

FORSYTH COUNTY
BOARD OF COMMISSIONERS

**BRIEFING
DRAFT**

MEETING DATE: AUGUST 31, 2017

AGENDA ITEM NUMBER: 19

SUBJECT: RESOLUTION RATIFYING AND AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE AIRPORT COMMISSION OF FORSYTH COUNTY, FORSYTH COUNTY, AND FORSYTH TECHNICAL COMMUNITY COLLEGE FOR THE LEASE OF A 3 ACRE PORTION OF REAL PROPERTY LOCATED AT THE SMITH REYNOLDS AIRPORT

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

SUMMARY OF INFORMATION:-

ATTACHMENTS: yes no

SIGNATURE: _____ DATE: _____
COUNTY MANAGER

RESOLUTION RATIFYING AND AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE AIRPORT COMMISSION OF FORSYTH COUNTY, FORSYTH COUNTY, AND FORSYTH TECHNICAL COMMUNITY COLLEGE FOR THE LEASE OF A 3 ACRE PORTION OF REAL PROPERTY LOCATED AT THE SMITH REYNOLDS AIRPORT

WHEREAS, the Airport Commission of Forsyth County and Forsyth County have ownership interests in real property commonly referred to as the Smith Reynolds Airport; and

WHEREAS, Forsyth Technical Community College plans to develop, operate, and maintain an Aviation Career Development Center on a 3 acre portion of the Smith Reynolds Airport site described in the attached document labeled, "Lease Area", which is incorporated herein by reference; and

WHEREAS, N.C.G.S. 160A-274 authorizes Forsyth County and the Airport Commission of Forsyth County, as governmental units, to lease to Forsyth Technical Community College, as an institution, any interest in real property upon such terms and conditions as deemed wise, with or without consideration; and

WHEREAS, the proposed Lease will be based upon the attached lease provisions which include a 40-year term, a \$0.35 per square foot annual rent, with a 2% annual increase;

NOW, THEREFORE, BE IT RESOLVED by the Forsyth County Board of Commissioners that the proposed Lease Agreement between the Airport Commission of Forsyth County, Forsyth County, and Forsyth Technical Community College of a 3 acre portion of the real property located at Smith Reynolds Airport described herein, is hereby ratified as required by N.C.G.S. 160A-461 and authorized by N.C.G.S. 160A-274, subject to approval by the Airport Commission of Forsyth County and Forsyth Technical Community College.

BE IT FURTHER RESOLVED that the Chairman or County Manager and the Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, a Lease Agreement of the above-described property with the Airport Commission of Forsyth County to Forsyth Technical Community College based on the attached proposed provisions, subject to a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney.

BE IT FURTHER RESOLVED that this resolution ratifying interlocal cooperation between Forsyth County, the Airport Commission of Forsyth County and Forsyth Technical Community College is hereby spread upon the minutes of the Forsyth County Board of Commissioners.

Adopted this the 31st day of August 2017.

LEASE AREA

COMMENCING at an existing 1 1/4" iron in the northern right-of-way of Fairchild Road, said iron being the southeast corner of PIN 6836-88-3867, Three Aircraft Seats (De) Ltd. property as recorded in Deed Book 2281, page 3817 and Plat Book 30, Page 59 and a corner of PIN 6837-90-1978 Forsyth County property as recorded in Deed Book 875, Page 102; thence crossing said Forsyth County property N. 72°56'52" E. 653.87' to a 7/8" iron placed the point and place of BEGINNING thence on a new line the four following courses and distances: 1) N. 55°21'52" E. 280.00' to a 7/8" iron placed; thence 2) S. 34°38'09" E. 475.00' to a 7/8" iron placed; thence 3) S. 55°21'52" W. 280.00' to a 7/8" iron placed; thence 4) N. 34°38'09" W. 475.00' to the BEGINNING and containing 3.0532 Acres more or less.

