. The City's employees, agents, and contractors shall have the right to enter upon the Leased Premises, at any reasonable time and from time to time, for the purpose of examining the condition of the Leased Premises, determining Lessee's compliance with the provisions of this Lease, accessing any public utility installations as shown on drawings at the office of the Airport Manager, and for any other proper purpose. The City shall use reasonable efforts to avoid disrupting Lessee's business operations and shall promptly repair any damage to the Leased Premises caused by the City's entry. The City shall use reasonable efforts to notify Lessee at least 24 hours in advance of entering upon the Leased Premises, except that no advance notice shall be required in the event of an emergency.

## 2. Term: Early Termination.

(A) Initial Term (5 years, plus initial construction period between Effective Date and Rent Commencement Date). The initial term of this Lease ("Term") shall commence on the Effective Date (being the date on which the City shall deliver exclusive possession of the Leased Premises to Lessee), and, unless extended or sooner terminated as herein provided, shall expire on the last day of the fifth (5<sup>th</sup>) Lease Year (being the date immediately preceding the fifth (5<sup>th</sup>) anniversary of the Rent Commencement Date (as defined in section 3 below)). As used herein, a "Lease Year" shall mean each successive 12-month period beginning on the Rent Commencement Date. (The period between the Effective Date and the Rent Commencement Date, during which Lessee is designing and constructing the Leasehold Improvements, shall be included in the Term but shall not be included in the first Lease Year). The parties presently intend that the Rent Commencement Date shall occur on or about January 1, 2023. The parties shall confirm the actual Rent Commencement Date in writing once such date has occurred (however failure to do so shall not affect such date).

(B) Renewals Periods (5-years each, up to 40 years). Provided Lessee is not in default under this Lease beyond any applicable cure period at the time it exercises each renewal option, Lessee shall have the option to extend the Term of this Lease, for seven (7) renewal periods of five (5) years each (for a total Term, including the initial Term, of 40 Lease Years), exercisable by giving written notice thereof to the City at least ninety (90) days (but no earlier than 9 months) prior to the expiration of the initial Term or then current renewal period (each, a "Written Notice of Renewal"). Each renewal shall be on the same terms and conditions as set forth herein (except that, after the 7<sup>th</sup> Renewal Period, there shall be no additional renewal options unless agreed to by the parties in a written amendment to this Lease). As used herein, the "Term" of this Lease means the initial Term and, if applicable, the Renewal Periods.

(C) Parties' Right to Terminate Early if Lessee is Unable to Construct Leasehold Improvements. Notwithstanding anything in this Lease to the contrary, each party shall have the right to terminate this Lease early, by giving written notice thereof to the other party no less than 30 days prior to the effective date of termination as specified in the termination notice (a "Termination Notice"), if, by December 31, 2023, Lessee has not notified DOTE in writing that Lessee has obtained a building permit and any and all other permits, utility easements, zoning approvals, and other government and non-governmental approvals as may be required in connection with Lessee's construction of the Leasehold Improvements (collectively, the "Required Approvals"). Upon such termination, neither party shall thereafter have any rights or obligations hereunder (except that Lessee shall remove its stored materials and do all things necessary to restore the Leased Premises to the same condition it was in on the Possession Date). At such time as Lessee notifies DOTE in writing that Lessee has obtained all Required Approvals (and provided neither party has previously delivered a Termination Notice to the other party), the parties' termination rights under this paragraph 2(C) shall automatically terminate.

(D) Parties' Right to Terminate Early if Lessee Fails to Open for Business Within 48 Months. Notwithstanding anything in this Lease to the contrary, each party shall have the right to terminate this Lease early, by giving a Termination Notice to the other party no less than 30 days prior to the effective date of termination as specified in the Termination Notice, if Lessee fails to notify DOTE in writing that it has opened for business (i.e., that the Rent Commencement Date has occurred) within 48 months after the Effective Date of this Lease. Upon such termination, neither party shall thereafter have any rights or obligations hereunder (except that Lessee shall remove its stored materials and do all things necessary to restore the Leased Premises to the same condition it was in on the Possession Date). At such time as Lessee opens for business (and provided neither party has previously delivered a Termination Notice to the other party), the parties' termination rights under this paragraph 2(D) shall automatically terminate.

(E) Assignment of the Leased Premises to the Port. Nothing in this Agreement shall be construed to prohibit Developer from entering into a lease assignment arrangement with respect to the Leased Premises in which the leasehold interest to the Leased Premises is assigned to the Port of Greater Cincinnati Development Authority (the "**Port**"); *provided, however*, that (a) the purpose for such transaction is to take advantage of the sales tax exemption on the purchase of Project building materials, (b) Developer shall provide the City with such documents and other information with respect to this arrangement as the City may reasonably request, including the final form of the Port assignment transaction documents that are to be executed, at least 14 days prior to the effective date of the lease assignment, (c) Developer agrees to execute an amendment to the terms of this Lease, containing terms and provisions mutually agreed upon by the parties, should the City indicate, in writing, that such an amendment (or such amendments) are required to effect any technical and legal changes that the City may, in its reasonable discretion, deem to be necessary or desirable to accommodate such an arrangement while maintaining all of the material economic and financial terms of this Lease, and (d) the City and Developer agree to negotiate in good faith towards any such amendment. Developer may not assign its rights, obligations, or any other interest under this Lease to any other party, at any time, in compliance with the provisions of this Lease. The assignment to the Port or any other third party shall still be subject to the City's rights under this Lease. Developer hereby provides notice to the City that Developer will enter into the Port assignment transaction.

### 3. Rent.

(A) Rent Commencement Date (date Lessee opens for business). As provided in section 6 below, following the Possession Date, and provided Lessee has obtained all Required Approvals, Lessee shall make certain Leasehold Improvements to prepare the Leased Premises for its use. Base rent shall begin to accrue on the date on which Lessee first begins conducting business at the Leased Premises (the "**Rent Commencement Date**"). Lessee presently anticipates that the Rent Commencement Date will occur within 12 months after the Effective Date. On the date on which Lessee first opens for business, Lessee shall notify DOTE thereof in writing (however failure to notify DOTE shall not affect the Rent Commencement Date).

