

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)

ORDINANCE NO: 21-22-783

**AN ORDINANCE PROVIDING FOR A LEASE AND AGREEMENT BETWEEN
EDGEFIELD COUNTY AND EDGEFIELD AVIATION, LLC, THE LATTER SHALL
LEASE THE PREMISES OF THE EDGEFIELD COUNTY AIRPORT AND SERVE AS
THE AIRPORT’S FIXED BASE OPERATOR AND AIRPORT MANAGER**

WHEREAS, Edgefield County, hereinafter referred as “LESSOR,” is the owner of the Edgefield County Airport, hereinafter referred to as “AIRPORT,” and desires that a private entity serve as the AIRPORT’S Fixed Base Operator and Airport Manager under the terms and conditions described herein; and

WHEREAS, Edgefield Aviation LLC, hereinafter referred to as “LESSEE”, desires to lease AIRPORT and serve as its Fixed Base Operator and Airport Manager under the terms and conditions described herein; and

WHEREAS, Edgefield County has conducted three readings of this Lease and Agreement Ordinance, hereinafter referred to as “LEASE AND AGREEMENT,” and has held the public hearing requisite under 4-9-130 (6), SC Code of Laws 1976, as amended; and

WHEREAS, no prior leases or agreements between the parties or LESSEE’s predecessor in interest concerning AIRPORT are legally binding or otherwise valid,

NOW, THEREFORE, THIS LEASE AND AGREEMENT, by and between Edgefield County, hereinafter referred to as “LESSOR” and Edgefield Aviation LLC, hereinafter referred to as “LESSEE,” is made and entered into this ___ day of July 2022.

**Article 1
Property Description**

LESSOR, for and in consideration of the rents, covenants, terms and conditions hereinafter set forth, does hereby agree to rent, lease, and let unto LESSEE, who does hereby agree to rent and lease from LESSOR 100 acres of the following property in Edgefield County, State of South Carolina, with such property being more fully described as follows, but with the exception further described below:

The lands, consisting of approximately 100 acres, known as the Edgefield County Airport, the same land conveyed to Edgefield County by deed of Sara Younce, dated July 8, 1945, and recorded in Deed Book 37, at Page 686, records of Edgefield County, on July 19, 1945.

ARTICLE 11 TERMS AND CONDITIONS

The parties hereto further agree to the following terms and conditions:

A. Term of Lease and Agreement

The term of this LEASE AND AGREEMENT shall be for a period of twenty-five (25) years beginning on the date of its execution in the year 2022 and expiring at 12:01 a.m. on the anniversary of that date in the year 2047.

B. Leasing and Selling of Buildings by LESSEE, Assignment of Lease by LESSEE to Other Parties, Conveyance of Building to LESSOR at Termination of Lease, Termination of Lease by Lessor for Cause.

(i) Leasing and Selling of Buildings by LESSEE

During the term of the LEASE AND AGREEMENT, LESSEE shall have the right to lease or sell improvements built or purchased by LESSEE; provided, however, that such subsequent ownership or leases shall be subject to the terms and conditions set forth herein, including the term of said LEASE AND AGREEMENT as set forth in Article 22, paragraph A, after which term all buildings shall be conveyed to LESSOR for and in consideration of One Dollar (\$1.00).

(ii) Assignment of Lease by LESSEE to Other Parties

LESSEE may assign this LEASE AND AGREEMENT in its entirety, subject to the same terms and conditions binding initial LESSEE as stated herein; provided, however, that LESSOR must be notified in writing at least ninety (90) days in advance of any such assignment. Additionally, such assignment shall run concurrently with the term dates set forth in Article II, Paragraph A herein, and all buildings located on the premises of AIRPORT shall be conveyed to LESSOR at the end of such term for and in consideration of One Dollar (\$1.00)

(iii) Conveyance of Buildings to LESSOR at Termination of Lease

If this LEASE AND AGREEMENT is terminated as provided for in Article II, Paragraph B (iv), or as provided for in Article II, Paragraph D or F, as set forth herein, LESSOR shall pay LESSEE or LESSEE's assigns the fair market value of all buildings under ownership of LESSEE or LESSEE's assigns at the time of termination. Fair market value, for purposes of this LEASE AND AGREEMENT, shall be determined by the average of three property appraisals, as conducted by three (3) separate licensed appraisers whose credentials are duly recognized by the State of South Carolina. Two such appraisers shall be of LESSOR's choosing; the third appraiser shall be of LESSEE's choosing. Where the termination of this LEASE AND AGREEMENT is affected in accordance with Article II Paragraph A as set forth herein, however, such buildings under the ownership of LESSEE or LESSEE's assigns will be conveyed to LESSOR for and in consideration of One Dollar (\$1.00).

C. Monetary Considerations of Lease and Agreement

The consideration for said LEASE AND AGREEMENT shall be the sum of One Dollar (\$1.00) paid by LESSEE to LESSOR, due annually no later than the thirty-first day of July in each year for which this LEASE AND AGREEMENT remains in effect.