Legend

7/8" Iron Pines	■
Iron Found (As Noted)	○
Boundary Line	—
Unsurveyed Line	- - -
Adjoining Boundary Line	—

Map of Formerly
 PW 6538-88-1867
 Deed Book 2261, Page 147
 Fannin County, Ga.
 Plat Book 30, Page 35

Map of Formerly
 PW 6237-80-1978
 Forsyth County
 Deed Book 276, Page 102

Map of Formerly
 PW 6537-80-1978
 Forsyth County
 Deed Book 276, Page 102

Map of Formerly
 PW 6237-80-1978
 Forsyth County
 Deed Book 276, Page 102

Forsyth County, North Carolina

I, Jerry W. Ellis, certify that this map was drawn under my supervision from an actual fieldland and a GPS survey made under my supervision (See description recorded in Deed Book 276, Page 102 and other reference sources as shown), that the boundaries not surveyed are indicated as dashed lines and drawn from information shown, that the ratio of precision or positional accuracy for the fieldland survey as certified by latitude and departures is 1/250,000±; the following information was used to perform the GPS survey: (1) Class of survey: A (2) Positional accuracy: 0.10 (3) Type of GPS field procedure: RTK (4) Date of survey: July 25, 2017 (5) Datum: NAD83(2011) (6) NGCS VRS/RTN (7) Geoid model: 2012 (8) Combined grid location: C-899840(9) Units: US Survey Feet; that the area was calculated by coordinates, and that this map meets the requirements of the Standards of Practice for Land Surveying in North Carolina (21 NCAC 56.1600) and does not meet the requirements of NCSC 47-30 as amended.

Witness my hand and seal this 31st day of July, 2017.

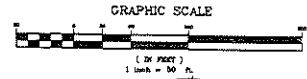
Jerry W. Ellis
 Professional Land Surveyor
 L-4558



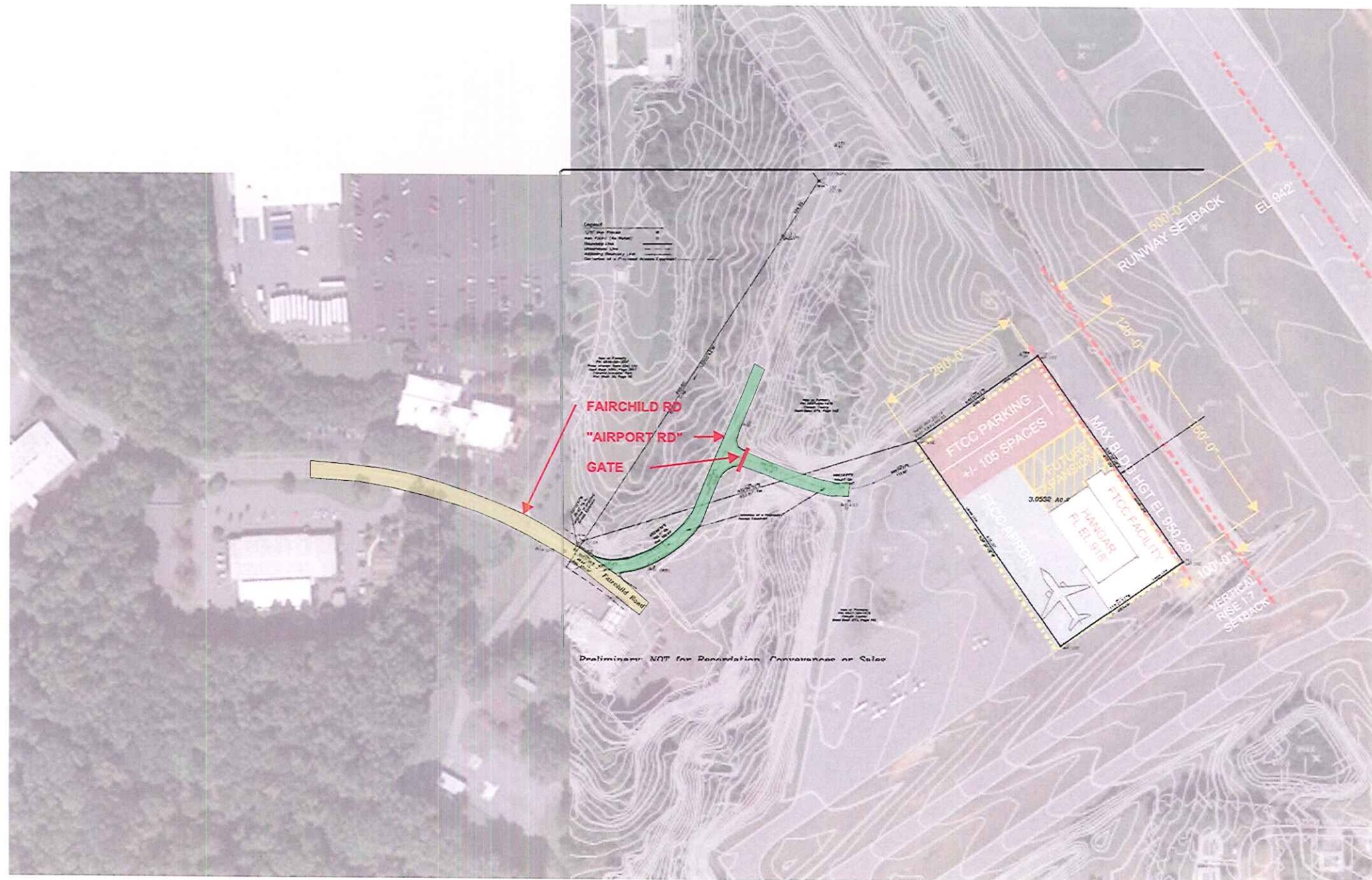
Notes:

- 1) This property is subject to any easements, agreements, or right-of-way of record prior to the date of this map which were not apparent at the time of my inspection and might otherwise be disclosed by an attorney's title opinion which is of date shown hereon has not been supplied to Brady Surveying Company, P.A. There may be easements or other matters of record affecting this property not shown hereon.
- 2) All distances shown are measured horizontal ground distances unless specifically noted otherwise.
- 3) Geoidetic Datum acquired via the NGCS VRS/RTN Horizontal Datum: NAD83(2011)

**Boundary Survey for Lease Area
 Forsyth Technical College
 Winston Township
 Forsyth County, North Carolina
 July 31, 2017**



Brady Surveying Company, P.A. C-583
 2900 Bethesda Place, Suite 601-B
 Winston-Salem, North Carolina 27103
 (336) 790-2716



Preliminary: NOT for Recordation, Conveyance or Sales

Proposed Terms

Land lease between the Airport Commission of Forsyth County (ACFC), Forsyth Technical Community College (FTCC), and Forsyth County (County)

PURPOSE

FTCC shall develop, operate and maintain a first-rate Aviation Career Development Center.

USE OF AIRPORT FACILITIES

FTCC shall have the nonexclusive right to the use of the runways and taxiways of the Airport, and other public places in the Airport, the roadways and landing aids, and other public facilities provided by the ACFC.

PROPERTY LEASED

ACFC will lease to FTCC certain real property ("Premises") located at the Smith Reynolds Airport ("Airport") which is described in Exhibit "A" (It is the understanding of the parties that FTCC shall conduct a survey of said property to more accurately describe and can be incorporated into the agreement as Exhibit A).

TERM

The term of this Agreement shall include the construction phase (estimated 2 to 3 years) plus forty (40) years, commencing upon receipt of the Notice to Occupy (NTO). Prior to the NTO, FTCC shall have a maximum of 36 months to construct the Aviation Center commencing on _____, 2017.