(B) Opening Delay Fee Upon Lessee's Failure to Open by January 1, 2025. If for any reason the Rent Commencement Date has not occurred by January 1, 2025, Lessee shall pay the City a fee of **\$2,150/month** (prorated for any partial calendar month) until the Rent Commencement Date occurs (the "**Opening Delay Fee**"), with the first payment due on such date, and each subsequent payment due, in advance, on the first business day of each month thereafter until the Rent Commencement Date occurs. The Opening Delay Fee shall be prorated for the first and last partial calendar months if the payment period with respect to which the Opening Delay Fee is payable begins and/or ends on a day other than the first day and last day, respectively, of a calendar month.

(C) Base Rent. Lessee shall pay annual base rent in equal monthly installments, in advance, on the first business day of each month, in the amounts calculated under this paragraph 3(C). The monthly installment of rent for any partial calendar month during the Term shall be prorated on a per diem basis. Notwithstanding the rent adjustments provided for herein, in no event shall annual base rent decrease.

(i) Lease Years 1-5 (fixed). For Lease Years 1-5, annual base rent shall be equal to the following amount:

**\$19,144.50/year (\$1,595.38/month)** (approx. \$0.30 psf)

(ii) Lease Year 6 (CPI adjustment). Effective as of the first day of Lease Year 6, annual base rent shall increase to an amount that is equal to the product of multiplying the annual base rent payable on the Rent Commencement Date by a fraction, the numerator of which is the CPI most recently published 60 days prior to the adjustment date, and the denominator of which is the CPI most recently published 60 days prior to the Rent Commencement Date. As used herein, "CPI" means the Consumer Price Index, All Urban Consumers, U. S. City Average (1982-1984=100) published from time to time by the United States Bureau of Labor Statistics. Lessee shall make all CPI rent adjustment computations under this section 3 and shall send written notice of each CPI-based rent adjustment, together with Lessee's computations ("**Lessee's Rent Adjustment Notice**"), to DOTE (to the two addresses set forth in section 12 below) and to the City's Real Estate Services Division (801 Plum Street, Room 122, Cincinnati, OH 45202) no less than 30 days prior to each rent adjustment date.

(iii) Lease Years 7-40 (annual CPI adjustments). Effective as of the first day of Lease Year 7 and effective as of the first day of each Lease Year thereafter, annual base rent shall increase to an amount that is equal to the product of multiplying the annual base rent payable during the Lease Year then just ended by a fraction, the numerator of which is the CPI most recently published 60 days prior to the adjustment date, and the denominator of which is the CPI for the corresponding month in the prior year. Lessee shall send Lessee's Rent Adjustment Notice to DOTE and to the City's Real Estate Services Division no less than 30 days prior to each rent adjustment date.

(iv) Lease Years 11, 21, and/or 31 fair market value adjustment every 10 years. Upon the City's receipt of Lessee's Rent Adjustment Notice for Lease Years 11, 21, and/or 31 (i.e., every 10 years), the City shall determine whether the prior CPI-based adjustments in annual base rent have kept pace with increases in the fair market value of the Leased Premises (land value only; i.e., not taking into consideration the value of Lessee's Leasehold Improvements). If the City determines in its sole but good faith discretion that the CPI-based adjustments in the annual base rent for Lease Year 11, 21, and/or 31 does not reflect the then fair market rental value of the Leased Premises, as determined by appraisal by the City's Real Estate Services Division (land value only; i.e., not taking into consideration the value of Lessee's Leasehold Improvements or any other capital improvements constructed and paid for by Lessee, and after consultation with the Airport Manager and taking into consideration airport industry standards, FAA requirements, and other fair market rental rates then being paid by other similarly-situated tenants at the Airport), the City shall have the right to increase the annual base rent to the then fair market rental value and shall notify Lessee thereof in writing at any time during Lease Years 11, 21, and/or 31 (the "**City's Rent Adjustment Notice**"), which notice shall be accompanied by a copy of the City's appraisal. The adjusted rental amount shall become effective 60 days after Lessee's receipt of the City's Rent Adjustment Notice, or on the first day of the following month if the 60-day period does not end on the first day of a month so as to avoid a monthly proration of rent. If Lessee does not accept the amount of the adjusted rent as set forth in the City's Rent Adjustment Notice, Lessee shall have the right to terminate this Lease by giving the City written notice thereof within 90 days after receiving the City's Rent Adjustment Notice. Lessee's termination notice shall specify an effective date of termination that is no sooner than 30 days and no later than 180 days following the date on which the City receives Lessee's termination notice.

(D) Fuel Fees; Fuel Statements (Cincinnati Municipal Code §402-23). Throughout the Term, Lessee shall (i) provide the City, on or before the 10<sup>th</sup> day of each month, with complete and accurate monthly statements of all gasoline and jet engine fuel received, sold and used at the Leased Premises during the previous month (the "**Monthly Fuel Statements**"), and (ii) pay the City a fee based upon the number of gallons of gasoline or jet engine fuel sold or used at the Leased Premises (currently, twelve cents (**\$0.12**) per gallon, or such other amount as is provided for from time to time under the Cincinnati Municipal Code ("**CMC**") ("**Fuel Fees**"), all as required under CMC Section 402-23 (*Operating and Fuel Fees*), as the same may be modified from time to time; *provided, however*, that, as provided under CMC Section 402-23, as a fixed base operator Lessee shall have the right to retain a portion of the Fuel Fees, currently six cents (**\$0.06**) per gallon of the gasoline or jet engine fuel sold or used; which retainage amount is subject to change from

time to time under the CMC and shall also be subject to an annual review and adjustment, if necessary, by the Director of DOTE based upon the City's need for efficient delivery of fuel services at the Airport as described in CMC Section 402-23. Lessee acknowledges that the City administration has no control over the Fuel Fees or retainage established by Cincinnati City Council or when the new rates go into effect.

(E) Operating Fees; Gross Revenue Statements (Cincinnati Municipal Code 402-23). Throughout the Term, Lessee shall (i) provide the City, on a semi-annual basis, with complete and accurate sworn statements of gross revenue received from operations (the "**Semi-Annual Gross Revenue Statements**"), and (ii) pay the City a percentage of gross revenue received from operations (currently, one percent (**1.0%**), but subject to change) ("**Operating Fees**"), all as required under CMC Section 402-23, as the same may be modified from time to time. (The parties acknowledge that, under CMC Section 402-23, as currently written, Lessee is not required to pay the 1% fee on revenue derived from the carrying of United States mail, passengers or cargo on scheduled air routes, the sale of airplanes, the sale of gasoline, or revenue received for storage of aircraft in City-owned hangars; and that, where an operator provides more than one type of service licensed under CMC Section 402-22, the minimum operating fee is \$500/year.) Lessee acknowledges that the City administration has no control over the Operating Fees established by Cincinnati City Council or when the new rates go into effect.