D. Insurance Requirements for Lease/Airport Manager and Fixed Base Operator; Termination of Lease for Insufficient Insurance Coverage

LESSEE is required to maintain at all times proof of sufficient airport liability insurance. At a minimum, LESSEE shall maintain hangars keepers' liability coverage in the amount sufficient to cover the value of all property within the hangars, as well as airport premises liability coverage in the amount of Two Million Dollars (\$2,000,000.00) per occurrence. To the extent greater amounts of coverage become reasonable available on commercial market, this amount of coverage shall be increased up to Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00) at the end of the first ten (10) years of this LEASE AND AGREEMENT and up to Two Million Five Hundred Thousand Dollars (\$2,500,000.00) at the end of the second ten (10) years of this LEASE AND AGREEMENT. In the event that LESSEE engages in the sale of products, services, flying lessons, or other activities of a commercial nature, LESSEE shall maintain airport product liability insurance in appropriate amounts for those activities. For all types of insurance coverage that LESSEE is required to maintain under this LEASE AND AGREEMENT, LESSEE shall make LESSOR a certificate holder and LESSOR shall be added as an insured. All such insurance shall be purchased at LESSEE's expense and shall be purchased from a company with an A.M. Best rating of A minus (A-) or better. It shall be the responsibility of LESSEE to ensure that any sub-leases are sufficiently insured in accordance with the requirements of this LEASE AND AGREEMENT. LESSEE shall also be responsible for insuring such other property as it may own that is located on the premises of AIRPORT. If at any time during the term of this LEASE AND AGREEMENT, LESSEE is found not to be compliance with the insurance requirements as stated herein, said LEASE AND AGREEMENT shall be subject to immediate termination at the discretion of LESSOR and buildings conveyed to LESSOR in accordance with Article II, Paragraph B (iii) herein.

E. Insurance Requirements for LESSOR, Acknowledgement of Legal Restrictions Against LESSOR Indemnifying LESSEE.

Lessor shall maintain such insurance as may be necessary to cover negligence on LESSOR's part. LESSOR and LESSEE understand and agree that LESSOR, under the Code of Laws and the Constitution of the State of South Carolina, may not indemnify private individuals or entities.

F. Airport and Runway Maintenance and Capital Improvements

LESSEE shall serve as AIRPORT'S Fixed Base Operator and Airport Manager and shall be responsible for all aspects of maintaining said AIRPORT. Such maintenance responsibilities shall include, but not be limited to, cutting grass, removing obstructions, and otherwise ensuring that all

runway surfaces are maintained in a safe and legally operable manner. LESSEE agrees to provide and maintain such equipment, supplies and labor as may be necessary for such maintenance. LESSEE shall also be responsible for ensuring that AIRPORT remains in compliance with all applicable state, federal and local laws and regulations pertaining to the operation of airports and runways. LESSEE shall be responsible for working with FAA officials and reporting directly to the Edgefield County Council one or more times a year as deemed necessary by either party. The maintenance requirements of LESSEE, as described herein, shall devolve entirely on maintenance associated with AIRPORT. It is agreed that LESSEE shall be responsible for FAA-required and other capital improvements to the public areas of the AIRPORT and that LESSEE will advise LESSOR of the FAA's requirement of such improvements. It is further agreed that LESSOR shall be responsible for any required or necessary property condemnation in the Airport Safety Area as referenced in the Airport Safety Ordinance and any subsequent amendments thereto, subject to reimbursement to LESSOR by LESSEE for LESSOR's payments and costs for any condemnation. Such reimbursement shall be made by LESSEE within 180 days of notice to LESSEE of the amount. If LESSEE fails to make timely reimbursement, said LEASE AND AGREEMENT shall be subject to immediate termination at the discretion of LESSOR and buildings conveyed to LESSOR in accordance with Article II, Paragraph B (iii) herein. Any required or necessary tree cutting shall be the responsibility of LESSEE; however, LESSOR, in its discretion, may undertake or provide tree-cutting. LESSEE agrees to inform LESSOR of apparent observed or known violations of the Airport Safety Area. LESSOR, in its sole discretion, may provide assistance for improvements and may provide for an annual appropriation for maintenance.

G. Improvements Made by LESSEE Considered Lease Hold Improvements

Only LESSEE and LESSEE's heirs, successors or assigns shall be permitted to erect fixed building structures and make other improvements on the premises of AIRPORT, except as provided herein. Upon termination of this LEASE AND AGREEMENT, as provided for in Article II, Paragraph A herein, all fixed building structures and other permanent building improvements shall be conveyed to LESSOR for and in consideration of One Dollar (\$1.00) paid by LESSOR to LESSEE, with such fixed building structures and other permanent improvements being considered leasehold improvements.

H. Public Airport

AIRPORT and its runways shall remain open to the general flying public, and the public shall not be deprived of its rightful, equal and uniform use thereof, subject to compliance with all legally recognized restrictions governing the licensure and safety of aircraft and airport usage. It shall be deemed that AIRPORT is classified as an "unattended/uncontrolled" airport. LESSEE shall have the right to close AIRPORT for safety reasons or lack of insurance coverage, and also shall have the right to close a portion of AIRPORT for safety reasons.

I. Taxation of Real, Personal, and Other Property

For all property on AIRPORTS'S premises under LESSEE's ownership, LESSEE shall pay all taxes due in accordance with the South Carolina Code of Laws 1976, as amended, for tax periods

beginning with the year of execution of this LEASE AND AGREEMENT and for all subsequent years during the term of the LEASE AND AGREEMENT. The Edgefield County Tax Assessor and the South Carolina Department of Revenue shall jointly determine the taxability of property located at, pertaining to, affixed to, or stored on, AIRPORT's premises. The payment of personal and other property taxes shall be fixed to ownership and shall be the same as those assessed against similar property under private ownership.

**ARTICLE III
BINDING AGREEMENT**

LESSOR AND LESSEE agree that all provisions herein are to be construed as covenants and agreements and shall be binding upon and shall inure to the benefit of the parties hereto, their respective representative, heirs, successors and assigns, for and during the life of this LEASE AND AGREEMENT.

IN WITNESS WHEREOF, LESSOR and LESSEE have hereunto set their Hands and Seals to this LEASE AND AGREEMENT, executed in duplicate, this __ day of July 2022.

Edgefield County Council

Dean Campbell, Chair

ATTEST:

Aretha Eubanks, Clerk to Council

First Reading: _____

Second Reading: _____

Third Reading: _____