FTCC'S OBLIGATIONS

It is the understanding and agreement of the parties that FTCC is to develop and construct Aviation Center. FTCC obligation to develop and construct such Aviation Center is subject to Tenant's ability to obtain all necessary permits, including, but not limited to building permits.

REVERSION OF IMPROVEMENTS

Ownership of all improvements on the Premises shall revert to the ACFC upon termination of the forty (40) year term from the date of NTO.

HOLDOVER

If FTCC holds possession of the Premises after the expiration of the term of this Agreement or any extension thereof, with consent of ACFC and County, either expressed or implied FTCC shall become a tenant from month to month. All rent(s) for said holdover tenancy shall be adjusted to reflect the rate for both Land and Improvements. All other terms and conditions of this Agreement shall remain unchanged.

RENT

Annual rent during construction and after the NTO, shall be calculated by multiplying the square foot annual rent rate, (\$0.35), times the total area (calculated in square feet). For instance, a three acre parcel would equate to an annual payment of \$45,738 a year or \$3,811.50 a month (1 acre = 43,560 square feet: $\$0.35 \times 130,680 \text{ sf} = \$45,738$).

During the construction phase, the rent shall be prorated. Rent shall be paid to the ACFC within ten (10) days of the first day of each month in advance or the County and/or FTCC can make an annual payment to the ACFC.

RENT ESCALATION

On January 1, 2020, an annual fixed rate escalator shall be applied to the annual rent. Each year a 2% increase shall be applied and continued for the remainder of the Agreement.

ALTERATIONS BY FTCC

FTCC shall make improvements, alterations, or additions to the Premises, provided, however, that approval of such improvements, alterations or additions must be obtained in advance in writing from the Airport Director. Tenant shall obtain all necessary applicable permits after securing the Airport Director's written approval of plans. Such consent shall not be unreasonable withheld.

FAA SPECIAL PROVISIONS.

The Tenant (FTCC), representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

The Tenant, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the 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 subject to discrimination; and (3) the Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally- assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

The Tenant assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Tenant assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Tenant assures that it will require that its covered suborganizations provide assurances to the Tenant that they similarly will undertake affirmative action programs and that they will

require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

The ACFC reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of the Tenant and without interference or hindrance. Such reservation includes without limitation the right to develop and operate other airports, to relocate existing operations at other airports and to offer services and facilities at the other airports that may compete with the operations of Tenant.

The ACFC shall maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of the Tenant in connection with its use of such facilities.

The Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the ACFC and the United States, relative to the development, operation or maintenance of the Airport.

Tenant agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

There is hereby reserved to the ACFC, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from or operation on the Airport.

The Tenant, by accepting this expressly, agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder above the mean sea level elevation of more than ____ feet (TBD by survey). In the event the aforesaid covenants are breached, the ACFC reserves the right to enter upon the Premises and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Tenant.

The Tenant, by accepting the Agreement, agrees for itself, its successors and assigns that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, ACFC reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of the Tenant.

The Agreement and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regula-

tion and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

CONTAMINATION and POLLUTION

Tenant solely at its own cost and expense, will provide clean up of any premises, property or natural resources contaminated or polluted due to Tenant activities. Any fines, penalties, punitive or exemplary damages assigned due to contaminating or polluting activities of the Tenant will be borne entirely by the Tenant.