(F) City's Right to Inspect Books and Records. The City shall have the right to inspect and audit Lessee's books and records from time to time, upon reasonable advance written notice, to verify the accuracy of the Monthly Fuel Statements and Semi-Annual Gross Revenue Statements. If any such inspection or audit reveals an inaccuracy that resulted in an underpayment of the Fuel Fees or Operating Fees, Lessee shall pay the additional amount owed and shall reimburse the City for all costs associated with such inspection or audit, payable within 30 days after the City's written demand.

(G) Place of Payment. As used herein, "rent" shall mean base rent and all other amounts payable by Lessee to the City under this Lease. Rent shall be payable to "Treasurer – City of Cincinnati" and mailed or delivered to: City of Cincinnati, 262 Wilmer Avenue, Room 22, Cincinnati, OH 45226, Attn: Lunken Airport Manager, or to such other address as the City may from time to time specify in writing.

(H) Late Payments. If any payment of base rent is not paid when due, a late charge of 5% of the amount past due shall automatically become due and payable. If base rent is outstanding for longer than 30 days, such past due amount shall bear interest at the rate of 10% per annum until paid. Late payments of Fuel Fees and Operating Fees shall be subject to a 10% late fee under CMC Section 402-23.

#### 4. Permitted Uses; Hours of Operation.

(A) Permitted Uses. Provided Lessee has obtained all valid permits from the City and any and all other required permits, Lessee shall use the Leased Premises for the activities described on Exhibit C (Permitted Uses) hereto (the "**Permitted Uses**") and for no other activities whatsoever without the City's prior written consent. Lessee's right to use the Leased Premises for the Permitted Uses is non-exclusive, and nothing herein shall limit or prevent the City from granting the same or similar non-exclusive rights to other persons or entities utilizing space at the Airport. Lessee shall not deviate from the Permitted Uses without the City's prior written approval (and if required, as determined by the City, without the prior written approval of the FAA).

(B) Fixed Base Operator (FBO) Minimum Standards. Lessee shall conform to and comply with minimum FBO standards (as the same may be modified from time to time) for the parking, storage, servicing, repair and maintenance of aircraft, air taxi service, flight training, aircraft rental, for administration and operations offices, shops, and lounges in connection with those proposed, and for the sale of aviation gasoline and jet aviation fuel.

(C) Required Hours of FBO Operation (Continuous Operation Required). Beginning on the Rent Commencement Date and thereafter throughout the remainder of the Term, Lessee shall continuously operate its business at the Leased Premises during Lessee's standard business hours (except that temporary



closures in the event of an emergency, damage by casualty, or periodic remodeling shall not be deemed a default under this Lease). Lessee's standard business hours shall be substantially consistent with the business hours kept by other fixed-base operators operating at Lunken Airport and shall otherwise be consistent with FAA regulations and requirements.

**5. Utilities; Real Estate Taxes; Other Expenses.** This is a "triple net" lease for the City, and during the Term of this Lease, Lessee shall pay (i) any and all utility charges associated with the Leased Premises, (ii) all real estate taxes and assessments levied against the Leased Premises that are applicable to the Term (including the Leasehold Improvements) (including the two semi-annual tax bills issued by the Hamilton County Treasurer following the expiration or termination of the Term, payable in arrears, as described below), and (iii) any and all other expenses associated with the Leased Premises, including without limitation any and all other fees required to be paid under CMC Chapter 402 (*Airport*). *Lessee acknowledges and agrees that the City shall not be liable for any expenses associated with the Leased Premises during the Term of this Lease.* Lessee shall have the right to contest the amount or validity of real estate taxes and assessments on Lessee's Leasehold Improvements by appropriate legal proceedings in its own name. The City shall have the right to participate in such legal proceedings at the City's election. Lessee shall pay all costs and expenses arising from such legal proceedings. If the Leased Premises are not separately taxed by the County Auditor for real estate tax purposes, the City shall calculate Lessee's fair share of each tax bill (using the Auditor's value of all real property included in the tax bill and taking into account the values attributed to raw land and improvements where applicable), and Lessee shall pay its allocated share of the bill within 30 days after receiving written notice from the City of the amount due.

**Final Semi-Annual Real Estate Tax Bills:** No later than three (3) months prior to the end of the Term, Lessee shall estimate the amount of the two final semi-annual real estate tax bills owed by Lessee and shall pay such amount to the City; and the City shall use such funds to pay the final two tax bills once the bills have been issued by the Hamilton County Treasurer. Within 30 days after the Treasurer issues the tax bills: (i) if the estimated amount paid by Lessee is *less than* the actual amount owed, Lessee shall pay the additional amount owed to the City; and (ii) if the estimated amount paid by Lessee is *greater than* the actual amount owed, the City shall refund the overpayment to Lessee.

**6. Leasehold Improvements.**

(A) **Construction of Leasehold Improvements.** Following the Possession Date, Lessee shall (a) cause the Lease Premises to be reconfigured into one new tax parcels; and (b) thereafter begin constructing improvements at the Leased Premises to prepare the Leased Premises for its use, in accordance plans and specifications approved in writing by DOTE, including without limitation the design, location and all other material aspects thereof (as approved by DOTE, the "**Leasehold Improvements**", and the "**Final Plans**", as applicable). Lessee shall submit plans and specifications to DOTE. DOTE shall promptly review Lessee's proposed plans and specifications upon receipt thereof and respond with comments. All plans and specifications shall be prepared by licensed architects or engineers. Lessee shall bear all costs associated with the Leasehold Improvements. Once approved by DOTE, Lessee shall not make any modifications to the Final Plans without the prior written approval of DOTE. Upon commencement of on-site work, Lessee shall thereafter diligently pursue the same to completion. Upon completion of construction, Lessee shall provide DOTE with a copy of the "as built" plans if obtained by Lessee. As used in this Lease, "Leasehold Improvements" shall mean the initial leasehold improvements and any and all future leasehold improvements approved by DOTE and made by Lessee to the Leased Premises during the Term, including without limitation all buildings, ordinary fixtures and trade fixtures.

(B) **Lessee's Right to Grant Leasehold Mortgage.**

(i) **Right to Grant Leasehold Mortgage.** The City acknowledges and agrees that [a] Lessee shall have the right to grant a leasehold mortgage to the construction lender who will be providing financing to Lessee for the Leasehold Improvements (a "**Permitted Leasehold Mortgage**", and the "**Permitted Leasehold Mortgagee**", as applicable), and [b] if Lessee defaults under the Permitted Leasehold Mortgage, the Permitted Leasehold Mortgagee shall be permitted, by written notice to the City, to assume Lessee's

leasehold interests under this Lease by foreclosure of the Permitted Leasehold Mortgage or otherwise and on the terms and conditions set forth therein. The City shall execute any commercially reasonable documents required by Tenant's Permitted Leasehold Mortgagee provided that such documents are consistent with Tenant's rights and obligations under this Lease (i.e., The City may refuse to execute documents required by a Permitted Leasehold Mortgagee that would extend rights to the Tenant or Permitted Leasehold Mortgagee or impose obligations on the City that are greater than those set forth in this Lease).

(ii) Delivery of Default Notices to Permitted Leasehold Mortgagee. Provided Lessee or the Permitted Leasehold Mortgagee shall have given the City a recorded copy of the Permitted Leasehold Mortgage and notified the City in writing of the Permitted Leasehold Mortgagee's mailing address for purposes of notices under this Lease, then, if, while the Permitted Leasehold Mortgage remains in effect, the City gives a written notice of default to Lessee under this Lease, which default, if uncured, would entitle the City to terminate this Lease under section 10 hereof (a "**Default Notice**"), the City shall send a copy of the Default Notice to the Permitted Leasehold Mortgagee. Notwithstanding the City's termination rights under section 10 hereof, the City agrees that it shall not exercise its right to terminate this Lease upon Lessee's default until the City has given the Permitted Leasehold Mortgagee at least sixty (60) days (following the City's delivery of the Default Notice to the Permitted Leasehold Mortgagee) to cure such default. The foregoing shall not be construed as requiring the Permitted Leasehold Mortgagee to cure Lessee's default. If neither Lessee nor the Permitted Leasehold Mortgagee cures Lessee's default within the applicable time periods specified in this paragraph (B)(ii) and section 10, the City shall be free to exercise its right to terminate this Lease and thereby extinguish the Permitted Leasehold Mortgage (and whereupon, if the City requires Lessee to surrender the Leasehold Improvements to the City under paragraph 13(B) hereof, Lessee shall take all steps necessary to ensure that the Leasehold Improvements are transferred to the City free and clear of all monetary liens and encumbrances as required under paragraph 13(B)).

(C) Taxiway. If modification to the terrain surrounding the existing taxiway opening is required to comply with the FAA-required obstacle-free area on the taxiway, Developer shall bear all costs of such modification.

(D) Soil and Environmental Conditions. Lessee acknowledges that it is familiar with and has had an opportunity to investigate the soil and environmental conditions at the Leased Premises. The City shall have no responsibility or liability in the event the existing conditions do not support Lessee's proposed Leasehold Improvements.

(E) Permits. Lessee shall obtain all required permits and shall pay all required permit fees associated with the Leasehold Improvements.

(F) Changes to Land Grade or Level. Lessee shall not make any changes in the land grade or level of the Leased Premises that might affect the abutting properties without the prior written consent of DOTE.

(G) Compliance with Federal Air Regulations: Improvements to Adjacent Property. Developer shall comply with Federal Air Regulations Part 77 and shall not penetrate any designated runway clear zone. If modification to the terrain surrounding the Leased Premises, including the existing adjacent taxiway, is required to conform to FAA regulations or requirements or is otherwise necessary to accommodate or support the Project, Developer shall bear all costs of such modification.

(H) Floodplain. Lessee acknowledges that (i) the Leased Premises are located in a flood plain, (ii) FEMA requires that all improvements constructed within a flood plain comply with precise, rigorous construction standards, (iii) City building officials will not issue construction permits if the plans are not in compliance with the FEMA standards specific to flood plains, and (iv) compliance may add significant additional time and costs to the design and construction of Lessee's proposed Leasehold Improvements.

(I) Alterations and Future Improvements. Once installed, Lessee shall not alter or remove the Leasehold Improvements except in accordance with section 13 below. Any and all alterations to the initial

Leasehold Improvements, and any and all new improvements, shall comply with the minimum aesthetic and architectural standards and requirements adopted by the City (if any) that are applicable to the exterior of all other buildings and structures at the Airport.

(J) Determinations by DOTE. All determinations of the City, including determinations by the DOTE Director, with respect to the construction, alteration, maintenance, repair, restoration or removal of improvements at the Leased Premises shall be based upon confirmation that the improvements (i) are structurally sound, (ii) comply with the safety standards and requirements applicable to all other buildings and structures at the Airport, (iii) are consistent with the quality and appearance of Airport facilities adjacent to Wilmer Avenue, and (iv) comply with all other requirements under this Lease applicable to the Leasehold Improvements.

**7. Maintenance and Repairs; Other Operating Requirements.**

(A) Maintenance and Repairs. Lessee shall maintain the Leased Premises in good, clean and safe condition and repair, shall not permit any waste or nuisance on the Leased Premises, shall not permit any debris or rubbish to accumulate in open space, and shall keep the Leased Premises free from unreasonable accumulations of snow and ice and other obstructions. Without limitation of the foregoing, Lessee shall replace all light bulbs and filters, provide water sprinkler system inspection and repair, provide trash removal, window washing, grass cutting and proper maintenance of landscaped areas, and maintain and keep in good condition and repair the exterior and interior structural portions and roof of any and all buildings, structures, hangars, fences, fixtures, pavement, HVAC, electrical, plumbing and mechanical fixtures, and any and all other improvements located on the Leased Premises, reasonable wear and tear excepted, and in compliance with all applicable building and fire codes, airport regulations and other laws (collectively, "**Applicable Laws**").

(B) Protection from Aircraft Engine Blasts. Lessee shall provide an approved means of protection for persons and property from jet aircraft engine blasts or exhaust emissions at any time jet aircraft is operated on the Leased Premises.