STORMWATER REGULATIONS ACKNOWLEDGMENTS

Tenant shall be responsible for stormwater fees assessed on impervious surfaces within premise. Notwithstanding any other provisions or terms of the Agreement, Tenant acknowledges the ACFC is subject to federal stormwater regulations 40 CFR Part 122, for aircraft maintenance shops (including aircraft rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations that occur at the Airport as defined in these regulations and, as applicable, State stormwater regulations provided. Tenant further acknowledges that it is familiar with these stormwater regulations; that it conducts or operates vehicle and aircraft maintenance, equipment cleaning operations activities as defined in the stormwater regulations; and that it is aware the there are significant penalties for submitting false information, including fines and imprisonment for knowing violations. ACFC and Tenant both acknowledge that close cooperation is necessary to minimize costs. Tenant acknowledges and agrees that it undertake all reasonably necessary actions to minimize the exposure of stormwater to significant materials generated, stored, handles, or otherwise used by Tenant, by adhering to ACFC requirements and Best Management Practices. "Best Management Practices" describes practices employed to prevent or reduce source water pollution, such as the construction of runoff-retention basins and replanting eroding surfaces. The Airport will conduct annual Best Management Practice inspections to assure Tenants compliance.

ENVIRONMENTAL PROTECTION

Tenant shall take all measures available to:

- A. Avoid any pollution of the atmosphere or littering of Airport caused by or originating in, on, or about Tenant's facilities.
- B. Keep the noise level on the Premises to a minimum so that other tenants may effectively utilize other areas of the Airport and so that persons in the general neighborhood will not be detrimentally affected.
- C. Keep the lights on the Premises from emitting light that could negatively affect the operation of aircraft or ground vehicles in the area.
- D. If the Tenant's activities on the property, which is the subject of the Agreement, involve in any manner the use, storage, or transportation of any chemicals, solvents, or other material which may be considered to be hazardous in their use, application, and/or transportation, other than any materials which are commonly used in connection with the use and storage of airplanes and other aviation equipment, Tenant shall advise ACFC in writing immediately. Tenant agrees additionally to have the Forsyth County Environmental Health Department inspect any property subject to such use on a not less than semiannual basis.
- E. Shall not perform engine run-ups for aircraft maintenance during the hours of 7pm to 8am.

AIRPORT REGULATIONS

Tenant agrees to observe, obey, and abide by all applicable laws, ordinances, field rules, and other regulations for the common and joint use of Airport facilities and for the maintenance and conduct of all its operations which are now or may hereafter be imposed or promulgated by ACFC, the Federal Aviation Administration, or any other governmental agency having jurisdiction over the subject matter.

COOPERATION BETWEEN TENANTS

The Tenant shall cooperate with all other Tenants of the ACFC who will be operating enterprises on the Airport and shall conduct its operations so as to avoid interference with the operations of other Tenants. Any difference or conflict, which may arise between the Tenant and other tenants, will be adjusted and determined fairly and equitably by the Director. If the operations of the Tenant are impaired because of any acts or omissions of such other tenants, the Tenant shall have no claim against the ACFC on that account.

UTILITIES

Tenant shall pay all service charges for gas, water, and electricity serving the Premises. Tenant shall pay connection fees and charges for all utilities, and service charges for electronic, computer or telephones equipment installed, used, or operated by Tenant on the Premises.

ACCESS

ACFC hereby represents that Tenant shall at all times have access to the Premises.

JANITORIAL SERVICES

Tenant shall provide all janitorial services and supplies at Tenant's sole expense. Tenant shall also maintain the Premises at all times in a neat, clean, orderly, and safe condition.

TRASH AND RUBBISH SERVICES

Tenant shall provide proper containers for and the regular collection of all trash and rubbish materials generated from or accumulating on the Premises.

SIGNS AND ADVERTISING

Tenant shall not erect or display, or permit to be erected or displayed, on the Airport or to the exterior of the buildings on the Premises, any signs or advertising matter of any kind without first obtaining the written consent of the Director which consent shall not be unreasonably withheld or delayed. Tenant shall obtain all necessary applicable permits after securing the Airport Director's written approval.

CONDITION OF PROPERTY UPON TERMINATION

Upon the termination of this Agreement for any reason, Tenant shall vacate the Premises and deliver it to ACFC in good order and condition, damage by the elements, fire, earthquake and ordinary wear and tear excepted and Tenant shall not be required to remove any of the improvements made to the Premises.