(C) Parking. Lessee shall provide within the limits of the Leased Premises, at its own cost, a parking area for motor vehicles sufficient for vehicle parking needs of Lessee, its agents, employees, and customers.

(D) Fuel Facilities. Lessee shall have sole responsibility for the operation, maintenance, repair and replacement of the fuel storage and distribution facilities located on the Leased Premises. Lessee shall be responsible for all required inspections and State of Ohio annual registration and fees.

**8. Insurance.**

(A) Insurance. Throughout the Term, Lessee shall maintain the following insurance:

(i) special peril (formerly known as "all-risk") full replacement cost insurance on the Leasehold Improvements, naming the City and Lessee as their interests may appear;

(ii) property insurance on any and all personal property of Lessee from time to time located at the Leased Premises in the amount of the full replacement cost thereof;

(iii) Commercial General Liability insurance of at least Five Million Dollars (\$5,000,000) per occurrence, combined single limit, naming the City as an additional insured, or such additional amounts as the City or its insurance or risk advisors may determine from time to time to be customary for similar-sized airport facilities;

(iv) automobile liability insurance in the amount of \$1,000,000 per occurrence, naming the City as an additional insured; and

(v) workers compensation insurance as required by law.

(vi) Additionally, the Lessee shall maintain insurance in compliance with all yearly permits issued by the City which shall be based on the operations of the Lessee, which insurance policies may include Comprehensive Airport Liability, Hangar Keepers, Pollution/Environmental Liability, Commercial Auto Liability, Fire Legal Liability, Products and Completed Operations Liability, and any Special Events coverages. The Lessee is responsible for understanding and procuring necessary insurance based on its operations.

(B) Policy Requirements. Lessee's insurance policies shall (i) be written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, (ii) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City, and (iii) be primary and non-contributory with respect to insurance maintained by the City. No later than the Possession Date, and annually thereafter, Lessee shall provide the City with a certificate of insurance evidencing the insurance required to be maintained by Lessee hereunder.

(C) Waiver of Subrogation. Lessee hereby waives all claims and rights of recovery, and on behalf of Lessee's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Lease to be maintained by Lessee, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Lessee shall at all times protect itself against such loss or damage by maintaining adequate insurance. Lessee shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(D) Indemnity. The City assumes no responsibility for any acts, errors, or omissions of Lessee or any employee, agent, contractor, subcontractor, representative or any other person acting or purporting to act for or on behalf of Lessee. Lessee shall defend, indemnify and hold the City, its employees, agents, contractors and subcontractors ("**Indemnified Parties**") harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from the acts of Lessee, its employees, agents, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Lessee in connection with Lessee's activities at or with respect to the Leased Premises or in connection with any breach by Lessee under this Lease.

9. Casualty; Eminent Domain. If the Leased Premises is damaged or destroyed by fire or other casualty, or if any portion of the Leased Premises is taken by exercise of eminent domain (federal, state or local), Developer shall repair and restore the Leased Premises, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Leased Premises was in immediately prior to such occurrence. The City and Developer shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the insurance or eminent domain proceeds are insufficient to fully repair and restore the Improvements, the City shall not be required to make up the deficiency. Developer shall handle all construction in accordance with the applicable requirements set forth in this Lease. Developer shall not be relieved of any obligations, financial or otherwise, under this Lease during any period in which the Leased Premises are being repaired or restored (it being the agreement of the parties that Developer shall purchase business interruption insurance, if it so chooses, to alleviate such financial burden). Notwithstanding the foregoing, if (i) the Leased Premises are entirely destroyed such that the cost to rebuild the Terminal Building and Improvements is commercially unreasonable; or (ii) the entire Leased Premises are taken by eminent domain, or (iii) if a substantial portion of the Leased Premises is taken by eminent domain such that the remainder is not usable for the Permitted Use as determined by Developer, Developer shall have the right to terminate this Lease by giving written notice thereof to the City on or before the date on which Developer is required to surrender possession of such portion. Upon such termination of this Lease, the insurance or eminent domain proceeds shall be allocated as follows: (i) in the case of a taking by the state or federal government, to the City, to compensate the City for the value of the land taken (and, in the event of a casualty or a partial taking, for the cost of

clearing and otherwise restoring the Leased Premises, or remaining portion thereof, to a safe and vacant condition); (ii) to Developer, to compensate Developer for the undepreciated value of the Improvements; and (iii) to the City, for the value of its reversionary interest in the Improvements. If the parties are unable to agree upon such values, the values shall be determined by the Hamilton County Court of Common Pleas.

**10. Default; Remedies.**

(A) Default. Each of the following shall constitute an event of default by Lessee under this Lease:

(i) If Lessee fails to pay rent or any other sum payable to the City hereunder when due, and such failure to pay continues for longer than ten (10) days after Lessee receives written notice thereof from the City;

(ii) If Lessee fails to perform or observe any of the other covenants, terms or conditions contained in this Lease, and such failure continues for longer than thirty (30) days after Lessee receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such thirty (30) day period, an event of default shall not be deemed to have occurred if Lessee commences to cure such failure within such thirty (30) day period and thereafter diligently pursues such cure to completion and, in fact, cures such failure within ninety (90) days after Lessee receives written notice of the default from the City. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Lessee fails to promptly take corrective action upon discovering such dangerous condition or emergency (and in any event within no later than 24 hours, depending upon the nature of the emergency and the steps needed to address it); and

(iii) The commencement of levy, execution or attachment proceedings against Lessee, any principal (which shall be defined as any individual or entity having an ownership interest in Lessee of more than 25%) or partner of Lessee, or any of the assets of Lessee, or the application for or appointment of a liquidator, receiver, custodian, sequester, conservator, trustee, or other similar judicial officer; or the insolvency in the bankruptcy or equity sense, of Lessee or any principal or partner of Lessee; or the assignment for the benefit of creditors, or the admission in writing of an inability to pay debts generally as they become due, or the ordering of the winding-up or liquidation of the affairs of Lessee or any principal or partner of Lessee; or the commencement of a case by or against Lessee or any principal or partner of Lessee under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar laws, state or federal, or the determination by any of them to request relief under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar proceeding, state or federal, including, without limitation, the consent by any of them to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequester or similar official for it or for any of its respective property or assets (unless, in the case of involuntary proceedings, the same shall be dismissed within ninety (90) days after institution).

(B) Remedies. Upon the occurrence of an event of default that continues beyond the applicable notice and cure period (if any) provided for under paragraph (A) above, the City shall be entitled to (i) terminate this Lease by giving Lessee written notice thereof, (ii) take such actions in the way of "self help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Lessee, and (iii) exercise any and all other rights and remedies under this Lease or available at law or in equity, including without limitation pursuing an action for specific performance; all such rights and remedies being cumulative. Lessee shall be liable for all costs and damages, including without limitation legal fees, suffered or incurred by the City as a result of a default of Lessee under this Lease or the City's enforcement or termination of this Lease. Lessee shall pay all such costs and damages within thirty (30) days after receiving documentation from the City of the amount due. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Lease shall not constitute a waiver of the breach of such covenant or of such remedy. Nothing contained in this Lease shall limit or

prejudice the right of a party to prove for and obtain as damages incident to a termination of this Lease in any bankruptcy, reorganization or other court proceedings, the maximum amount allowed by any statute or rule of law in effect when such damages are to be proved.

**11. Assignment and Subletting.** Lessee acknowledges that the City is entering into this transaction because of the City's confidence that Lessee has the financial means and business experience that are necessary to carry out the construction of the Leasehold Improvements and to successfully operate Lessee's business in accordance with the provisions of this Lease. Lessee acknowledges that the City shall not be expected to consent to a proposed assignment or sublease by Lessee of its interests under this Lease to any person or entity in whom the City does not have similar confidence, acting reasonably. Any attempt by Lessee to assign or otherwise transfer its interests under this Lease to a third party without the City's prior written consent, which shall not be unreasonably withheld in light of the considerations above, shall be null and void and shall, at the option of the City, constitute a default of Lessee under this Lease. The foregoing notwithstanding, if Lessee transfers its interests under this Lease to an affiliate of Lessee, or to the surviving entity in a merger involving Lessee, or to the purchaser of all or substantially all of Lessee's assets or ownership interests, such transfer shall not constitute a prohibited assignment for purposes of this section provided that Lessee provides the City with no less than 30 days prior written notice thereof, accompanied by the relevant supporting documentation. As used in the preceding sentence, an "affiliate" of Lessee means an entity that controls, or is controlled by, or is under common control with, Lessee. For purposes hereof "control" shall mean the power, exercisable jointly or severally, to manage and direct the business and affairs of a party through the ownership of more than fifty percent (50%) of membership or partnership interests, corporate stock and/or voting rights. No assignment or sublease by Lessee of its rights or obligations under this Lease to an affiliate or any other third party shall relieve Lessee from any liability to the City under this Lease.

**12. Notices.** All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:

City of Cincinnati  
Dept of Transportation & Engineering  
801 Plum Street, Suite 450  
Cincinnati, OH 45202

To Lessee:

VR Hospitality  
25 W. Robbins S  
Covington, KY 41011  
Attn: Guy van Rooyen

*with a copy to:*

Lunken Airport Administration Building  
Attn: Airport Manager  
262 Wilmer Avenue, Room 23  
Cincinnati, OH 45226

If Lessee sends a notice to the City alleging that the City is in default under this Lease, it shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202. If Lessor sends a notice to the Developer alleging the Developer is in default under this Lease, it shall simultaneously send a copy of such notice by U.S. certified mail to: Keating Muething & Klekamp PLL, 1 East 4<sup>th</sup> Street, Suite 1400, Cincinnati, Ohio 45202, Attn: Barrett Tullis

**13. Surrender; Removal of Leasehold Improvements; Holdover.**

(A) Ownership of Leasehold Improvements during Lease Term. Throughout the Term, Lessee shall be deemed the owner of the Leasehold Improvements for all purposes, including without limitation for

purposes of claiming depreciation on Lessee's federal income taxes.

(B) Ownership of Leasehold Improvements at end of Lease Term. At the end of the Term, Developer shall surrender the Leasehold Improvements to the City, free and clear of all liens and encumbrances, at no expense to the City, on the last day of the Term. At such time the Improvements shall automatically become the property of the City. Notwithstanding the foregoing, the City may at its option require Developer to remove any fuel tanks located on or below the Leased Premises. If the City requires Lessee to remove all or any portions of the fuel tanks, Lessee shall remove the same and repair any and all damage to the Leased Premises caused thereby within sixty (60) days after the City notifies Lessee that removal is required (provided however that Lessee shall not be required to complete such removal prior to the last day of the Term). (For example, (i) if the City notifies Lessee 3 months prior to the end of the Term that removal of designed portions of the fuel tanks is required, Lessee shall complete such removal and repairs no later than the last day of the Term; (ii) if the City notifies Lessee 60 days prior to the end of the Term that removal is required, Lessee shall complete such removal and repairs no later than the last day of the Term; (iii) if the City notifies Lessee 20 days prior to the end of the Term that removal is required, Lessee shall be given an additional 40 days after the end of the Term within which to complete such removal and repairs.)

(C) Lessee's Right to Remove Items of Personal Property. No later than the last day of the Term, Lessee shall remove all of Lessee's personal property at the Leased Premises (excluding trade fixtures, which shall not be removed unless otherwise directed by the City under paragraph 13(B) above) shall repair any and all damage to the Leased Premises caused by the installation or removal thereof and otherwise restore the Leased Premises to a safe, clean and satisfactory condition.

(D) Holdover. If Lessee fails to surrender possession of the Leased Premises to the City at the end of the Term (except as may be permitted under paragraph 13(B) above), such holdover shall be deemed as creating a tenancy-at-will on all of the same terms and conditions as set forth herein (except for the duration of the Term and except that base rent payable during the holdover period shall be equal to two hundred percent of the base rent in effect at the end of the Term), terminable by the City at any time by giving written notice thereof to Lessee. Lessee shall be liable for all costs and damages suffered or incurred by the City as a result of Lessee's failure to surrender possession at the end of the Term.

(E) Documents to be Delivered to City. At the end of the Term, Lessee shall deliver to the City originals or copies of all books and records, operating manuals, contracts with third parties (but only if the City has expressly agreed to accept an assignment of such contracts), warranty information, and all other written materials and documents that are in Lessee's possession or under Lessee's control and that are reasonably needed in order for there to be a seamless transition with respect to the operation and maintenance of the Leased Premises for the Permitted Uses.

#### **14. Compliance with Laws.**

(A) Compliance with Laws. Lessee shall comply with all federal, state and local laws, ordinances, rules and regulations, including without limitation all applicable building and zoning codes of the City of Cincinnati pertaining to the Airport, all applicable requirements set forth in CMC Chapter 402 (*Airport*), and all requirements under Title 49 of the Code of Federal Regulations, as the same may be enacted or modified from time to time.

(B) Non-Discrimination. With reference to 49 CFR Subtitle A, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation", the purpose of which "is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 . . . to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation", Lessee shall include the foregoing provision in every agreement or concession pursuant to which any person or persons, other than Lessee, operates any facility at the Leased Premises providing services to the public and shall include therein a provision granting the City the right to take such action as the United States may direct to enforce such covenant. Lessee shall defend, indemnify

and hold harmless the City from any and all claims and demands of third persons, including the United States of America, resulting from Lessee's noncompliance with any of the provisions of this section and shall reimburse the City for any and all losses or expenses incurred by reason of such noncompliance.

**15. General Provisions.**

(A) Entire Agreement. This Lease (including the exhibits hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(B) Amendments. This Lease may be amended only by a written amendment signed by both parties.

(C) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Lease shall be brought in the Hamilton County Court of Common Pleas, and Lessee agrees that venue in such court is proper. Lessee hereby waives trial by jury with respect to any and all disputes arising under this Lease.

(D) Binding Effect. This Lease shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(E) Captions. The captions of the various sections and paragraphs of this Lease are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Lease.

(F) Severability. If any part of this Lease is held to be void, illegal or unenforceable by a court of law, such part shall be deemed severed from this Lease, and the balance of this Lease shall remain in full force and effect.

(G) No Recording. This Lease shall not be recorded in the Hamilton County Recorder's office.

(H) Time. Time is of the essence with respect to the performance by Lessee of its obligations under this Lease.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Lease.

(J) No Brokers. Lessee represents that it has not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Lease.

(K) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Lease shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future member, officer, agent or employee of the City in other than his or her official capacity. No official executing or approving the City's participation in this Lease shall be personally liable under this Lease.

(L) Representation as to Authority. Lessee represents that it has the power and authority to enter into and perform its obligations under this Lease without the consent of anyone who is not a party to this Lease and that the execution and performance of this Lease has been duly authorized by all necessary actions on Lessee's part.



(M) FAA Subordination Clause. This Lease shall be subordinate to the provisions of any existing or future agreements between the City and the United States Government, including any and all grant assurances relating to the maintenance, development, or operation of the Airport, the execution of which agreements has been or will be required as a condition precedent to the granting of federal funds for the maintenance, development, or operation of the Airport to the extent that the provisions of any such existing or future agreements are generally required by the United States at other civil air carrier airports receiving federal funds.

16. **Exhibits.** The following exhibits are attached hereto and made a part hereof:  
Exhibit A - *Description of Leased Premises*  
Exhibit B - *Site Map*  
Exhibit C - *Permitted Uses*

*SIGNATURES ON FOLLOWING PAGE*

This Lease is executed by the parties on the dates indicated below their respective signatures, effective as of the later of such dates (the "Effective Date").

**City of Cincinnati**

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 202\_\_

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF HAMILTON        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, the \_\_\_\_\_ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the corporation. This is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

Recommended by:

\_\_\_\_\_  
John Brazina  
Director, Department of Transportation and Engineering

\_\_\_\_\_  
Fred Anderton, Lunken Airport Manager

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

Certified Date: \_\_\_\_\_

Fund/Code: \_\_\_\_\_

Amount: \_\_\_\_\_

By: \_\_\_\_\_  
Karen Alder, City Finance Director

[ Lessee Signature Page Follows ]

**Lessee:**

VR Hospitality, LLC  
a Kentucky limited liability company

By: \_\_\_\_\_

Printed name: Guy van Rooyen

Title: Authorized Manager

Date: \_\_\_\_\_, 2021

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF HAMILTON         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021 by Guy van Rooyen, the Authorized Manager of VR Hospitality, LLC, a Kentucky limited liability company, on behalf of the company. This is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF LEASED PREMISES**

**CITY OF CINCINNATI  
DEPARTMENT OF TRANSPORTATION  
and ENGINEERING**

**LUNKEN AIRPORT  
LEASE AREA 52  
November 30, 2021**

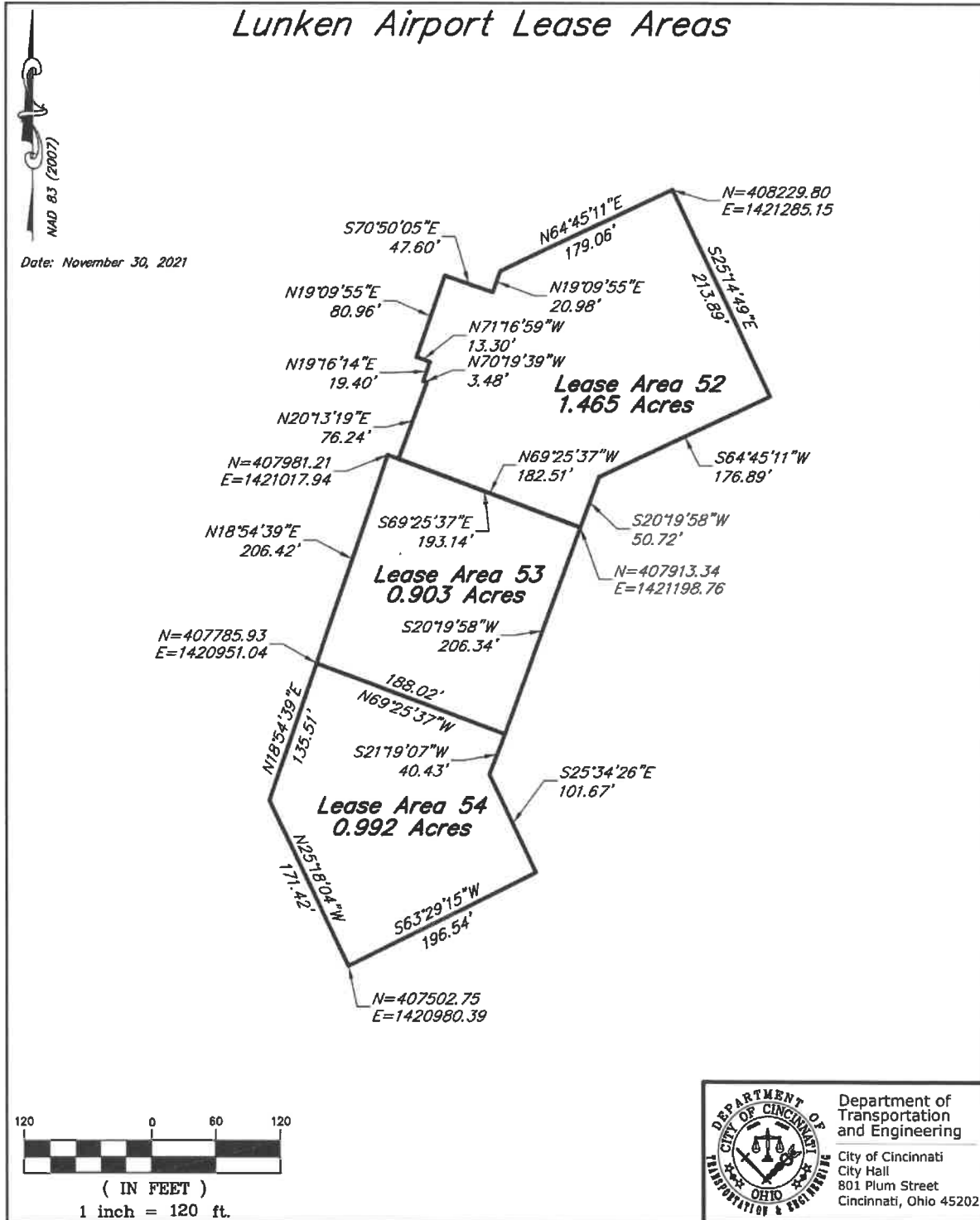
Situated in Section 30, Fractional Range 1, Town 5, Spencer Township, Hamilton County, Cincinnati, Ohio and being more particularly described as follows:

Beginning at a point with coordinates (408,229.80 N., 1,421,285.15 E.); thence South 25°14'49" East, 213.89 feet to a point; thence South 64°45'11" West, 176.89 feet to a point; thence South 20°19'58" West, 50.72 feet to a point with coordinates (407,913.34 N., 1,421,198.76 E.); thence North 69°25'37" West, 182.51 feet to a point; thence North 20°13'19" East, 76.24 feet to a point; thence North 70°19'39" West, 3.48 feet to a point; thence North 19°16'14" East, 19.40 feet to a point; thence North 71°16'59" West, 13.30 feet to a point; thence North 19°09'55" East, 80.96 feet to a point; thence South 70°50'05" East, 47.60 feet to a point; thence North 19°09'55" East, 20.98 feet to a point; thence North 64°45'11" East, 179.06 feet to the Place of Beginning.

Containing 1.465 acres of land, more or less. Bearings are based on Ohio State Plan Coordinate System, South Zone (3402), NAD83 (2007). Subject to all legal highways, easements and restrictors of record. This legal description is based on a survey performed under the direction of Douglas C. Spreen II, Ohio Registration Number 8238.

EXHIBIT B

SITE MAP



## EXHIBIT C

### PERMITTED USES

- (1) The operation of, or leasing space for, aircraft, engine, and accessory maintenance, modification, overhaul, interior refurbishing, and completion business, including, but not limited to satellite or limited service operations.
- (2) The servicing, parking, basing, repairing, modifying, overhauling, fueling, self-fueling, storage, and managing of aircraft and other equipment utilized by Lessee in its operations permitted hereunder or owned or operated by Lessee's tenants and customers. The Lessee shall operate and maintain a fuel farm and fuel servicing vehicles and all other requirements as provide for in the Airport's Rules and Regulations.
- (3) The sale, purchase, rental, leasing, storage, disposal and exchange of aircraft, airframes, aircraft engines, fuel (in accordance with the Cincinnati Municipal Code and annual permit renewal), oil, lubricant and other aircraft parts, equipment, tools, and supplies, and the furnishing and procurement of financing of such transactions.
- (4) The reconditioning and sale of aircraft parts, tools, components, accessories, and other aviation products.
- (5) The ground servicing of scheduled and non-scheduled aircraft, said ground servicing to include, but not limited to, baggage loading and unloading, cleaning, and refurbishing the aircraft for flight.
- (6) The providing of space to others for use for the parking, tie-down, or hangar storage of aircraft and aircraft tools, equipment, and consumable materials; for use for aircraft maintenance and repair shops; and for corporate or other private aircraft operating functions and other aviation related operations including office rental.
- (7) The operation of a snack or coffee bar or other food services for Lessee's tenants, employees, or bona fide aviation customers, one or more pilots' lounges; and the furnishing of food and beverage for in-flight consumption on aircraft.
- (8) The conduct of ground and flight training courses (including, but not limited to, courses offered "live" or by videotape, video conference, computer, ground training or flight simulator) for pilots and other persons and the giving of instruction in the operation and maintenance of aircraft of all types.
- (9) The conduct of a business of furnishing air transportation for hire of passengers and freight by air. Such flight operations shall be subject to the same rules and regulations applicable to all other operations at or from the Lunken Airport.
- (10) The installation of signs advertising the business and facilities of Lessee and the products sold by it on the lease area.
- (11) The installation, maintenance, and operation of antennas and of such electronic, communications, meteorological, and aerial navigation equipment and facilities as may be necessary or convenient for the operation of Lessee's business, so long as the location, elevation, installations, maintenance, or operation of such antennas, equipment, or facilities does not interfere with operations conducted or equipment operated by the City, the Federal Aviation Administration, or by or for the use of scheduled carriers or other airport public transportation operators.
- (12) The parking of automobiles of Lessee's tenants, employees and legitimate aviation customers

(not the general public and not in competition with the Airport's public and employee parking facilities).

(13) The hire, leasing and loaning of automobiles and other ground transportation for Lessee's account or as agent for others to Lessee's tenants, customers, and visitors and to the employees, customers, and visitors of other Airport tenants.

Subject to the prior written approval of the City Manager, Lessee is permitted to engage in any other use consistent with the activities enumerated herein and necessary to the servicing, storage, renting, operating, repair, sale, lease, and maintenance of general aviation, corporate, and aircraft and other types of aeronautical vehicles and equipment.

\* \* \*